TAXATION AND REVENUE DEPARTMENT
P.O. Box 630
Santa Fe, New Mexico 87504-0630

3.2 NMAC
GROSS RECEIPTS AND COMPENSATING TAX ACT REGULATIONS
SECTIONS 7-9-1 to 7-9-116 NMSA 1978

Revised December 2018

This page intentionally blank.

3.2 NMAC
TABLE OF CONTENTS

7-9-1. SHORT TITLE
3.2.1.7 – Definitions
3.2.1.8 – Citation of regulations

7-9-2. PURPOSE

7-9-3. DEFINITIONS

7-9-3(A). “buying” or “selling”
3.2.1.7 – Definitions
A. Benefit
B. Consideration
C. Detriment
F. Computer-related terms
G. Practitioner of the healing arts

7-9-3(B). “department”

7-9-3(C). “financial corporation”
3.2.1.7 – Definitions
D. Financial corporation

7-9-3(D). "initial use" or "initially used"

7-9-3(E). "leasing"
3.2.1.17 – Gross receipts – leasing
H. Leasing computers
3.2.1.22 – Leasing
C. Security agreement distinguished from a lease - tax consequences

7-9-3(F). "local option gross receipts tax"

7-9-3(G). "manufactured home"

7-9-3(H). "manufacturing"
3.2.1.25 - Manufacturing - general examples

7-9-3(I). "person"

7-9-3(J). "property"
3.2.1.7 – Definitions

E. Franchise

3.2.1.27 – Property

A. Bills, notes, etc.

B. Sale of license to use software is sale of property

C. Granting the right to hunt is the sale of a license to use

7-9-3(K). "research and development services"

7-9-3(L). "secretary"

7-9-3(M). "service"

3.2.1.18 – Gross receipts - services

CC. Receipts from telephone or telegraph services

EE. Custom software

3.2.1.29 – Services

D. When a transaction is predominantly a service

E. Transactions in which neither the performance of a service or the sale of tangible personal property predominates

7-9-3(N). "use" or "using"

3.2.1.30 – Use and using

A. Use

B. Storage

7-9-3.2. ADDITIONAL DEFINITION

3.2.20.7 – Definitions

A. Admission

B. Agency, institution or instrumentality

C. Entertainment, athletic or recreational services or events

D. State of New Mexico and any agency, institution, instrumentality or political subdivision thereof

3.2.20.9 - "Receipts" and "taxable activity" defined

3.2.20.10 - "Facility open to the general public" defined

3.2.20.11 - Intangibles - indebtedness

3.2.20.12 - Intangibles - receipts from sale of licenses or permits

3.2.20.13 - Reporting, filing or registration fees

3.2.20.14 - Receipts from granting licenses to use real property

3.2.20.15 - Receipts from granting licenses to use information or personal property

3.2.20.16 - Receipts from leasing

3.2.20.17 - Receipts from services - general

3.2.20.18 - Receipts from services - refuse collection, refuse disposal and sewage

3.2.20.19 - Receipts from services - recreational, entertainment and athletic services

3.2.20.20 - Receipts from transactions which are predominantly the sale of tangible personal property

3.2.20.21 - Receipts from sales of tangibles - facilities not open to the general public
3.2.20.22 - Taxes
3.2.20.23 - Grants - donations
3.2.20.24 - Agency
3.2.20.25 - Implementation of governmental gross receipts tax for cash basis taxpayers and accrual basis taxpayers
3.2.20.26 - Registration and filing
3.2.20.27 - Governmentally-owned water utilities - installation and stand-by charges - minimum charges
3.2.20.28 - Time-price differentials - income from investments
3.2.20.30 - Receipts from sale of real estate
3.2.20.31 – Receipts from recreational, athletic and entertainment services
3.2.20.32 - Fines

7-9-3.3. DEFINITIONS -- ENGAGING IN BUSINESS
3.2.1.12 – Engaging in business
A. Affiliated corporations
B. Corporation not for profit
C. Leasing property
D. Hotels and motels providing interstate telecommunications service to guests
E. Persons not engaging in business – foster parents
F. Persons not engaging in business – certain caretakers
G. Persons not engaging in business – home care for developmentally disabled family members
H. Owner engages in business when selling to owned entity
II. Persons not engaging in business - sale or exchange of renewable-fueled electricity generated from a system installed in a personal residence

7-9-3.4. DEFINITIONS -- CONSTRUCTION AND CONSTRUCTION MATERIALS
3.2.1.11 – Construction
A. Construction service as distinguished from other services
B. Construction includes
C. Construction does not include
D. Oil and gas industry construction
E. Construction includes prefabricated buildings; prefabricated versus modular buildings
F. Construction materials and services; landscaping
G. Nontaxable transaction certificates
H. Fixtures
I. Construction materials; general
J. Meaning of “building”

7-9-3.5. DEFINITION -- GROSS RECEIPTS
3.2.1.14 - Gross receipts – general

A. Gross receipts
B. Credit card sales
C. Consideration other than money
D. Consideration less than fair market value
E. Sale of commercial paper
F. Interdepartmental transfers
G. Service charges computed on balances
H. Corporations and organizations not organized for profit – fund raising activities
I. Discount coupons
J. Gross receipts embezzled
K. Vending machines
L. “Gross receipts” excludes leased vehicle surcharge
M. Receipts from furnishing parts or labor under automotive service contract
N. Receipts from deductibles/co-payments under automotive service contracts
O. Receipts of dealer from own reserve
P. Water conservation fee
Q. Sales of items subject to the federal manufacturer's excise tax
R. Transactions among related persons are gross receipts
S. Owner’s receipts from transactions with owned entity are gross receipts

3.2.1.15 – Gross receipts – tangible personal property
A. Lease purchase agreement as a sale
B. Consignment sales
C. Delivery expenses
D. Freight charges
E. Refundable deposits
F. Buyer’s financing costs
G. Sale of items subject to the state cigarette tax act
H. Florist receipts
I. Sale of food and beverage at horse racetracks
J. Packaged software
K. Sale of postage stamps
L. Refined metals

3.2.1.16 – Gross receipts – real estate and intangible property
A. Insurance proceeds
B. Receipts from sale of automotive service contracts
C. Receipts from insurance company under an automotive service contract program
D. Gift certificates
E. Merchant discount and interchange rate fee receipts
F. Prepaid telephone cards - “calling cards”

3.2.1.17 – Gross receipts – leasing
A. Leasing of property employed in New Mexico

B. Additional charges
C. Lease of license - franchise agreement
D. Multistate use of leased equipment
E. Leasing of property employed outside New Mexico
F. Use of vehicles in New Mexico
G. Safe harbor lease--purchaser/lessor

3.2.1.18 – Gross receipts - services
A. Receipts from performing a service in New Mexico
B. Services performed both within and without New Mexico
C. Allocating receipts from selling services performed within and without New Mexico
D. Expenses incurred outside New Mexico and allocated to operations in New Mexico
E. Receipts from performing services outside New Mexico
F. Sales of state licenses by nongovernmental entities
G. Stockbrokers' commissions
H. Attorneys' fees
I. Directors' or trustees' fees
J. Anesthetists' fees
K. Athletic officials
L. Racing receipts
M. Advertising receipts of a newspaper or broadcaster
N. Advertising space in pamphlets
O. Billboard advertising
P. Day care centers
Q. Child care
R. Service charges; tips
S. Real estate brokers
T. Entertainers
U. Managers or agents of entertainers
V. Water utilities - installation of water taps and pipes
W. Utilities - installation charges
X. Construction on Indian reservations or pueblos
Y. Star route contractors
Z. Racetrack operators
AA. Data access charges
BB. Specialty software package [Repealed]
DD. Allied company underwriting automotive service contracts
FF. Check cashing is a service
GG. Receipts of collection agencies
HH. Commission of independent contractors when another pays gross receipts tax on the receipts from the underlying transaction
II. Receipts from winning contest.

3.2.1.19 – Gross receipts – receipts of agents
A. Nonemployee agents
B. Receipts of condominium and other real property owners associations
C. Reimbursed expenditures
D. Reimbursement of expenditures made to volunteers

7-9-4. IMPOSITION AND RATE OF TAX -- DENOMINATION AS "GROSS RECEIPTS TAX"
3.2.4.7 - Definitions
3.2.4.8 - Who is the taxpayer
3.2.4.9 – Federal preemption – transactions with Indian tribes
A. Imposition barred by federal law - sale in Indian country of tangible personal property to a tribe or tribal member – general
B. Imposition barred by federal law - sale in Indian country of tangible personal property to a tribe or tribal member - electricity, natural gas or water sold by public utility
C. Imposition barred by federal law - leasing in Indian country to tribe or tribal members
D. Imposition barred by federal law - services in Indian country for tribe or tribal members – general
E. Imposition barred by federal law - services in Indian country for tribe or tribal members - construction services
F. Imposition barred by federal law - services in Indian country for tribe or tribal members - telecommunications services
G. Imposition barred by federal law - receipts of federally licensed Indian traders
H. Imposition barred by federal law - Indian business within tribe's territory
3.2.4.10 - Federal preemption and state exemption - credit unions
3.2.4.11 - Federal preemption - job corps contractors
3.2.200.8 - Federal preemption of local taxes

7-9-4.3. IMPOSITION AND RATE OF TAX -- DENOMINATION AS "GOVERNMENTAL GROSS RECEIPTS TAX"
3.2.21.8 - Application of governmental gross receipts tax
3.2.21.9 - Licensed entities providing health care services

7-9-5. PRESUMPTION OF TAXABILITY
3.2.5.8 - Persons not required to register with the department

7-9-6. SEPARATELY STATING THE GROSS RECEIPTS TAX
3.2.6.8 - Separately stating the gross receipts tax
3.2.6.9 - Who is the taxpayer

7-9-7. IMPOSITION AND RATE OF TAX -- DENOMINATION AS "COMPENSATING TAX"
3.2.10.8 - Tangible personal property acquired outside New Mexico for use in New Mexico
3.2.10.9 - Personal rather than commercial use of tangible personal property or services

3.2.10.10 - The use in New Mexico of a service performed entirely outside New Mexico
3.2.10.11- Tangible personal property on which the compensating tax has been previously paid
3.2.10.12 - Promotional gifts
3.2.10.13 - Construction projects occupied or leased prior to sale
3.2.10.14 - Processing pipe
3.2.10.15 - Materials used on nontaxable projects
3.2.10.16 - Ordinary and necessary business expense
3.2.10.17 - Services which qualify as capital expenditures
3.2.10.18 - Compensating tax on dealer use of parts
3.2.10.19 - Tangible personal property furnished to dealers by out-of-state service contract administrators
3.2.10.20 - Telecommunications service used by hotels and motels
3.2.10.21 - Federal preemption and state exemption - credit unions
3.2.10.22 - Federal preemption - job corps contractors

7-9-7.1. DEPARTMENT BARRED FROM TAKING COLLECTION ACTIONS WITH RESPECT TO CERTAIN COMPENSATING TAX LIABILITIES

7-9-8. PRESUMPTION OF TAXABILITY AND VALUE
3.2.11.8 - Value - freight charges
3.2.11.9 - Value of drug samples
3.2.11.10 - Restaurant food for employees

7-9-9. LIABILITY OF USER FOR PAYMENT OF COMPENSATING TAX
3.2.12.8 - Separate stating of the tax
3.2.12.9 - General example

7-9-10. AGENTS FOR COLLECTION OF COMPENSATING TAX -- DUTIES
3.2.13.8 - Guidelines for “activity”
3.2.13.9 - Third party sales by agents for collection of compensating tax
3.2.13.10 - Collection of compensating tax by broadcasters

7-9-11. DATE PAYMENT DUE
3.2.2.8 - Extension of time for payment
3.2.2.9 - Determination of timeliness
3.2.2.10 - Effect of Saturday, Sunday, or holiday on payment date
3.2.2.11 - Reporting of progress payments
3.2.2.12 - Petition to change accounting methods
3.2.2.13 - Reporting of gross receipts - semi-annual reporting or quarterly reporting
3.2.2.14 - Accrual and cash basis reporting
3.2.2.15 - Return required to be filed

7-9-12. EXEMPTIONS

3.2.100.8 - Registration and filing
3.2.100.9 - Exemptions from gross receipts

7-9-13. EXEMPTION -- GROSS RECEIPTS TAX -- GOVERNMENTAL AGENCIES
3.2.101.8 - Governmentally-owned utilities - installation and stand-by charges - minimum charges
3.2.101.9 - Receipts of governmental entities
3.2.101.10 - American National Red Cross

7-9-13.1. EXEMPTION -- GROSS RECEIPTS TAX -- SERVICES PERFORMED OUTSIDE THE STATE THE PRODUCT OF WHICH IS INITIALLY USED IN NEW MEXICO -- EXCEPTIONS

7-9-13.2. EXEMPTION -- GOVERNMENTAL GROSS RECEIPTS TAX -- RECEIPTS SUBJECT TO CERTAIN OTHER TAXES

7-9-13.3. EXEMPTION -- GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX -- STADIUM SURCHARGE

7-9-13.4. EXEMPTION -- GROSS RECEIPTS TAX -- SALE OF TEXTBOOKS FROM CERTAIN BOOKSTORES TO ENROLLED STUDENTS

7-9-13.5. EXEMPTION -- GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX -- EVENT CENTER SURCHARGE

7-9-14. EXEMPTION -- COMPENSATING TAX -- GOVERNMENTAL AGENCIES -- INDIANS
3.2.102.8 - Use of property by governmental entities
3.2.102.9 - Tangible personal property incorporated into a metropolitan redevelopment project
3.2.102.10 - Use of property by Indian governments
3.2.102.11 - American National Red Cross

7-9-15. EXEMPTION -- COMPENSATING TAX -- CERTAIN ORGANIZATIONS
.....3.2.103.8 - Single member limited liability company whose solve member is a 501(c)(3) organization

7-9-16. EXEMPTION -- GROSS RECEIPTS TAX -- CERTAIN NONPROFIT FACILITIES
3.2.104.8 - Nonprofit status to be determined by department
3.2.104.9 - Payments made by the health and environment department
3.2.104.10 - Sales by auxiliaries

7-9-17. EXEMPTION -- GROSS RECEIPTS TAX -- WAGES
3.2.105.7 - Definitions - employee

3.2.105.8 - Blind operators of vending stands
3.2.105.9 - School bus operators
3.2.105.10 - Commissioned salespersons
3.2.105.11 - Employer reimbursement of expenditures to employees

7-9-18. EXEMPTION -- GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX -- AGRICULTURAL PRODUCTS
3.2.106.7 – Definitions
A. Agricultural products
B. Poultry
3.2.106.8 - Lease of livestock
3.2.106.9 - Cooperative associations
3.2.106.10 - Nursery
3.2.106.11 - Tree farms
3.2.106.12 - Bull semen
3.2.106.13 - General examples
3.2.106.14 - Sale of worms for aeration

7-9-18.1. EXEMPTION -- GROSS RECEIPTS TAX -- FOOD STAMPS

7-9-19. EXEMPTION -- GROSS RECEIPTS TAX -- LIVESTOCK FEEDING
3.2.107.8 - Receipts from feeding animals

7-9-20. EXEMPTION -- GROSS RECEIPTS TAX -- CERTAIN RECEIPTS OF HOMEOWNERS ASSOCIATIONS
3.2.108.8 - Ownership of property within the development or subdivision required
3.2.108.9 - Receipts other than membership fees, dues or assessments
3.2.108.10 - Receipts of associations where common areas are open to non-members

7-9-22. EXEMPTION -- GROSS RECEIPTS TAX -- VEHICLES
3.2.109.8 - Motor vehicle excise tax
3.2.109.9 - Additional equipment
3.2.109.10 - Discounting of vehicles sales contracts
3.2.109.11- Manufactured homes
3.2.109.12 - Service contract sale price and transfer fees on vehicle sale not deductible as taxable under motor vehicle excise tax
3.2.109.13 - ATVs

7-9-22.1. EXEMPTION -- GROSS RECEIPTS TAX -- BOATS
3.2.110.8 - Additional equipment
3.2.110.9 - Discounting of boats sales contracts

7-9-23. EXEMPTION -- COMPENSATING TAX -- VEHICLES
3.2.111.8 - Credit for taxes paid in other states

7-9-23.1. EXEMPTION -- COMPENSATING TAX; BOATS

7-9-24. EXEMPTION -- GROSS RECEIPTS TAX -- INSURANCE COMPANIES
3.2.112.8 - Premiums from bonds & policies
3.2.112.9 - Insurance adjusters or adjusting firms
3.2.112.10 - Unrelated businesses

7-9-25. EXEMPTION -- GROSS RECEIPTS TAX -- DIVIDENDS AND INTEREST
3.2.113.8 - Stockbroker's commissions
3.2.113.9 - Pawnbrokers

7-9-26. EXEMPTION -- GROSS RECEIPTS AND COMPENSATING TAX -- FUEL
3.2.114.8 - Refund of tax
3.2.114.9 - Turbo prop and jet fuel
3.2.114.10 - Transfer of fuel incidental to a sale or lease

7-9-26.1. EXEMPTION -- GROSS RECEIPTS TAX AND COMPENSATING TAX -- FUEL FOR SPACE VEHICLES

7-9-27. EXEMPTION -- COMPENSATING TAX -- PERSONAL EFFECTS
3.2.115.8 - Business use of property

7-9-28. EXEMPTION -- GROSS RECEIPTS TAX -- OCCASIONAL SALE OF PROPERTY OR SERVICES
3.2.116.8 - Criteria used in determining isolated or occasional sales
3.2.116.9 - License to do business or holding out to do business
3.2.116.10 - Persons having three or fewer rental units
3.2.116.11 - Sale or leasing the same or similar property
3.2.116.12 - Executors' and administrators' fees
3.2.116.13 - Trustee fees
3.2.116.14 - Safe harbor lease - seller/lessee

7-9-29. EXEMPTION -- GROSS RECEIPTS TAX -- CERTAIN ORGANIZATIONS
3.2.117.8 - Receipts of 501(c)(3) organizations after July 1, 1970
3.2.117.9 - Receipts of 501(c)(6) organizations after July 1, 1988 - general rules
3.2.117.10 - Receipts of 501(c)(6) organizations – examples
3.2.117.11 - Single member limited liability company whose solve member is a 501(c)(3) organization

7-9-30. EXEMPTION -- COMPENSATING TAX -- RAILROAD EQUIPMENT AND AIRCRAFT
3.2.118.7 - Railroad defined

7-9-31. EXEMPTION -- GROSS RECEIPTS AND COMPENSATING TAX -- RESALE ACTIVITIES OF AN ARMED FORCES INSTRUMENTALITY
3.2.119.8 - Concessionaires on federal areas

7-9-32. EXEMPTION -- GROSS RECEIPTS TAX -- OIL AND GAS OR MINERAL INTERESTS

7-9-33. EXEMPTION -- GROSS RECEIPTS TAX -- PRODUCTS SUBJECT TO OIL AND GAS EMERGENCY SCHOOL TAX ACT
3.2.121.8 - Fuel in the operation of a "production unit"
3.2.121.9 - Which receipts are exempt and which are taxable

7-9-34. EXEMPTION -- GROSS RECEIPTS TAX -- REFINERS AND PERSONS SUBJECT TO NATURAL GAS PROCESSORS TAX ACT

7-9-35. EXEMPTION -- GROSS RECEIPTS TAX -- NATURAL RESOURCES SUBJECT TO RESOURCES EXCISE TAX ACT
3.2.123.8 - Receipts not exempt
3.2.123.9 - Clearing land for mining operations

7-9-36. EXEMPTION -- GROSS RECEIPTS TAX -- OIL AND GAS CONSUMED IN THE PIPELINE TRANSPORTATION OF OIL AND GAS PRODUCTS
3.2.124.8 - Fuel consumed in the operation of a "production unit"

7-9-37. EXEMPTION -- COMPENSATING TAX -- USE OF OIL AND GAS IN THE PIPELINE TRANSPORTATION OF OIL AND GAS PRODUCTS

7-9-38. EXEMPTION -- COMPENSATING TAX--USE OF ELECTRICITY IN THE PRODUCTION, CONVERSION AND TRANSMISSION OF ELECTRICITY
3.2.126.8 - Use of electricity in production and transmission of electricity

7-9-38.1. EXEMPTION -- GROSS RECEIPTS TAX -- INTERSTATE TELECOMMUNICATIONS SERVICES

7-9-38.2. EXEMPTION -- GROSS RECEIPTS TAX -- SALE OF CERTAIN TELECOMMUNICATIONS SERVICES

7-9-39. EXEMPTION -- GROSS RECEIPTS TAX -- FEES FROM SOCIAL ORGANIZATIONS
3.2.127.8 - Receipts derived from assessments
3.2.127.9 - Other organizations
3.2.12710 - General examples - registration fees
3.2.127.11 - Rental of rooms in a rooming house
3.2.127.12 – Civic organizations are "social" organizations

7-9-40. EXEMPTION -- GROSS RECEIPTS TAX -- PURSES AND JOCKEY REMUNERATION AT NEW MEXICO RACETRACKS -- RECEIPTS FROM GROSS AMOUNTS WAGERED
3.2.128.7 - Horsemen defined
7-9-41. EXEMPTION -- GROSS RECEIPTS TAX -- RELIGIOUS ACTIVITIES
3.2.129.7 - Minister defined

7-9-41.1. EXEMPTION -- GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX -- ATHLETIC FACILITY SURCHARGE

7-9-41.2. EXEMPTION -- COMPENSATING TAX -- LOCOMOTIVE ENGINE FUEL

7-9-41.3. EXEMPTION -- RECEIPTS FROM SALES BY DISABLED STREET VENDORS

7-9-41.4. EXEMPTION -- OFFICIATING AT NEW MEXICO ACTIVITIES ASSOCIATION -- SANCTIONED SCHOOL EVENTS

7-9-43. NONTAXABLE TRANSACTION CERTIFICATES AND OTHER EVIDENCE REQUIRED TO ENTITLE PERSONS TO DEDUCTIONS -- RENEWAL
3.2.201.8 - Possession and delivery of nontaxable transaction certificates - types of certificates
3.2.201.9 - Application for and use of nontaxable transaction certificates
3.2.201.10 - Documentation required
3.2.201.11 - Construction contractors
3.2.201.12 - Delivery of NTTC after date report due
3.2.201.13 - Multijurisdictional uniform sales and use tax certificates
3.2.201.14 - Good faith acceptance of nontaxable transaction certificates
3.2.201.15 - Photocopies or other reproductions of nontaxable transaction certificates
3.2.201.16 - Difference between “issue” and “execute”
3.2.201.17 - Special Nontaxable Transaction Certificate Type OSB authorized for certain out-of-state buyers
3.2.201.19 - Border States Uniform Sale for Resale Certificate

7-9-43.1. NONTAXABLE TRANSACTION CERTIFICATES NOT REQUIRED BY LIQUOR WHOLESALERS

7-9-44. SUSPENSION OF THE RIGHT TO USE A NONTAXABLE TRANSACTION CERTIFICATE [Repealed]
3.2.202.8 - Suspension of right to issue nontaxable transaction certificates

7-9-45. DEDUCTIONS
3.2.203.8 - Limitation on number of deductions allowed
3.2.203.9 - Persons whose receipts are deductible
3.2.203.10 - Deductions from gross receipts

7-9-46. DEDUCTION -- GROSS RECEIPTS TAX -- GOVERNMENTAL GROSS RECEIPTS -- SALES TO MANUFACTURERS
3.2.204.8 - Motor vehicle parts
3.2.204.9 - Printing and silk-screening
3.2.204.10 – [Reserved]
3.2.204.11 - Transportation expenses
3.2.204.12 - Dental supplies
3.2.204.13 - Photographic supplies
3.2.204.14 - Upholstery materials
3.2.204.15 - Software materials
3.2.204.16 - Receipts from custom software developed for manufacturer of packaged software not deductible
3.2.204.17 - Unprocessed metal ores
3.2.204.18 – Car washing and detailing
3.2.204.19 – Tools and equipment

7-9-47. DEDUCTION -- GROSS RECEIPTS TAX -- GOVERNMENTAL GROSS RECEIPTS TAX -- SALE OF TANGIBLE PERSONAL PROPERTY OR LICENSES FOR RESALE
3.2.205.8 - Delivery of the nontaxable transaction certificate
3.2.205.9 - Sale on installed basis
3.2.205.10 – Tangibles sold for use in performance of a service versus simultaneous transactions – billing practices
A. Use of tangible personal property in performing a service
B. Purchase of blueprints by architects
C. Lawn service
D. Sale of landscape items
E. Morticians
F. Watch repair
G. Photographic processors
H. Sale of paint to body shops
3.2.205.11 - Sale of tangible personal property to a federal contractor or subcontractor
3.2.205.12 - Consignment sales
3.2.205.13 – Packaging and related materials
A. Containers, wrapping paper and other packaging products
B. Sales to a burlap bag processor
C. Sale of bagging and ties
D. Steel strapping
E. Sale of baling wire to a farmer
3.2.205.14 – Medicines and medical supplies
A. Dental supplies
B. Medical supplies
C. Sale of radioisotopes
D. Issuance of nontaxable transaction certificates by oncologists

E. Sale of medicine to veterinarians
F. Vitamins and drugs sold to sale barn
3.2.205.15 – Food and related supplies
A. Sale of food
B. Sale of food to certain nonprofit organizations
C. Sale of animal food
D. Restaurants - nonreuseable items - supplies
3.2.205.16 - Vending machines
3.2.205.17 - Sale to an electric cooperative association
3.2.205.18 – Parts and supplies sold under service contracts
A. Receipts from sale of parts to fulfill promisor's obligation under automotive service contract not deductible
B. Supplies billed by automotive dealer on repair orders subject to compensating tax
3.2.205.19 – Computer software
A. Packaged software - sale of tangible personal property versus sale of a license
B. Packaged software - sale for resale
C. Packaged software - sale for use
3.2.205.20 - Use of tangible personal property by hotels, motels and similar facilities
3.2.205.21 - Utility sales by landlord

7-9-48. DEDUCTION -- GROSS RECEIPTS TAX -- GOVERNMENTAL GROSS RECEIPTS -- SALE OF A SERVICE FOR RESALE
3.2.206.8 - Receipts from the next sale must be taxable
3.2.206.9 - Separately stating by attachment to principal billing
3.2.206.10 - Installation service
3.2.206.11 - Certain services which are used and not resold
3.2.206.12 – Nonconstruction services sold to construction contractors
3.2.206.13 – Advertising and broadcast services
A. Advertising service: radio & television stations
B. Advertising service: trading stamps
C. Sales of broadcast time for resale
3.2.206.14 – Transportation services
A. Transporting property
B. Transporting property
C. Hauling prefabricated buildings
D. Transportation services
3.2.206.15 – Medical services
A. Medical laboratory services
B. Anesthetists' services
3.2.206.16 - Linen service for restaurants
3.2.206.17 - Equipment repair services
3.2.206.18 - Photo processing service
3.2.206.19 - Morticians
3.2.206.20 – Telecommunications services

A. Cable television hook-up
B. Telephone services
3.2.206.21 - Garbage collection
3.2.206.22 - Receipts from sale of services to fulfill promisor's obligation under automotive service contract not deductible

7-9-49. DEDUCTION -- GROSS RECEIPTS TAX -- SALE OF TANGIBLE PERSONAL PROPERTY AND LICENSES FOR LEASING
3.2.207.8 - General qualifications - examples
3.2.207.9 - Automobile leasing
3.2.207.10 - Safe harbor lease - purchase of and/or sale of property by seller/lessee

7-9-50. DEDUCTION -- GROSS RECEIPTS TAX -- LEASE FOR SUBSEQUENT LEASE
3.2.208.8 - General qualifications
3.2.208.9 - Lease vs. license to use
3.2.208.10 - Employer/employee vehicle lease agreement

7-9-51. DEDUCTION -- GROSS RECEIPTS TAX -- SALE OF TANGIBLE PERSONAL PROPERTY TO PERSONS ENGAGED IN THE CONSTRUCTION BUSINESS
3.2.209.7 - Ingredient or component part defined
3.2.209.8 - Items that are not ingredient or component parts - oil field
3.2.209.9 - Items that are ingredient or component parts - oil fields
3.2.209.10 - Materials in concrete work
3.2.209.11 - Sale of water
3.2.209.12 - Forms and fuel
3.2.209.13 - Welding rods
3.2.209.14 - Paint and painting supplies
3.2.209.15 - Sprinkler systems
3.2.209.16 - Burner fuel
3.2.209.17 - Survey supplies
3.2.209.18 - Windows and doors
3.2.209.19 - Electricity
3.2.209.20 - Blueprints - photostats
3.2.209.21 - Compensating tax on materials
3.2.209.22 - Ingredient and component parts of a construction project
3.2.209.23 - Construction materials used in nontaxable construction projects
3.2.209.24 - Materials used in nontaxable projects
3.2.209.25 – Carpets and draperies installed in a construction project
3.2.209.26 – Materials used in government or non-profit projects

7-9-52. DEDUCTION -- GROSS RECEIPTS TAX -- SALE OF CONSTRUCTION SERVICES AND CONSTRUCTION-RELATED SERVICES TO PERSONS ENGAGED IN THE CONSTRUCTION BUSINESS
3.2.210.7 – [Repealed]

3.2.210.8 – General business services are not construction services or construction-related services
3.2.210.9 - Well construction services
3.2.210.10 – Hauling services
3.2.210.12 – [Repealed]
3.2.210.13 - Water taps
3.2.210.14 - Salvaging of a “production unit”
3.2.210.15 - Cleaning the construction site
3.2.210.16 - Damage to a construction project by subcontractor
3.2.210.17 - Manufacturer's equipment installation
3.2.210.18 – Construction-related services - laboratory work and environmental testing
3.2.210.19 – Construction-related services and associated products
3.2.210.20 - Compensating tax on construction services
3.2.210.21 - Mud engineering services
3.2.210.22 - Lease of construction equipment
3.2.210.23 - Construction staking
3.2.210.24 – Construction-related inspection services
3.2.210.25 – Transactions involving construction-related services

7-9-52.1. DEDUCTION -- GROSS RECEIPTS TAX -- LEASE OF CONSTRUCTION EQUIPMENT TO PERSONS ENGAGED IN THE CONSTRUCTION BUSINESS
3.2.249.8 – Lease of construction equipment – general
3.2.249.9 – Lease of construction equipment – oil field

7-9-53. DEDUCTION -- GROSS RECEIPTS TAX -- SALE OR LEASE OF REAL PROPERTY AND LEASE OF MANUFACTURED HOMES
3.2.211.7 – Definitions
A. Trailer park defined
B. Month defined
C. Recreational vehicle defined
3.2.211.8 – Receipts from providing accommodations
A. Change of name of facility
B. Rental of space for less than one month
C. Rental of a house trailer
D. Municipal lodgers and room tax
E. Utility sales by trailer parks
F. Rooming houses
3.2.211.9 - Amount attributable to improvements and the cost of land
3.2.211.10 - Remodeling or other improvements
3.2.211.11 - Utilities - sale of company facilities
3.2.211.12 - Lease of advertising signs
3.2.211.13 - Gasoline service station equipment lease receipts
3.2.211.14 - General examples
3.2.211.16 - Locker rooms in a warehouse/self storage warehouse units

3.2.211.17 - Receipts from license to use real property

7-9-54. DEDUCTION -- GROSS RECEIPTS TAX -- GOVERNMENTAL GROSS RECEIPTS TAX -- SALES TO GOVERNMENTAL AGENCIES
3.2.212.8 - Leasing of tangible personal property to a governmental agency
3.2.212.9 - Sale of service to a governmental agency
3.2.212.10 - Construction performed for a governmental agency
3.2.212.11 - Sale of meals
3.2.212.12 - Lodging
3.2.212.13 - Public housing authority
3.2.212.14 - Landscaping
3.2.212.15 - Sale of dentures to inmates of prisons
3.2.212.16 - School pictures
3.2.212.17 - Nonappropriated activities of military services
3.2.212.18 - Sale of drugs to welfare patients
3.2.212.19- Proof of payment
3.2.212.20 - Metropolitan redevelopment projects
3.2.212.21 - Government credit or procurement card purchases
3.2.212.22 - Tangible personal property in projects financed by industrial revenue or similar bonds
3.2.212.23 - Sale of a license to a government
3.2.212.24 - Custom software
3.2.212.25 - Federal credit unions are governmental instrumentalities but state credit unions are not
3.2.212.26 - American National Red Cross
3.2.212.27 – Sale of gases

7-9-54.1. DEDUCTION -- GROSS RECEIPTS FROM SALE OF AEROSPACE SERVICES TO CERTAIN ORGANIZATIONS

7-9-54.2. GROSS RECEIPTS -- DEDUCTION -- SPACEPORT OPERATION -- LAUNCHING AND RECOVERY OF SPACE LAUNCH VEHICLES -- PAYLOAD SERVICES OPERATIONALLY RESPONSIVE SPACE PROGRAM SERVICES

7-9-54.3. DEDUCTION -- GROSS RECEIPTS TAX -- WIND ENERGY GENERATION EQUIPMENT--SALES TO GOVERNMENT AGENCIES

7-9-54.4. DEDUCTION -- COMPENSATING TAX -- SPACE-RELATED TEST ARTICLES

7-9-54.5. DEDUCTION -- COMPENSATING TAX -- TEST ARTICLES

7-9-55. DEDUCTION -- GROSS RECEIPTS TAX -- GOVERNMENTAL GROSS RECEIPTS TAX -- TRANSACTION IN INTERSTATE COMMERCE
3.2.213.7 – Definitions

A. Regional defined
B. Seller or advertiser defined
3.2.213.8 - Advertising receipts of publication from out-of-state customers
3.2.213.9 – Broadcasting and related advertising
A. Microwave carriers
B. Deduction available to broadcaster and advertising agency
C. Sales of broadcast time
D. Cable television systems
3.2.213.10 – Interstate transportation
A. Transporting forest fire fighting materials
B. Star route contractors
C. Hauling livestock or produce
D. Transportation by aircraft
E. Federal preemption - transportation by motor carrier
3.2.213.11 - Printed reports
3.2.213.12 - Transactions not qualified as interstate commerce

7-9-56. DEDUCTION -- GROSS RECEIPTS TAX – INTRASTATE TRANSPORTATION AND SERVICES IN INTERSTATE COMMERCE
3.2.214.8 - General examples
3.2.214.9 - Commissions of New Mexico agents
3.2.214.10 - Repair of damaged household effects
3.2.214.11 - Public distribution warehouse

7-9-56.1. DEDUCTION -- GROSS RECEIPTS TAX – INTERNET SERVICES

7-9-56.2. DEDUCTION -- GROSS RECEIPTS TAX – HOSTING WORLD WIDE WEB SITES

7-9-56.3. DEDUCTION -- GROSS RECEIPTS -- TRADE-SUPPORT COMPANY IN A BORDER ZONE

7-9-57. DEDUCTION -- GROSS RECEIPTS TAX -- SALE OF CERTAIN SERVICES TO AN OUT-OF-STATE BUYER
3.2.215.9 - Services performed on federal areas
3.2.215.10 - Other evidence
3.2.215.11 - Product of service which is reviewed and accepted outside of New Mexico but initially used in New Mexico
3.2.215.12 - General examples

7-9-57.1. DEDUCTION -- GROSS RECEIPTS TAX -- SALES THROUGH WORLD WIDE WEB SITES

7-9-57.2. DEDUCTION -- GROSS RECEIPTS TAX -- SALE OF SOFTWARE DEVELOPMENT SERVICES

7-9-58. DEDUCTION -- GROSS RECEIPTS TAX -- FEED -- FERTILIZERS
3.2.216.7 – Definitions
A. Farming defined
B. Ranching defined
C. Feed for livestock defined
3.2.216.8 - Written statement of farming or ranching
3.2.216.9 - Good faith acceptance of buyer's statement
3.2.216.10 - Feed for horses

7-9-59. DEDUCTION -- GROSS RECEIPTS TAX -- WAREHOUSING, THRESHING, HARVESTING, GROWING, CULTIVATING AND PROCESSING AGRICULTURAL PRODUCTS
3.2.217.8 - Fertilizers and insecticides
3.2.217.9 - Storage, grading, and packing apples
3.2.217.10 - Ginning of cotton
3.2.217.11 - Hauling of agricultural products
3.2.217.12 - Shearing sheep

7-9-60. DEDUCTION -- GROSS RECEIPTS TAX -- GOVERNMENTAL GROSS RECEIPTS TAX -- SALES TO CERTAIN ORGANIZATIONS
3.2.218.8 - Sale to a 501(c)(3) organization
3.2.218.9 - Services, leases, construction services
3.2.218.10 - Custom software
3.2.218.11 - Sale of meals
3.2.218.12 – Lodging
3.2.218.13 – Sale of gases
3.2.218.14 – Single member limited liability company whose solve member is a 501(c)(3) organization

7-9-61.1. DEDUCTION -- GROSS RECEIPTS TAX -- CERTAIN RECEIPTS
3.2.219.8 - Escrow fees - installment contracts
3.2.219.9 - Certain charges are deductible
3.2.219.10 - Certain charges are not deductible

7-9-61.2. DEDUCTION -- RECEIPTS FROM SALES TO STATE-CHARTERED CREDIT UNIONS

7-9-62. DEDUCTION--GROSS RECEIPTS TAX--AGRICULTURAL IMPLEMENTS--AIRCRAFT MANUFACTURERS--VEHICLES THAT ARE NOT REQUIRED TO BE REGISTERED--AIRCRAFT PARTS AND MAINTENANCE SERVICES--REPORTING REQUIREMENTS
3.2.220.8 - Trade-in allowances
3.2.220.9 - Proportioning pumps

3.2.220.11 - Feed storage
3.2.220.12 - Fuel for irrigation pumps
3.2.220.13 – [Reserved]
3.2.220.14 - Motorized golf carts
3.2.220.15 - Baling wire
3.2.220.16 - Mining equipment
3.2.220.17 - Written statement of farming or ranching

7-9-62.1. DEDUCTION -- GROSS RECEIPTS TAX -- AIRCRAFT SALES AND SERVICES-- REPORTING REQUIREMENTS

7-9-63. DEDUCTION -- GROSS RECEIPTS TAX -- PUBLICATION SALES
3.2.221.8 - Columnists, cartoonists, and wire services
3.2.221.9 - General examples

7-9-64. DEDUCTION -- GROSS RECEIPTS TAX -- NEWSPAPER SALES
3.2.222.8 - Newspaper defined
3.2.222.9 - Credit bureau publication
3.2.222.10 - Racing forms
3.2.222.11 - Report of recreational conditions
3.2.222.12 - Sale of newspaper by printer

7-9-65. DEDUCTION -- GROSS RECEIPTS TAX -- CHEMICALS AND REAGENTS
3.2.223.7 – Definitions
A. Lots defined
B. Chemical defined
3.2.223.8 - Well drilling mud
3.2.223.9 - Natural gas wells: salt water disposal wells and injection wells
3.2.223.10 - Treatment for inhibiting corrosion
3.2.223.11 - General example

7-9-66. DEDUCTION -- GROSS RECEIPTS TAX -- COMMISSIONS
3.2.225.8 - Commissions on sales of real property, intangible property or privileges
3.2.225.9 - Commissions paid to nonemployee agents
3.2.225.10 - Stockbrokers
3.2.225.11 - Auctioneers
3.2.225.12 - Sales “not subject” to gross receipts tax

7-9-66.1. DEDUCTION -- GROSS RECEIPTS TAX -- CERTAIN REAL ESTATE TRANSACTIONS
3.2.226.8 - Calculating the deductible portion of a real estate commission
3.2.226.9 - Real estate commission on sales not subject to gross receipts tax are fully taxable

7-9-67. DEDUCTION -- GROSS RECEIPTS TAX -- GOVERNMENTAL GROSS RECEIPTS TAX -- REFUNDS -- UNCOLLECTIBLE DEBTS
3.2.227.8 - Trading stamps
3.2.227.9 - Refundable deposits
3.2.227.10 - General examples
3.2.227.11 - Sale of repossessed property
3.2.227.12 - Returned checks and credit card reversals
7-9-68. DEDUCTION -- GROSS RECEIPTS TAX -- WARRANTY OBLIGATIONS
3.2.228.8 - Warranty subcontractor
3.2.228.9 - Warranty obligations - general examples
3.2.228.10 - Service contract and manufacturer's warranty distinguished
3.2.228.11 - Receipts from co-payments/deductibles under warranties

7-9-69. DEDUCTION -- GROSS RECEIPTS TAX -- ADMINISTRATIVE AND ACCOUNTING SERVICES
3.2.229.8 - General examples

7-9-70. DEDUCTION -- GROSS RECEIPTS TAX -- RENTAL OR LEASE OF VEHICLES USED IN INTERSTATE COMMERCE
3.2.230.8 - When federal authority required

7-9-71. DEDUCTION -- GROSS RECEIPTS TAX -- TRADE-IN ALLOWANCE
3.2.231.8 - Trade-in must be of like property
3.2.231.9 - Musical instruments

7-9-73. DEDUCTION -- GROSS RECEIPTS TAX -- GOVERNMENTAL GROSS RECEIPTS -- SALE OF PROSTHETIC DEVICES
3.2.232.8 - Eye wear
3.2.232.9 - Dental supplies.

7-9-73.1. DEDUCTION -- GROSS RECEIPTS TAX -- HOSPITALS

7-9-73.2. DEDUCTION -- GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX -- PRESCRIPTION DRUGS -- OXYGEN
3.2.234.8 – Packaging and storage containers
3.2.234.9 – Vaccines
3.2.234.10 – Items that are not prescription drugs

7-9-73.3. DEDUCTION--GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX--DURABLE MEDICAL EQUIPMENT--MEDICAL SUPPLIES

7-9-74. DEDUCTION -- GROSS RECEIPTS TAX -- SALE OF PROPERTY USED IN THE MANUFACTURE OF JEWELRY

7-9-75. DEDUCTION -- GROSS RECEIPTS TAX -- SALE OF CERTAIN SERVICES PERFORMED DIRECTLY ON PRODUCT MANUFACTURED
3.2.235.7 - Definitions
3.2.235.8 - Plating
3.2.235.9 - Hauling for manufacturer
3.2.235.10 - Receipts from manufacturer for “get ready”
3.2.235.11 - Receipts from non-manufacturers for “get ready”
3.2.235.12 - Installing computer programming as a component part

7-9-76. DEDUCTION -- GROSS RECEIPTS TAX -- TRAVEL AGENTS' COMMISSIONS PAID BY CERTAIN ENTITIES

7-9-76.1. DEDUCTION -- GROSS RECEIPTS TAX -- CERTAIN MANUFACTURED HOMES

7-9-76.2. DEDUCTION -- GROSS RECEIPTS TAX -- FILMS AND TAPES

7-9-77. DEDUCTIONS -- COMPENSATING TAX
3.2.237.8 - General example
3.2.237.9 - Transportation or freight charges

7-9-77.1. DEDUCTION -- GROSS RECEIPTS TAX -- CERTAIN MEDICAL AND HEALTH CARE SERVICES

7-9-78. DEDUCTIONS -- COMPENSATING TAX -- USE OF TANGIBLE PERSONAL PROPERTY FOR LEASING
3.2.238.8 - Automobile leasing
3.2.238.9 - General examples

7-9-78.1. DEDUCTION -- COMPENSATING TAX -- URANIUM ENRICHMENT PLANT EQUIPMENT

7-9-79. CREDIT -- COMPENSATING TAX
3.2.301.8 - Limit on credit
3.2.301.9 - Credit for compensating tax paid on construction projects

7-9-79.1. CREDIT -- GROSS RECEIPTS TAX -- SERVICES.
3.2.300.8 - Credit for tax paid to another state on services

7-9-79.2. GROSS RECEIPTS TAX -- COMPENSATING TAX -- BIODIESEL BLENDING FACILITY TAX CREDIT
3.13.21.7 – Definitions
3.13.21.8 – General provisions
3.13.21.9 – Certificate of eligibility application
3.13.21.10 – Application review process

3.13.21.11 – Claiming the biodiesel blending facility tax credit

7-9-83. DEDUCTION -- GROSS RECEIPTS TAX -- JET FUEL

7-9-84. DEDUCTION -- COMPENSATING TAX -- JET FUEL

7-9-85. DEDUCTION -- GROSS RECEIPTS TAX -- CERTAIN ORGANIZATION FUNDRAISERS
3.2.239.7 - Fundraising event defined
3.2.239.8 - Certain organizations not eligible for deduction - “organization” defined
3.2.239.9 - Receipts not eligible for deduction
3.2.239.10 - Who conducts fundraising event
3.2.239.11 - Period for fundraising event limited
3.2.239.12 - Identification of fundraising events

7-9-86. DEDUCTION -- GROSS RECEIPTS TAX -- SALES TO QUALIFIED FILM PRODUCTION COMPANY

7-9-87. DEDUCTION -- GROSS RECEIPTS TAX -- LOTTERY RETAILER RECEIPTS

7-9-88.1. CREDIT -- GROSS RECEIPTS TAX -- TAX PAID TO CERTAIN TRIBES

7-9-88.2. CREDIT -- GROSS RECEIPTS TAX -- TAX PAID TO NAVAJO NATION ON RECEIPTS FROM SELLING COAL

7-9-89. DEDUCTION -- GROSS RECEIPTS TAX -- SALES TO CERTAIN ACCREDITED DIPLOMATS AND MISSIONS

7-9-90. DEDUCTION -- GROSS RECEIPTS TAX -- SALES OF URANIUM HEXAFLUORIDE AND ENRICHMENT OF URANIUM

7-9-91. DEDUCTION -- COMPENSATING TAX -- CONTRIBUTIONS OF INVENTORY TO CERTAIN ORGANIZATIONS AND GOVERNMENTAL AGENCIES

7-9-92. DEDUCTION -- GROSS RECEIPTS -- SALE OF FOOD AT RETAIL FOOD STORE
3.2.240.7 – Definitions: “food”, “retail food store” and “home consumption”
3.2.240.8 – Who is a retail food store
3.2.240.9 – Equivalence of food sales for food stamp and section 7-9-92 NMSA purposes
3.2.240.10 – Receipts exempt or deductible under other sections

7-9-93. DEDUCTION -- GROSS RECEIPTS -- CERTAIN RECEIPTS FOR SERVICES PROVIDED BY HEALTH CARE PRACTITIONER
3.2.241.7 – Definitions: “scope of practice” defined
3.2.241.8 – Receipts deductible under other sections

3.2.241.9 – Receipts from third party claims administrators
3.2.241.10 – Receipts of health care practitioners from managed health care providers and health care insurers pursuant to contract with independent practice association
3.2.241.11 – Receipts for administrative services not deductible
3.2.241.12 – Receipts not deductible under Section 7-9-96 NMSA 1978
3.2.241.13 – Receipts of corporate practice
3.2.241.14 – Valid certificate of compliance required
3.2.241.15 – Self-insurers may be "managed health care providers"
3.2.241.16 – Payments from workers compensation
3.2.241.17 – Receipts of health care facilities not deductible
3.2.241.18 – Receipts form "medigap" insurance policies not deductible

7-9-94. DEDUCTION -- GROSS RECEIPTS -- MILITARY TRANSFORMATIONAL ACQUISITION PROGRAMS

7-9-95. DEDUCTION -- GROSS RECEIPTS TAX -- SALES OF CERTAIN TANGIBLE PERSONAL PROPERTY -- LIMITED PERIOD
3.2.242.7 – Definitions
3.2.242.8 – Items normally sold as a unit
3.2.242.9 – Purchases using a rain check
3.2.242.10 – Layaway sales
3.2.242.11 – Exchanges and refunds
3.2.242.12 – Internet, mail order and telephone sales
3.2.242.13 – Documenting deductible sales
3.2.242.14 – Items that do no qualify for the deduction under Section 7-9-95 NMSA 1978
3.2.242.15 – Receipts that are not deductible
3.2.242.16 – Items considered to be computers for purposes of the deduction under Section 7-9-95 NMSA 1978

7-9-96. CREDIT -- GROSS RECEIPTS TAX -- GOVERNMENTAL GROSS RECEIPTS TAX -- CERTAIN SALES FOR RESALE
3.2.302.8 – Service for resale tax credit

7-9-96.1. CREDIT -- GROSS RECEIPTS TAX -- RECEIPTS OF CERTAIN HOSPITALS

7-9-96.2. CREDIT -- GROSS RECEIPTS TAX -- UNPAID CHARGES FOR SERVICES PROVIDED IN A HOSPITAL

7-9-97. DEDUCTION -- GROSS RECEIPTS TAX -- RECEIPTS FROM CERTAIN PURCHASES BY OR ON BEHALF OF THE STATE

7-9-98. DEDUCTION -- COMPENSATING TAX -- BIOMASS-RELATED EQUIPMENT -- BIOMASS MATERIALS

7-9-99. DEDUCTION -- GROSS RECEIPTS TAX -- SALE OF ENGINEERING, ARCHITECTURAL AND NEW FACILITY CONSTRUCTION SERVICES USED IN CONSTRUCTION OF CERTAIN PUBLIC HEALTH CARE FACILITIES

7-9-100. DEDUCTION -- GROSS RECEIPTS TAX -- SALE OF CONSTRUCTION EQUIPMENT AND CONSTRUCTION MATERIALS USED IN NEW FACILITY CONSTRUCTION OF A SOLE COMMUNITY PROVIDER HOSPITAL THAT IS LOCATED IN A FEDERALLY DESIGNATED HEALTH PROFESSIONAL SHORTAGE AREA

7-9-101. DEDUCTION -- GROSS RECEIPTS -- EQUIPMENT FOR CERTAIN ELECTRIC TRANSMISSION OR STORAGE FACILITIES

7-9-102. DEDUCTION -- COMPENSATING TAX -- EQUIPMENT FOR CERTAIN ELECTRIC TRANSMISSION OR STORAGE FACILITIES

7-9-103. DEDUCTION -- GROSS RECEIPTS -- SERVICES PROVIDED FOR CERTAIN ELECTRIC TRANSMISSION AND STORAGE FACILITIES

7-9-103.1. DEDUCTION -- GROSS RECEIPTS TAX -- CONVERTING ELECTRICITY

7-9-103.2. DEDUCTION -- GROSS RECEIPTS -- ELECTRICITY EXCHANGE

7-9-104. DEDUCTION -- GROSS RECEIPTS -- NONATHLETIC SPECIAL EVENT AT POST-SECONDARY EDUCATIONAL INSTITUTION

7-9-105. CREDIT FOR PENALTY PURSUANT TO SECTION 7-1-71.2 NMSA 1978

7-9-106. DEDUCTION-- CONSTRUCTION SERVICES AND EQUIPMENT

7-9-107. DEDUCTION -- GROSS RECEIPTS TAX -- PRODUCTION OR STAGING OF PROFESSIONAL CONTESTS

7-9-108. DEDUCTION -- GROSS RECEIPTS -- RECEIPTS FROM PERFORMING MANAGEMENT OR INVESTMENT ADVISORY SERVICES FOR MUTUAL FUNDS, HEDGE FUNDS OR REAL ESTATE INVESTMENT TRUSTS

7-9-109. DEDUCTION -- GROSS RECEIPTS TAX -- VETERINARY MEDICAL SERVICES, MEDICINE OR MEDICAL SUPPLIES USED IN MEDICAL TREATMENT OF CATTLE
3.2.248.8 - Written statement of farming or ranching

7-9-110. EXEMPTION -- GROSS RECEIPTS TAX -- LOCOMOTIVE ENGINE FUEL

7-9-110.1. DEDUCTION -- GROSS RECEIPTS TAX -- LOCOMOTIVE ENGINE FUEL
7-9-110.2. DEDUCTION -- COMPENSATING TAX -- LOCOMOTIVE ENGINE FUEL

7-9-110.3. PURPOSE AND REQUIREMENTS OF LOCOMOTIVE FUEL DEDUCTION
3.2.250.7 – Definitions
3.2.250.8 – Qualifications and requirements
3.2.250.9 – Reporting

7-9-111. DEDUCTION -- GROSS RECEIPTS -- HEARING AIDS AND VISION AIDS AND RELATED SERVICES

7-9-112. DEDUCTION -- GROSS RECEIPTS -- SOLAR ENERGY SYSTEMS
3.2.247.7 - Definitions
3.2.247.8 - Written statement
3.2.247.9 - Good faith acceptance or buyer's written statement

7-9-113. DEDUCTION -- GROSS RECEIPTS -- SPECIAL FUEL, DYED DIESEL

7-9-114. ADVANCED ENERGY DEDUCTION -- GROSS RECEIPTS AND COMPENSATING TAXES

7-9-115. DEDUCTION--GROSS RECEIPTS TAX--GOODS AND SERVICES FOR THE DEPARTMENT OF DEFENSE RELATED TO DIRECTED ENERGY AND SATELLITES

7-9-116. DEDUCTION--GROSS RECEIPTS TAX--RETAIL SALES BY CERTAIN BUSINESSES

* Two versions of this statute are incorporated into this document. This is a result of the adoption of two separate pieces of legislation (2003) that affect the same statute.

This page intentionally blank.

3.2 NMAC
REGULATIONS PERTAINING TO THE GROSS RECEIPTS AND COMPENSATING TAX ACT
SECTIONS 7-9-1 to 7-9-115 NMSA 1978

7-9-1. SHORT TITLE.--Chapter 7, Article 9 NMSA 1978 may be cited as the "Gross Receipts and Compensating Tax Act."

3.2.1.7 - DEFINITIONS

The terms defined in 3 NMAC 2.1.7 apply throughout 3 NMAC 2.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 12/29/89, 11/26/90, 11/15/96, 4/30/97, 1/15/98; 3.2.1.7 NMAC - Rn & A, 3 NMAC 2.1.7, 4/30/01; A, 12/30/03; A, 12/14/12]

3.2.1.8 - CITATION OF REGULATIONS

Unless otherwise stated, all citations of statutes in Chapter 3.2 NMAC with respect to the Gross Receipts and Compensating Tax Act are to the New Mexico Statutes Annotated, 1978 (NMSA 1978).

[11/26/90, 11/15/96; 3.2.1.8 NMAC – Rn & A, 3 NMAC 2.1.8, 4/30/01]

7-9-2. PURPOSE.--The purpose of the Gross Receipts and Compensating Tax Act is to provide revenue for public purposes by levying a tax on the privilege of engaging in certain activities within New Mexico and to protect New Mexico businessmen from the unfair competition that would otherwise result from the importation into the state of property without payment of a similar tax.

7-9-3. DEFINITIONS.--As used in the Gross Receipts and Compensating Tax Act :

7-9-3(A). "buying" or "selling" means a transfer of property for consideration or the performance of service for consideration;

3.2.1.7 - DEFINITIONS: The terms defined in 3.2.1.7 NMAC apply throughout 3.2 NMAC.

A. **Benefit**: A "benefit" is any consideration to either party. "Benefit" is not limited to profits, pecuniary gains, or any particular kind of advantage.

B. **Consideration**: "Consideration" is any benefit, interest, gain or advantage to one party, usually the seller, or any detriment, forbearance, prejudice, inconvenience, disadvantage, loss of responsibility, act or service given, suffered, or undertaken by the other party, usually the buyer.

C. **Detriment**: A "detriment" is a forbearance of either party of a right which the party is entitled to exercise or any consideration flowing from either party, not limited to payment of money or transfer of property.

F. **Computer-related terms**:

(1) "Computer software" means computer programming in whatever form or medium.

(2) "Custom software" means computer programming developed specifically at the order of another or for a specific purpose. "Custom software" includes the modification of existing computer programming.

(3) "Packaged software" means computer programming embodied in electronic, electromagnetic or optical materials for transfer from one person to another, with or without explanatory materials, instructions or other programming and intended to be sold or licensed without modification to multiple buyers or users.

(4) "Software" means "computer software".

G. **Practitioner of the healing arts**: A "practitioner of the healing arts" is a person licensed to practice in this state medicine, osteopathic medicine, acupuncture and oriental medicine, dentistry, podiatry, optometry, chiropractic, nursing or similar medical services for human beings. The term also includes veterinarians licensed to practice in this state.

H. **Person engaged in the construction business:** A "person engaged in the construction business" is a person who performs construction services as defined in Section 7-9-3.4 NMSA 1978.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 12/29/89, 11/26/90, 11/15/96, 4/30/97, 1/15/98; 3.2.1.7 NMAC - Rn & A, 3 NMAC 2.1.7, 4/30/01; A, 12/30/03; A, 12/14/12]

7-9-3(B). "department" means the taxation and revenue department, the secretary of taxation and revenue or an employee of the department exercising authority lawfully delegated to that employee by the secretary;

7-9-3(C). "financial corporation" means a savings and loan association or an incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;

3.2.1.7 - Definitions

D. **Financial corporations:**

(1) A financial corporation is any corporation primarily dealing in moneyed capital and in substantial competition with commercial banks.

(2) Example 1: FC is a corporation which is primarily engaged in the following activities: (a) buying and selling mortgages on real estate, (b) initiating mortgages on real estate and selling these mortgages, and (c) servicing mortgages. FC is a financial corporation because it is primarily dealing in moneyed capital and is in substantial competition with commercial banks.

(3) Example 2: IA is an insurance agency which, as an adjunct of its primary business, loans money to finance premiums. IA is not a financial corporation because it is not primarily dealing in moneyed capital and it is not in substantial competition with commercial banks.

(4) Example 3: A corporation which receives a commission on sales of money orders to its customers as an adjunct of its primary business is not a financial corporation within the meaning of Subsection C of Section 7-9-3 NMSA 1978 simply because it engages in this business activity.

(5) Example 4: A corporation which is engaged in the following activities is not a financial corporation because it is not primarily dealing in moneyed capital and is not in substantial competition with commercial banks:

(a) acting as an investment advisor to a mutual fund and others and receiving a fee for such services;

(b) acting as principal underwriter for the same mutual fund as in 1 above and receiving a fixed percentage of the selling price of the securities sold as a commission or fee; or

(c) issuing a weekly stock analysis report as an advisory service, receiving for this service payment in the form of subscription fees.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 12/29/89, 11/26/90, 11/15/96, 4/30/97, 1/15/98; 3.2.1.7 NMAC - Rn & A, 3 NMAC 2.1.7, 4/30/01; A, 12/30/03]

7-9-3(D). "initial use" or "initially used" means the first employment for the intended purpose and does not include the following activities:

(1) observation of tests conducted by the performer of services;

(2) participation in progress reviews, briefings, consultations and conferences conducted by the performer of services;

(3) review of preliminary drafts, drawings and other materials prepared by the performer of the services;

(4) inspection of preliminary prototypes developed by the performer of services; or

(5) similar activities;

7-9-3(E). "leasing" means an arrangement whereby, for a consideration, property is employed for or by any person other than the owner of the property, except that the granting of a license to use property is licensing and is not a lease;
(Laws 2007, Chapter 339, Section 1)

3.2.1.17 – Gross receipts - leasing

H. **Leasing Computers**: Receipts from renting or leasing the use of computers or related equipment in New Mexico, on either a part-time or a full-time basis, are subject to the gross receipts tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.1.17 NMAC – Rn & A, 3 NMAC 2.1.17, 4/30/01]

3.2.1.22 - LEASING

A. [Reserved.]

B. [Reserved.]

C. **Security agreement distinguished from a lease – tax consequences**

(1) The gross receipts from leasing equipment to a lessee for the lessee's own use and not for subsequent leasing are subject to the gross receipts tax unless the presence of all or a majority of the following or similar indicia indicates that the transaction between lessor and lessee is in fact a financing transaction between a secured party and a buyer:

(a) There is a written agreement which provides that, upon compliance with the terms of the agreement, the buyer has the option to purchase the property without additional consideration or with nominal consideration; exercise of the option in itself is not sufficient to establish the transaction as an installment sale;

(b) The secured party pays for the equipment selected by the buyer from the stock of an independent vendor with funds allocable to a line of credit previously extended by the secured party to the buyer;

(c) The payments made by the buyer to the secured party are determined by the cost of the equipment selected by the buyer plus an interest charge added by the secured party;

(d) If the buyer is not a federal, state, local or Indian government, the equipment is carried as an asset on the books of the buyer and depreciated by the buyer, not the secured party, and if the buyer is a federal, state, local or Indian government, the tangible personal property is not carried as an asset on the books of the seller or depreciated by the seller;

(e) The secured party treats the total amount of payment as receivables on its books and treats the interest charged the buyer as “unearned income”, transferring amounts to “income” as payments are received.

(2) The presence of these or other such factors between the parties to an agreement denominated as a “lease agreement” will lead to the conclusion that the lessee under such an arrangement is the purchaser of the equipment, and that the lessor as the seller of the equipment is a secured party financing the sale and is using the “lease” as a form of security agreement. In such cases the rental receipts of the lessor will not be gross receipts from leasing

and, unless all or a portion of the rental receipts are gross receipts from the installment sale of property, will not be subject to the gross receipts tax. However, the gross receipts from the sale of such equipment by a vendor in New Mexico who also may be the secured party in a two party transaction will be subject to the gross receipts tax unless an exemption or deduction applies.

(3) The buyer, other than a federal, state, local or Indian government, in such an arrangement will be liable for payment of the compensating tax if the buyer introduces property into this state which was acquired outside the state as a result of a transaction that would have been subject to the gross receipts tax had it occurred within the state and if the property is not subject to any exemption from payment of the compensating tax.

[12/5/69, 3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.1.22 NMAC – Rn, 3 NMAC 2.1.22, 4/30/01]

7-9-3(F). "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts and required to be collected by the department at the same time and in the same manner as the gross receipts tax; "local option gross receipts tax" includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax Act, County Local Option Gross Receipts Taxes Act, Local Hospital Gross Receipts Tax Act, County Correctional Facility Gross Receipts Tax Act and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department;

7-9-3(G). "manufactured home" means a movable or portable housing structure for human occupancy that exceeds either a width of eight feet or a length of forty feet constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation;

7-9-3(H). "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include construction;

3.2.1.25 - MANUFACTURING - GENERAL EXAMPLES

A. For purposes of Subsection H of Section 7-9-3 NMSA 1978, combining means assembling two or more pieces of tangible personal property to create another piece of personal property. Processing means to convert tangible personal property into a marketable form. A person is engaged in the business of manufacturing only if:

(1) that person combines or processes components or materials;

(2) the value of the tangible personal property which has been combined with other tangibles or which has been processed has increased as a direct result of the manufacturing process; and

(3) the person manufacturing sells the same or similar type of manufactured products in the ordinary course of business.

B. The following examples illustrate the application of Subsection H of Section 7-9-3 NMSA 1978.

C. Example 1: Y sells parts and bodies for automobiles to X. X, who owns a used car lot and garage, places the parts and bodies in and on used cars from his lot. X then resells the renovated cars to the general public in the ordinary course of business. X is manufacturing because X is assembling and fabricating the cars to increase their value and is selling them in the ordinary course of business.

D. Example 2: Y, a machine tool firm, assembles three machine tools solely for its own use in producing components. Y does not sell any of these three machine tools. Assembling the machine tools is not “manufacturing” because Y is not assembling the tools to increase their value for sale in the ordinary course of business.

E. Example 3: S, who is in the business of building custom boats, purchases fiberglass and other supplies from F, a fiberglass manufacturer. S is furnished blueprints by customers and all the materials that are to be purchased are specified in those blueprints. After S obtains all the materials from F, S builds the boats to the specifications set out in the blueprints and then sells the boats to customers in the ordinary course of business. S is manufacturing boats. S may therefore give F a nontaxable transaction certificate.

F. Example 4: R is in the business of retreading and recapping pneumatic tires. If R retreads and recaps a tire carcass which R owns in order to increase its value for sale in the ordinary course of business and that tire carcass becomes a component part of a recapped tire, then R is “manufacturing”.

G. Example 5: P is in the business of printing and silk screening. If P uses only printing supplies which P owns as an ingredient or component part of the end product which P sells in the ordinary course of business, then P is “manufacturing”. If P uses printing supplies such as paper, ink, staples, glue, binding, chemicals, and dyes provided by the customer, then even though such supplies become ingredient or component parts of an end product which P sells in the ordinary course of business, P is “performing a service” and not “manufacturing”.

H. Example 6: Y is a newspaper publishing company located outside New Mexico with no business location, salespersons or other presence in New Mexico. Z is a printing company inside New Mexico. Y arranges to have Z print the newspapers which it publishes. Z is required to provide newsprint (paper), ink, and all the materials required for the production of newspapers. Z is manufacturing printed material. Z, in the given fact situation, does not have receipts from either publishing a newspaper or selling a newspaper; therefore, the deductions provided by Section 7-9-63 NMSA 1978 and Section 7-9-64 NMSA 1978 do not apply. Z may deduct from its gross receipts its receipts from selling printed material to Y if the printed material is delivered to Y outside New Mexico.

I. Example 7: A is in the business of painting oil and water color pictures for sale in the ordinary course of business. A is a manufacturer of tangible personal property. A combines oils, color pigments, fixing agents, canvas, frames and glass in a painting as components and properly issues a nontaxable transaction certificate to the seller of the components. A cannot properly issue a nontaxable transaction certificate to the seller of brushes, palettes, knives, cleaners, erasers and easels since these items of property are not components for purposes of Subsection H of Section 7-9-3 NMSA 1978.

[12/5/69, 3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.1.25 NMAC - Rn & A, 3 NMAC 2.1.25, 4/30/01; A, 12/30/03]

7-9-3(I). "person" means:

(1) an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other entity, including any gas, water or electric utility owned or operated by a county, municipality or other political subdivision of the state; or

(2) a national, federal, state, Indian or other governmental unit or subdivision, or an agency, department or instrumentality of any of the foregoing;

7-9-3(J). "property" means real property, tangible personal property, licenses other than the licenses of copyrights, trademarks or patents and franchises. Tangible personal property includes electricity and manufactured homes;
(Laws 2007, Chapter, 339, Section 1)

3.2.1.7 - Definitions

E. **Franchise.**

(1) A "franchise" is an agreement in which the franchisee agrees to undertake certain business activities or to sell a particular type of product or service in accordance with methods and procedures prescribed by the franchisor, and the franchisor agrees to assist the franchisee through advertising, promotion and other advisory services. The franchise usually conveys to the franchisee a license to use the franchisor's trademark or trade name in the operation of the franchisee's business.

(2) Example: Y, a pie company of Cambridge, Massachusetts, grants to X of Virden, New Mexico, the right to make pies according to their exclusive recipe and to operate Y Pie shops throughout New Mexico. The right to make the pies and operate the pie shops, whether granted for a "one-time" payment or for a continuing percentage of the proceeds of the shops, is a franchise. Therefore, the receipts of Y, from its granting of the franchise are subject to gross receipts tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 12/29/89, 11/26/90, 11/15/96, 4/30/97, 1/15/98; 3.2.1.7 NMAC - Rn & A, 3 NMAC 2.1.7, 4/30/01; A, 12/30/03]

3.2.1.27 - PROPERTY

A. **Bills, notes, etc.**: Tangible personal property does not include bills, notes, checks, drafts, bills of exchange, certificates of deposit, letters of credit, or any negotiable instrument. Coins, stamps, and documents which have a historic value or market value in excess of their face value are tangible personal property.

B. **Sale of license to use software is sale of property**:

(1) The definition of property includes licenses. The sale of a license to use software constitutes a sale of property and comes within the definition of gross receipts.

(2) The transaction constitutes a sale of a license to use the software program when a computer software company sells an already-developed software program where:

(a) no extraordinary services are performed in order to furnish the program;

(b) the buyer pays a fixed amount for the license to use the program and use is generally limited to a specific computer; and

(c) the buyer may not resell to any other person a license to use the program and may not transfer the software package itself to any other person.

C. **Granting the right to hunt is the sale of a license to use**. For purposes of this section, granting by a landowner to another, a right to access and hunt within the boundaries of the landowner's real property is a license to use the real property. A license is a form of property as defined in Subsection J of Section 7-9-3 NMSA 1978 and the receipts from the sale of a license are subject to the gross receipts tax. The following are four types of hunting-related

transactions, that when sold, may include the sale of a license:

(1) the sale of a hunting package that includes permission to hunt on private land;

(2) the sale of an authorization to hunt on private land granted by the New Mexico department of game and fish;

(3) the granting of permission or access to enter onto the private land to hunt; or

(4) the sale of a license/permit issued by the state to hunt on public land.

D. Receipts from selling a hunting package are subject to gross receipts tax to the extent that the individual components of the package are not deductible or exempt from the gross receipts tax pursuant to the Gross Receipts and Compensating Tax Act. A person that sells a hunting package that consists of taxable and nontaxable components must reasonably allocate the receipts based on the value of the individual components. For purposes of this section, a "hunting package" may include the following components:

(1) lodging;

(2) meals;

(3) delivery and transportation services;

(4) guide services;

(5) license to use the property;

(6) carcass of the hunted animal; or

(7) other services or tangible personal property included in the package.

E. Example: X owns a ranch in New Mexico and sells guided hunting packages. Included in the price for the hunt X guarantees that the hunter will retrieve an animal, lodging at the ranch, meals, experienced hunting guide, retrieval, caping, delivery to local meat processor and taxidermist. Not included in the price are expenses associated with alcohol consumption, meat processing, taxidermy services or gratuities for guides. X receipts from the sale of this type of hunting package includes receipts from providing services, the sale of tangible personal property (meals), the sale of the carcass (possibly livestock) and from granting a license to use the land within the ranch boundaries. X must determine a reasonable method of allocating their receipts between components that are subject to gross receipts tax and those that are exempt from gross receipts tax (sale of livestock).

[12/5/69, 3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 9/17/91, 11/15/96; 3.2.1.27 NMAC - Rn, 3 NMAC 2.1.27, 4/30/01; A, 8/15/12]

7-9-3(K). "research and development services" means an activity engaged in for other persons for consideration, for one or more of the following purposes:

(1) advancing basic knowledge in a recognized field of natural science;

(2) advancing technology in a field of technical endeavor;

(3) developing a new or improved product, process or system with new or improved function, performance, reliability or quality, whether or not the new or improved product, process or system is offered for sale, lease or other transfer;

(4) developing new uses or applications for an existing product, process or system, whether or not the new use or application is offered as the rationale for purchase, lease or other transfer of the product, process or system;

(5) developing analytical or survey activities incorporating technology review, application, trade-off study, modeling, simulation, conceptual design or similar activities, whether or not offered for sale, lease or other transfer; or

(6) designing and developing prototypes or integrating systems incorporating the advances, developments or improvements included in Paragraphs (1) through (5) of this subsection;

7-9-3(L). "secretary" means the secretary of taxation and revenue or the secretary's delegate;

7-9-3(M). "service" means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property. "Service" includes activities performed by a person for its members or shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. "Service" includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. That tangible personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. Sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property; and

3.2.1.18 – GROSS RECEIPTS - SERVICES

CC. **Receipts from telephone or telegraph services.** Receipts derived from telephone or telegraph services originating or terminating in New Mexico and billed to an account or number in this state are receipts from performing services in New Mexico and are subject to the gross receipts tax unless exempt under Section 7-9-38.1 NMSA 1978.

EE. **Custom software.**

(1) Except as otherwise provided in Subsection EE of Section 3.2.1.18 NMAC, receipts derived by a person from developing custom software are receipts from performing a service.

(2) When custom software is developed by a seller for a customer but the terms of the transaction restrict the customer's ability without the seller's consent to sell the software to another or to authorize another to use the software, the seller's receipts from the customer are receipts from the performance of a service. The seller's receipts from authorizing the customer's sublicensing of the software to another person are receipts from granting a license. The seller's receipts from authorizing the use by another person of the same software are receipts from granting a license to use the software.

3.2.1.29 - SERVICES

A. [Repealed.]

B. [Repealed.]

C. [Repealed.]

D. **When a transaction is predominantly a service**

(1) A transaction involving both the transfer of tangible personal property to the buyer and the performance of a service other than a construction or research and development service is predominantly a service when:

(a) the seller is not regularly engaged in selling or leasing the same or similar tangible personal property other than in conjunction with the sale of a service; and

(b) at least one of the following conditions applies:

(i) the transaction is primarily the performance of work and the transfer of any property through the transaction is incidental to the performance of the required work; or

(ii) the transaction requires the performance of work which is substantially greater in value than the value of the tangible personal property involved in the transaction; or

(iii) the performer of the service has the power to influence significantly the degree of involvement of the tangible personal property in the transaction.

(2) When the transaction is predominantly a service other than construction, any tangible personal property transferred in conjunction with the service is incidental to the service and the value of the property becomes an element of and is incorporated into the value of the service sold. Type 2 nontaxable transaction certificates (NTTCs) may not be executed to acquire the property so incorporated.

(3) Example A1: C, a consultant, reviews operations of clients; C does not engage in the business of selling office supplies. C is hired to evaluate certain operations of L. C presents the evaluation to L as a written report, with supplemental data on computer disks. C contends that the paper used for the report and the computer disks were sold to L and therefore C may execute a Type 2 NTTC to acquire these tangibles. The transaction with L is predominantly the performance of a service. The paper and computer disks convey the result of the C's service and are incidental to that service. C may not execute Type 2 NTTCs for the purchase of these tangibles.

(4) Example A2: X is engaged in the business of performing certain services and is not engaged in selling tangible personal property in the ordinary course of business. X enters into a cost plus a fixed fee contract with Y to conduct a survey of residents of this state to determine consumer acceptability of and demand for particular household products which Y manufacturers and plans to distribute into New Mexico. The contract specifies that on completion or termination of the contract any tangible property purchased by X, and billed by X, will be paid by Y as a cost of fulfilling the requirements of the contract. X chooses to purchase a personal computer to use in the performance of the service. X will enter results of the surveys into the computer which will classify the responses and generate reports which X will analyze, interpret and submit to Y. Since X has the power to exert significant influence over the degree of involvement (use) of the computer under the contract and since X is not engaged in selling computers or similar property in the ordinary course of business, X's receipts attributed to the cost of the computer are receipts from performing a service. X may not execute a Type 2 NTTC for the purchase of the computer.

(5) Example A3. A well servicing company uses disposable bits and other disposable “rubber goods” in servicing oil and natural gas wells. The disposable items are used up in the course of the servicing; pieces of the abraded material are left in the well. The company claims it should be allowed to execute Type 2 NTTCs because the disposable items are left with the owner(s) of the well. These materials are incidental to the performance of the service. The company may not execute Type 2 NTTCs in acquiring these disposable items.

(6) Construction is defined to be a service and that service is defined to include all tangible personal property which becomes an ingredient or component part of the construction

project. Under the provisions of Section 7-9-51 NMSA 1978, however, a person engaging in the construction business may execute a nontaxable transaction certificate for the purchase of tangible personal property which will become an ingredient or component part of a construction project.

(7) The product of a research and development service may be tangible property, such as prototypes, facsimiles, reports or other similar property. Even though the product of the service may itself be tangible, receipts from the transaction are receipts from the sale of a service and not from the sale of tangible personal property. Accordingly the performer of research and development services may not execute a nontaxable transaction certificate when purchasing tangible personal property used to assemble or create such product of the service, except as provided by Section 3.2.205.11 NMAC.

(8) Example B1: B, an engineering company, contracts to design a product for Y, a manufacturer, who intends to manufacture the product for sale to the general public. The contract requires B to submit plans for the product and a prototype of it. B contends that the plans and prototype are tangible personal property and therefore Type 1 or Type 2 NTTCs may properly be executed. B is performing a research and development service, even though the product of the service is embodied in tangible personal property. The tangibles used are incidental to the performance of the service. Type 1 and Type 2 NTTCs may not be executed to acquire the tangible personal property making up the plans and prototype.

(9) Example B2: B, an engineering company, is a qualified contractor within the meaning of Section 3.2.205.11 NMAC under a contract with D, an agency of the United States. The contract is a research and development contract covered by the agreement between the state of New Mexico and several agencies of the United States, including D. The contract calls for B to design and submit plans for a rocket motor and to develop and deliver a facsimile of the rocket casing to a research facility for testing. B maintains that B is selling tangible personal property to the federal government. B is performing research and development services. The plans and facsimile are products of that service. The transaction is predominantly the performance of a service rather than the sale of tangible personal property. B is not selling tangible personal property to the federal government but may be eligible to execute Type 15 NTTCs if the conditions specified by Section 3.2.205.11 NMAC and the State-Federal agreement are met.

(10) When the performer of the service either is regularly engaged in selling or leasing by itself the type of tangible personal property transferred in the transaction, a single transaction may encompass both the sale of a service and the sale of property as distinct and separable parts of the transaction. In such a case, Type 2 NTTCs may be executed to acquire the tangible personal property resold if the conditions in Subsection A of Section 3.2.205.10 NMAC are met.

(11) Example B3: F, an accountant, performs bookkeeping services for several clients. The accountant transmits various forms and papers to the clients in the course of providing this service. G, another accountant, runs short of certain forms and purchases some from F to tide G over until G's regular suppliers are open for business. F contends that, because F has sold to G tangible personal property by itself of the type sold to F's clients, two separate transactions occur with F's clients. F is not regularly engaged in the business of selling these forms. F's transactions with F's clients are not separable into distinct service and tangible components. F's transactions are predominantly the performance of a service.

(12) Example B4: H, who operates a computer hardware and software company, is hired to write computer programs for one of M's divisions, acquire and set up 25 computer stations for use of the division and to train the division personnel in the use of the stations and programs. H contends that the computer stations are sold to M and therefore H may execute Type 2 NTTCs to acquire them for resale. The transaction encompasses both the performance of services (developing the programs and training the division personnel) as well as the sale of tangible personal property (the computer stations) as separable elements. Therefore H may execute Type 2 NTTCs in acquiring the computer stations.

(13) See Paragraph (8) of Subsection A of Section 3.2.205.10 NMAC for transactions in which buyer regularly sells the tangible personal property by itself.

E. **Transactions in which neither the performance of a service or the sale of tangible personal property predominates**

(1) In some cases, a transaction involving the performance of a service other than a construction or research and development service and the sale of tangible personal property may not be predominately either the performance of a service or the sale of tangible personal property, as for example where receipts attributable to each constitutes more than forty percent of the total receipts from the transaction. In such cases, if the market value or costs of the tangible personal property or services is readily ascertainable and if the taxpayer's records adequately reflect the portion of receipts derived from the sale of tangible personal property and the portion derived from the performance of services, the receipts may be apportioned accordingly. The burden rests on the taxpayer to provide that information, and to justify that the portion of receipts attributable to the sale of the tangible personal property or to the performance of services accurately reflects the relative market value or costs, including reasonably apportioned overhead, of the tangible personal property or services. The clearest way of carrying that burden is to specify separately on the invoice the charges for the property and the charges for the services, and to retain sufficient records to allow a determination that the relative value of either the property or the services is not overstated.

(2) Example 1: Taxpayer X enters into a contract with a governmental entity to maintain the entity's computer equipment. The contract obliges X to check and maintain the equipment, providing replacement parts such as toner cartridges on a regular basis, and to repair the equipment, including the replacement of broken parts. X bills the entity separately stating the charges for its maintenance and repair services and for the replacement parts. Receipts from the charges for replacement parts will be receipts from the sale of tangible personal property to a governmental entity and are deductible pursuant to Section 7-9-54 NMSA 1978. Receipts from charges for the services are not deductible.

(3) Subsection E of Section 3.2.1.29 NMAC does not apply to construction or to transactions in which prototypes or other tangible products of a service are transferred.

[9/29/67, 12/5/69, 3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 4/30/99; 3.2.1.29 NMAC – Rn & A, 3 NMAC 2.1.29, 4/30/01]

7-9-3(N). "use" or "using" includes use, consumption or storage other than storage for subsequent sale in the ordinary course of business or for use solely outside this state.

3.2.1.30 - USE AND USING

The definition of "use" and "using" pursuant to Subsection N of Section 7-9-3 NMSA 1978 includes three components: use, consumption and storage.

A. **Use**: The first component, "use", means to employ or utilize property or a service for a particular purpose. Use does not include mere ownership or possession of property. Use does not include the mere treatment, processing or servicing of tangible property to make the property fit for utilization when the ultimate use of the property is outside New Mexico. Use does not include the transfer to the customer of tangible personal property in_the course of the treatment, processing or servicing or the return of the property to the owner at the conclusion of the treatment, processing or servicing.

(1) Example 1: The uses of a chair are many and varied. Its designed or intended use is being sat on by human beings. A chair, however, may also be "used" to wedge a door shut, as a step-ladder to reach something, as a receptacle to hold objects, as a display item, as a support to prop up a table or shelf and many other purposes not planned by its designer or maker. In contrast, a chair is not "used" by being assembled, polished, painted, upholstered or recaned.

(2) Example 2: B enters into a contract with C, a firm in New Mexico. Under the contract, B sends a gaseous compound to C for separation. C returns the separated materials to B or delivers them to D for further processing. B has not used the compound or the separated materials in New Mexico.

B. **Storage**:

(1) The term "using" includes storage in New Mexico except where the storage is for subsequent sale of the property in the ordinary course of the seller's business or for use solely outside New Mexico.

(2) Example 1: D, a resident of Utah, buys pipe in Texas to be used solely in Utah. The pipe is shipped into New Mexico, unloaded, and stored for three days. It is then reloaded and shipped to Utah. There is no use of the pipe in New Mexico within the meaning of Subsection N of Section 7-9-3 NMSA 1978. The transaction which occurred was merely storage for use solely outside New Mexico.

(3) Example 2: X Construction Company purchases a bulldozer in Illinois intending to use it in its construction business. The bulldozer is then delivered to X in New Mexico. X does not have any immediate use for the bulldozer so it is stored in the back lot of the construction company with other equipment. Two months later X changes plans and sells the bulldozer to Y Construction Company who needs it for a job. The bulldozer remained in storage from the day X received it until the day it was sold. Since the storage of the tractor was not for subsequent sale in the ordinary course of X's business, the storage of the tractor is a "use" within the meaning of Subsection N of Section 7-9-3 NMSA 1978. Therefore, X Construction Company will be subject to the compensating tax on the value of the tractor because it has used the property in New Mexico.

[9/29/67, 12/5/69, 3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96;

3.2.1.30 NMAC - Rn & A, 3 NMAC 2.1.30, 4/30/01; A, 12/30/03; A, 2/29/12]

7-9-3.2. ADDITIONAL DEFINITION--

A. As used in the Gross Receipts and Compensating Tax Act, "governmental gross receipts" means receipts of the state or an agency, institution, instrumentality or political subdivision from:

(1) the sale of tangible personal property other than water from facilities open to the general public;

(2) the performance of or admissions to recreational, athletic or entertainment services or events in facilities open to the general public;

(3) refuse collection or refuse disposal or both;

(4) sewage services;

(5) the sale of water by a utility owned or operated by a county, municipality or other political subdivision of the state; and

(6) the renting of parking, docking or tie-down spaces or the granting of permission to park vehicles, tie-down aircraft or dock boats.

"Governmental gross receipts" includes receipts from the sale of tangible personal property handled on consignment when sold from facilities open to the general public but excludes cash discounts taken and allowed, governmental gross receipts tax payable on transactions reportable for the period and any type of time-price differential.

B. As used in this section, "facilities open to the general public" does not include point of sale registers or electronic devices at a bookstore owned or operated by a public post-secondary educational institution when the registers or devices are utilized in the sale of textbooks or other materials required for courses at the institution to a student enrolled at the institution who displays a valid student identification card.

(Laws 2004, Chapter 69, Section 1)

3.2.20.7 - DEFINITIONS

A. **Admission:** An “admission” to a recreational, athletic or entertainment event includes the granting of permission to observe or participate in a recreational, athletic or entertainment activity.

(1) Example 1: City C charges a “greens fee” for use of a public golf course maintained by the city. Receipts from the greens fee are admissions.

(2) Example 2: County Y charges a fee for use of a swimming pool and surrounding area maintained by the county. Receipts from this fee are admissions.

B. **Agency, institution or instrumentality:**

(1) An agency, institution or instrumentality includes all parts of the agency, institution or instrumentality. An entity which is administratively attached to an agency, institution or instrumentality is not thereby part of the agency, institution or instrumentality. An agency, institution or instrumentality which is subject to the supervisory or regulatory authority of another is not thereby part of the supervising or regulating entity.

(2) Example 1: The New Mexico museum of natural history is part of the museum division of the office of cultural affairs. The New Mexico museum of natural history is

not an “agency” or “institution” for purposes of the governmental gross receipts tax but only a component of an agency. In contrast, the office of cultural affairs is administratively attached to the department of finance and administration. The office of cultural affairs is not part of the department of finance and administration, which merely provides the office with some administrative support. The office of cultural affairs is an “agency” for the purposes of the governmental gross receipts and is responsible for reporting for all of its components.

(3) Example 2: Under the Property Tax Code, the taxation and revenue department has general supervisory power over county assessors and the department of finance and administration has certain enforcement powers relating to county treasurers. The existence of these authorities does not make either county officer a part of the superintending state agency.

C. **Entertainment, athletic or recreational services or events:** The term “entertainment, athletic or recreational services or events” includes any recreational, athletic or entertainment activity.

D. **State of New Mexico and any agency, institution, instrumentality or political subdivision thereof:**

(1) For the purposes of the Gross Receipts and Compensating Tax Act, the term “state of New Mexico and any agency, institution, instrumentality or political subdivision thereof” includes:

(a) the legislature of the state of New Mexico and any committee or employee thereof; examples of committee: the legislative council, the legislative finance committee, the legislative education study committee and any interim committee; staff of such a committee are part of the committee;

(b) the supreme court, court of appeals, district courts, metropolitan courts, magistrate courts, probate courts and any agency thereof; examples of agency: the administrative office of the courts, the judicial standards commission and the compilation commission;

(c) the office of the governor and every state executive agency subject to the authority of the governor; examples of agency: every state cabinet agency, such as the taxation and revenue department, every agency not a cabinet agency whose head is directly responsible to the governor for the operations of the agency, such as the public defender department, whether or not the agency is administratively attached to a state cabinet agency, and every advisory committee established pursuant to Section 9-1-9 NMSA 1978;

(d) every other state executive agency, board, commission or authority whose governing body is a board or commission either elected by the people or appointed by the governor, with or without consent of the Senate, whose actions are not formally subject to the control or approval of the governor, whether or not such agency is administratively attached to a state cabinet agency; examples: the state public regulation commission, the state racing commission, the public service commission, the state personnel board, and the state game commission;

(e) a state officer other than the governor whose office is created by the state constitution, together with the agency or office such person heads, whether or not the officer is elected or appointed; examples: the secretary of state, the attorney general, the state treasurer, the state auditor, the commissioner of public lands and the state mine inspector;

(f) every executive agency created by the state constitution not included in items c through e above; examples: the state board of education, the state department of

education and the department of agriculture;

(g) every health, educational, penal or other institution of the state; every entity controlled or operated by such an institution is part of that institution;

(i) examples of institutions: the entities enumerated in Article XII, Section 11 and Article XIV, Section 1 of the state constitution, community colleges, branch colleges, junior colleges, technical and vocational institutions, area vocational institutions and hospitals not enumerated in Article XIV, Section 11 of the state constitution;

(ii) examples of controlled entities: any newspaper published by a state university or college, whether or not operated as an educational function of the university, or any radio or televisions stations, the license to operate which is held by an entity or entities described in Section 3.2.20.1 NMAC;

(h) every instrumentality of the state which has the power to levy a tax or assessment, whether the instrumentality was created by the state constitution or by law, whether the governing power is vested in an officer or a board or commission or whether the officer or members of the board or commission are elected or appointed; examples: New Mexico beef council, economic advancement districts, irrigation districts, conservancy districts, soil and water conservation districts and flood control districts;

(i) every instrumentality of the state administering state retirement and other programs benefiting employees of the state: examples: the public employees retirement association and its governing board and the educational retirement board;

(j) every instrumentality of the state other than those described in Subparagraph (h) of Subsection D of Section 3.2.20.7 above, whether created by the state constitution or by law, whether the governing power is vested in an officer or a board or commission or whether the officer or members of the board or commission are elected or appointed; examples: the mortgage finance authority, the industrial and agricultural finance authority, the business development corporation and any corporation established under the Educational Assistance Act;

(k) every county of New Mexico, which includes all of its parts, instrumentalities and elected officials; example: a county hospital, regardless of whether operation of the hospital is conducted by another entity under contract, or any entity with power of taxation or assessment authorized to be established with the permission of the county commission or the voters of the county under Article 4 NMSA 1978, such as a county improvement district;

(l) every municipality of New Mexico, whether incorporated under special law or general law, which includes all of its parts, instrumentalities and elected officials; examples: any municipal housing authority, any municipally-owned transit, water, sewer, electric or gas utility, any municipally-controlled organization operating a convention center, any regional planning commission or any entity with power of taxation or assessment authorized to be established with the permission of the governing body of the municipality or the voters of the municipality under Article 3 NMSA 1978, such as a municipal parking authority or community development agency;

(m) every public school district of New Mexico;

(n) community ditch or acequia associations;

(o) community land grants, whether incorporated or not, which have

statutory power of taxation or assessment; and

(p) every other political subdivision of New Mexico, including every component or instrumentality of that political subdivision;

(2) the term "state of New Mexico and any agency, institution, instrumentality or political subdivision thereof" does not include:

(a) organizations created by interstate compact; examples: Cumbres and Toltec scenic railroad commission, multistate tax commission, interstate agricultural grain marketing commission, western interstate commission for higher education and the council of state governments.

(b) or any entity not created by the state constitution or by law or local ordinance, which has no power of taxation and in which membership is voluntary; examples: New Mexico association of counties, New Mexico municipal league, any union of government employees and any association advancing the professional interests of its members.

[6/28/91, 9/17/91, 10/2/92, 11/15/96; 3.2.20.7 NMAC - Rn, 3 NMAC 2.100.7 & A, 4/30/01; A, 10/31/05]

3.2.20.9 - "RECEIPTS" AND "TAXABLE ACTIVITY" DEFINED

A. "Receipts" means the total amount of money or the value of other consideration received by the state of New Mexico or any agency, institution, instrumentality or political subdivision thereof from another person.

B. Example: City Y operates a zoo. Admissions are charged; annual passes are also sold. A nonprofit organization, called Zoo People, is established by concerned citizens to provide various services to or for the zoo. Zoo People collects donations to defray the costs of its activities on behalf of the zoo. The zoo agrees to provide a limited number of annual passes to the organization in exchange for certain services. Zoo People sells these passes through raffles and other means. Although Zoo People does not turn over the proceeds from these sales to the zoo, the money helps pay for services provided to or for the zoo. The value of the services supplied is other consideration. City Y has receipts equal to the value of the consideration, up to the value of the passes supplied. The zoo also occasionally exchanges animals with other zoos which are parts of the state of New Mexico. In an exchange, the value of the other consideration received (in this case the value of the animal received) must be included in receipts.

C. Money or other consideration received in transactions among parts of an agency, institution, instrumentality or political subdivision are not receipts and therefore are not governmental gross receipts.

D. Example: City A's water department is operated on an enterprise basis. It sells water to City A's recreation department which must pay monthly, just as all of the water department's outside customers do. This is a transaction entirely within City A. City A as a whole has no receipts and therefore no governmental gross receipts from the transaction; money merely moved from one department's account to another's.

E. As used in Part 3.2.20 NMAC, the term "taxable activity" means:

(1) the sale of tangible personal property other than water from facilities open to the general public;

(2) the sale of water by a utility owned or operated by a political subdivision of New Mexico;

(3) the performance of or admissions to recreational, athletic or entertainment services or events in facilities open to the general public; or

(4) the performance of refuse collection, refuse disposal or sewage services.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.9 NMAC – Rn, 3 NMAC 2.100.9 & A, 4/30/01]

3.2.20.10 - "FACILITY OPEN TO THE GENERAL PUBLIC" DEFINED

A. The term "facility open to the general public" means a physical structure or location through which a member of the general public may transact business with the governmental entity to purchase tangible personal property or a service. A "facility open to the general public" does not necessarily involve the personal physical access by the member of the general public to the physical structure or location so long as any member of the general public may arrange through the facility the purchase of tangible personal property or a service.

B. Example: State agency X publishes a magazine which it sells to the general public. The magazine is physically prepared and printed in State A. It is mailed to subscribers through delivery in State A to the United States Postal Service. A person may subscribe to the magazine only by contacting a subscription service located in State B. Although there is little, if any, direct contact between the agency publishing the magazine and its customers, nevertheless the agency is selling tangible personal property through a facility open to the general public. Its receipts from selling the magazine are governmental gross receipts.

[6/28/91, 11/15/96; 3.2.20.10 NMAC – Rn, 3 NMAC 2.100.10, 4/30/01]

3.2.20.11 - INTANGIBLES - INDEBTEDNESS

A. Proceeds from the sale of indebtedness by any agency, institution, instrumentality or political subdivision of the state of New Mexico are not receipts from a taxable activity and are not governmental gross receipts.

B. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from repayment of indebtedness are not receipts from a taxable activity and are not governmental gross receipts.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.11 NMAC – Rn, 3 NMAC 2.100.11, 4/30/01]

3.2.20.12 - INTANGIBLES - RECEIPTS FROM SALE OF LICENSES OR PERMITS

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from a transaction which is primarily the granting of a license or a permit other than admissions to recreational, athletic or entertainment services or events are not governmental gross receipts, even if tangible evidence of the license or permit is given to the licensee or permittee.

B. Example 1: Under the Motor Vehicle Code, the state of New Mexico requires resident drivers of motor vehicles to be licensed by the taxation and revenue department. Upon passing of certain tests and payment of a fee for the license, the driver is licensed and a card is issued to a qualifying driver containing the driver's picture and certain information about the driver. The card is merely the physical evidence that the driver to whom the card was issued is licensed with the department in accordance with law. Receipts from issuing such driver's licenses are not receipts from the sale of tangible personal property and are not governmental gross receipts.

C Example 2: Several municipalities (under Section 3-38-1 NMSA 1978) and counties (under Section 4-37-1 NMSA 1978) require persons engaged in certain types of business to obtain a license prior to engaging or continuing to engage in that business. A certificate is issued documenting the granting of the license; sometimes the certificate is required to be displayed on the premises of the licensed business. Receipts from issuing such licenses are not receipts from the sale of tangible personal property and are not governmental gross receipts.

D. Example 3: Marriage licenses are required of persons desiring to marry in the state of New Mexico. Upon payment of the fee and other requirements, a document is issued. Receipts from issuing such licenses are not receipts from the sale of tangible personal property and are not governmental gross receipts.

[6/28/91, 11/15/96; 3.2.20.12 NMAC – Rn, 3 NMAC 2.100.12 & A, 4/30/01]

3.2.20.13 - REPORTING, FILING OR REGISTRATION FEES

A. Whenever a person is required by law to report to or register with a governmental agency or to register possession or use of tangible personal property, receipts of an agency, institution, instrumentality or political subdivision of the state of New Mexico from such registrations are not governmental gross receipts, regardless of whether tangible personal property is given to the person registering as evidence of the registration.

B. Example 1: The owner or operator of a facility in which a hazardous chemical is present in certain quantities is required to file an inventory report on such chemicals. A fee is charged for each inventory form filed. Receipts from such fees are not governmental gross receipts.

C. Example 2: The New Mexico owner of a motor vehicle which is to be driven upon the public highways is obliged to register the vehicle with the taxation and revenue department. A metal plate, to be affixed to the motor vehicle, is given to the owner upon registration as evidence of the registration. The transaction is not primarily the sale of tangible personal property but the registration of the motor vehicle. Receipts from such registrations are not governmental gross receipts.

D. Fees charged by any agency, institution, instrumentality or political subdivision of the state of New Mexico as a pre-condition for official action by that entity are not receipts from a taxable activity.

E. Example 1: Docketing fees are charged by New Mexico courts to defray the administrative costs of accepting a case. Cases will not be accepted in absence of payment of the fee. Such fees are not governmental gross receipts.

F. Example 2: The state public regulation commission charges fees for incorporating a corporation and will not recognize the corporation unless the fees are paid. Such fees are not governmental gross receipts.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.13 NMAC - Rn, 3 NMAC 2.100.13 & A, 4/30/01; A, 12/30/10]

3.2.20.14 - RECEIPTS FROM GRANTING LICENSES TO USE REAL PROPERTY

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from granting licenses to use real property, other than admissions or the grantings of permission to participate in a recreational, athletic or entertainment activity, or to

park vehicles, tie-down spaces or dock boats, are not receipts from a taxable activity. Such revenues are not governmental gross receipts.

B. Example 1: City X operates a parking garage open to the general public. It sells permits for use of designated parking spaces for an entire month. It also charges a fee for use of any undesignated spaces on a hourly basis. The revenues from the monthly permits and the hourly use charges are governmental gross receipts.

C. Example 2: The commissioner of public lands receives fees from granting ranchers the right to graze livestock on public lands. These fees are not governmental gross receipts.

D. Example 3: University A rents its auditorium to a private group for a rock concert. The rental agreement calls for payment to A of a flat fee plus a percentage of the gate. A's receipts are receipts from the granting of a license to use real property and are not governmental gross receipts. If, in addition to the basic terms of the rental arrangement, A also agreed to furnish security, janitorial services and ticket selling services for additional fees, A's receipts from performing such services are not governmental gross receipts because these services are not refuse collection, refuse disposal, sewage or recreational, entertainment or athletic services.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.14 NMAC – Rn, 3 NMAC 2.100.14, 4/30/01; A, 1/30/09]

3.2.20.15 - RECEIPTS FROM GRANTING LICENSES TO USE INFORMATION OR PERSONAL PROPERTY

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from granting licenses to use information or personal property are not receipts from a taxable activity. Such revenues are not governmental gross receipts.

B. Example 1: A governmental agency charges a fee for electronic access to its data files. The fee is composed of two parts, a monthly connection charge and a charge per item searched. The charges are not governmental gross receipts.

C. Example 2: A governmental agency charges a fee for use by private persons of its telefax machine to transmit documents to other locations. Receipts from the fee are not governmental gross receipts.

D. Example 3: For a fee, a state museum allows state officials to borrow paintings to decorate their state offices. The museum's receipts from these fees are receipts from granting a license to use personal property and are not governmental gross receipts.

E. Example 4: A library provides a coin-operated photocopying machine for use by its patrons. Receipts from use of the machine are receipts from granting a license to use personal property and are not governmental gross receipts.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.15 NMAC – Rn, 3 NMAC 2.100.15, 4/30/01]

3.2.20.16 - RECEIPTS FROM LEASING

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from leasing real property or tangible personal property are not receipts from a taxable activity.

B. Example 1: Municipality X, under an industrial development project agreement with Company A, has arranged for the construction and equipping of a factory which it leases to

Company A. The lease sets a monthly fee sufficient to cover the repayment of bonds issued by the municipality which provided the funds for the construction and equipping of the factory. At the end of the lease period, Company A may buy the factory and its equipment for a stated sum. The monthly receipts of the municipality from the lease are not governmental gross receipts but its receipts from the sale of the project's tangible personal property at the end of the lease are governmental gross receipts.

C. Example 2: Municipality B owns a baseball stadium which it leases to a professional team on a long-term basis for the team's use as its home park for specified portions of each year covered by the lease. B receives a fixed annual fee plus a percentage of gate receipts as well as a percentage of income from certain concessions. As part of the lease agreement, the team also agrees to perform certain maintenance functions and to construct some improvements to the stadium. The monetary and other consideration given B are receipts from leasing real property and are not governmental gross receipts.

D. The receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from the sale of season passes or season tickets to recreational, entertainment or athletic events in facilities open to the general public are receipts from admissions and not from leasing. Such receipts are governmental gross receipts.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.16 NMAC – Rn, 3 NMAC 2.100.16, 4/30/01]

3.2.20.17 - RECEIPTS FROM SERVICES - GENERAL

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from performing services other than services which are entirely or predominantly refuse collection, refuse disposal, sewage or recreational, entertainment or athletic services are not governmental gross receipts.

B. Example: Receipts from the sale of advertising space in a publication of a state agency are not receipts from performing a refuse collection, refuse disposal, sewage or recreational, entertainment or athletic service and are not governmental gross receipts.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.17 NMAC – Rn, 3 NMAC 2.100.17, 4/30/01]

3.2.20.18 - RECEIPTS FROM SERVICES - REFUSE COLLECTION, REFUSE DISPOSAL AND SEWAGE

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from performing refuse collection, refuse disposal or sewage services are governmental gross receipts regardless of how or for whom they are performed.

B. Refuse collection services include picking up the refuse, transporting the refuse to a disposal site and disposing of the refuse. Receipts from operating a landfill by itself and not as part of a service of picking up, transporting and disposing of refuse are receipts from a refuse disposal service. Similarly, operation of a septic disposal service is a refuse disposal service.

C. Example: City X operates both a landfill and a refuse collection service. X charges each residential and commercial customer a monthly fee to pick up refuse at the residence or business, transport the refuse to the landfill and dump the refuse properly at the landfill. The landfill also charges commercial refuse collection firms for the privilege of disposing of refuse collected by them in the landfill. The receipts from X's refuse collection service are governmental gross receipts. X's receipts from the landfill charges to the private

refuse collection companies are also governmental gross receipts.
[6/28/91, 10/2/92, 11/15/96; 3.2.20.18 NMAC – Rn, 3 NMAC 2.100.18, 4/30/01]

3.2.20.19 - RECEIPTS FROM SERVICES - RECREATIONAL, ENTERTAINMENT AND ATHLETIC SERVICES

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from performing services which are entirely or predominantly recreational, entertainment or athletic services in facilities which are open to the general public are governmental gross receipts and are subject to the governmental gross receipts tax.

B. Example: A public university sells season tickets to the games of its basketball team. The price of the season ticket includes use of a parking space in a parking lot near the place where the games are played. All receipts from the sale of the season tickets, including any receipts that might otherwise be attributable to the value of right to use the parking space, are governmental gross receipts.

C. Admissions fees to a recreational, entertainment or athletic facility open to the general public or to a recreational, entertainment or athletic event in a facility open to the general public are governmental gross receipts.

D. Example 1: Municipality X maintains a museum. An admissions fee of $2 is charged for admission to the museum, except that no fee is charged to school classes or accompanying adults. Receipts from the admissions fees collected are governmental gross receipts.

E. Example 2: A state agency maintains parks. It charges campers an admissions fee which also permits the use of a camping spot (whether designated or not). Receipts from the admissions fees collected are governmental gross receipts.

F. Student activity fees received by a state university, college or school are governmental gross receipts to the extent that the fees permit attendance at recreational, entertainment or athletic events in facilities open to the general public. When the portion of the student activity fees permitting attendance at recreational, entertainment or athletic events in facilities open to the general public is not readily determinable, reasonable methods may be used to estimate that portion, including the following.

(1) Reserved seats method. If a specific number of seats or places are reserved for students at the event, governmental gross receipts is estimated by multiplying the number of reserved seats or places times the amount of the lowest price ticket available to the general public.

(2) Face value method. When the student activity fee permits attendance of a student at an event at a reduced price (but not free), the governmental gross receipts from the sale of a discounted ticket is the cash received plus the amount of the discount, i.e., the face value of the ticket.

(3) Budget method. When the student activity fees are commingled with other revenue sources and the total is used to carry on several activities, including at least one taxable activity such as a program of athletic contests in facilities open to the general public, the portion of the student activity fees which are governmental gross receipts is estimated by multiplying the total amount of student activity fees by a fraction, the numerator of which is the amount budgeted for taxable activities and events and the denominator of which is the total amount of commingled

funds budgeted for all activities and events.

(4) Any other method agreed to by the secretary or the secretary's delegate.

G. Fees received by a municipality for providing a swimming instruction program are not governmental gross receipts. Teaching someone to swim is an educational service and not a recreational, athletic or entertainment service. Fees for permitting individuals to use pool facilities or to swim are receipts from admissions to a recreational, athletic or entertainment event and are governmental gross receipts. See Paragraph (2) of Subsection A of 3.2.20.7 NMAC regarding admissions.

[6/28/91, 11/15/96; 3.2.20.19 NMAC - Rn, 3 NMAC 2.100.19, 4/30/01; A, 12/30/10]

3.2.20.20 - RECEIPTS FROM TRANSACTIONS WHICH ARE PREDOMINANTLY THE SALE OF TANGIBLE PERSONAL PROPERTY

A. The entire receipts from transactions which are predominantly the sale of tangible personal property but which also include incidental services are governmental gross receipts. This version of Subsection A of Section 3.2.20.20 NMAC applies to transactions occurring on or after July 1, 2000.

B. Receipts from using the personnel and resources of the governmental agency to make reproductions (whether photocopies, tapes, disks or similar formats) of records or other documents for members of the general public or other governmental entities are primarily receipts from selling information or the granting of a license to use information, provided that ten or fewer copies of the record or other document are made for each person requesting copies. When more than ten copies of a record or other document are produced for a person, it will be presumed, in the absence of a preponderance of evidence to the contrary, that the transaction is predominantly the manufacture and sale of tangible personal property and that the receipts are governmental gross receipts.

[6/28/91, 11/15/96; 3.2.20.20 NMAC – Rn, 3 NMAC 2.100.20 & A, 10/31/2000]

3.2.20.21 - RECEIPTS FROM SALES OF TANGIBLES - FACILITIES NOT OPEN TO THE GENERAL PUBLIC

A. Receipts from sales of tangible personal property to persons through facilities not open to the general public are not governmental gross receipts.

B. Example 1: The bookstore of a state university sells textbooks and other course-related materials to its students in a facility to which access is denied to anyone without a current student, faculty or staff identification card. Purchase of the materials is accomplished entirely within this facility. Receipts from selling these textbooks and other educational materials are not sales of tangible personal property through facilities open to the general public. Therefore such receipts are not governmental gross receipts.

C. Example 2: The cafeterias of public schools generally provide lunches to students, faculty and staff only. Members of the general public as a general rule are denied access; special permission is required for parents or other school visitors to purchase food from the cafeterias. Receipts from sale of food, drink and other tangibles by school cafeterias operating as described above are not sales of tangible personal property through facilities open to the general public. Therefore such receipts are not governmental gross receipts.

[6/28/91, 11/15/96; 3.2.20.21 NMAC – Rn, 3 NMAC 2.100.21, 4/30/01]

3.2.20.22 - TAXES

A. The receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from the imposition of any tax, assessment or levy, including the governmental gross receipts tax, whether imposed by that entity or any other governmental entity, are not receipts from a taxable activity and are not governmental gross receipts.

B. Example 1: Municipality A receives a share of the gross receipts tax imposed by the state on taxable activities in Municipality A. A also imposes its own municipal gross receipts tax on those same activities. A's tax is collected by a state agency at the same time and in the same manner as the state gross receipts tax. Neither the share of the state tax nor the proceeds from A's own tax are governmental gross receipts.

C. Example 2: Upon a certain property in Municipality B, ad valorem taxes are levied by the state, county, municipality and certain special districts. All taxes are collected by the county treasurer and distributed to the entities imposing tax. None of the property taxes collected are governmental gross receipts for the county treasurer or any imposing entity.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.22 NMAC – Rn, 3 NMAC 2.100.22, 4/30/01]

3.2.20.23 - GRANTS - DONATIONS

A. The proceeds of any agency, institution, instrumentality or political subdivision of the state of New Mexico from grants from other governmental entities (federal, state or local) or grants, donations or bequests from private persons are not receipts from a taxable activity and are not governmental gross receipts.

B. Example: The Hospital Auxiliary holds a bake sale, the proceeds of which are donated to County X's hospital. The hospital's receipts are from donations and are not governmental gross receipts.

C. The proceeds from any raffle, lottery or similar game are receipts from a game of chance and are not governmental gross receipts. Such receipts will be treated as donations for the purposes of Section 7-9-3.2 NMSA 1978. In the event that tangible personal property (such as an automobile or camera) is offered as a prize by the raffle, lottery or other game, the tangible personal property will be deemed to be donated to the winner.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.23 NMAC – Rn, 3 NMAC 2.100.23 & A, 4/30/01]

3.2.20.24 - AGENCY

A. The receipts of an agent acting for an agency, institution, instrumentality or political subdivision of the state of New Mexico are subject to the governmental gross receipts tax if the receipts are from a taxable activity.

B. Example 1: City X operates a library open to the general public. A nonprofit organization called “Friends of the X Library” agrees to help raise funds for the library by, among other activities, selling Library X's excess or obsolete books and other materials. Money resulting from these sales are turned over to Library X. These receipts are governmental gross receipts.

C. Example 2: City Y operates a zoo. Admissions are charged; annual passes are also sold. A nonprofit organization, called Zoo People, is established by concerned citizens to provide various services to or for the zoo. Zoo People collects donations to defray the costs of its activities on behalf of the zoo. The zoo agrees to provide a limited number of annual passes in

exchange for certain services to the organization. Zoo People sells these passes through raffles and other means. Although Zoo People does not turn over the proceeds from these sales to the zoo, the money helps pay for services provided to or for the zoo. The value of the services supplied is other consideration; the value of the consideration, up to the value of the passes supplied, is subject to the governmental gross receipts tax.

D. Receipts of groups or organizations (other than corporations) created by an agency, institution, instrumentality or political subdivision will be considered receipts of the agency, institution, instrumentality or political subdivision for the purposes of the governmental gross receipts tax if the group or organization is acting as an agent for the agency, institution, instrumentality or political subdivision.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.24 NMAC – Rn, 3 NMAC 2.100.24, 4/30/01]

3.2.20.25 - IMPLEMENTATION OF GOVERNMENTAL GROSS RECEIPTS TAX FOR CASH BASIS TAXPAYERS AND ACCRUAL BASIS TAXPAYERS

A. Receipts of a cash basis taxpayer received prior to July 1, 1991 from selling tangible personal property or from performing a refuse collection, sewage or recreational, entertainment or athletic service which is to be delivered or performed after June 30, 1991 are not governmental gross receipts. Receipts received after June 30, 1991 by a cash basis taxpayer for tangible personal property sold prior to July 1, 1991 or from performing a refuse collection, sewage or recreational, entertainment or athletic service prior to July 1, 1991 are governmental gross receipts.

B. Example: Village C reports governmental gross receipts tax on a cash basis. The Village sells a water heater and other tangible personal property being removed from a building which is to be demolished. The Village sells the items for $1,000 and receives payment on June 20, 1991 and delivers all but the water heater to the purchaser that same day. The purchaser does not actually pick up the water heater until July 2. Because the Village is a cash basis taxpayer, it does not matter that some of the tangible personal property was delivered after June 30, 1991. The $1,000 receipts are not governmental gross receipts.

C. Receipts of an accrual basis taxpayer received prior to July 1, 1991 from selling tangible personal property or from performing a refuse collection, sewage or recreational, entertainment or athletic service which is to be delivered or performed after June 30, 1991 are governmental gross receipts to the extent of the revenues recognized for accounting purposes after June 30, 1991. Receipts received after June 30, 1991 by an accrual basis taxpayer with respect to revenues recognized for accounting purposes on the taxpayer's accounts prior to July 1, 1991 for selling tangible personal property sold prior to July 1, 1991 or from performing a refuse collection, sewage or recreational, entertainment or athletic service prior July 1, 1991 are not governmental gross receipts.

D. Example: U, a state university, is an accrual basis taxpayer. U runs a series of concerts during the period June through August 1991. U sells season tickets to the concerts. U recognizes the revenue from the season tickets as the concerts are performed. That part of U's receipts from season ticket sales received prior to July 1, 1991 are governmental gross receipts with respect to the receipts related to the concerts to be performed after June 30, 1991. Governmental gross receipts tax is due on the receipts related to the post-June concerts as they are recognized for accounting purposes as revenues on U's books.

E. Accrual basis taxpayers which bill customers for services or tangible personal property already delivered may reduce the amount reported as governmental gross receipts which represents the value of the service or tangible personal property provided prior to July 1, 1991. If the value of such services or tangible personal property is separately determinable, then that amount may be removed from the amount of governmental gross receipts to be otherwise reportable. If the amount is not readily determinable but the billing represents delivery of service or tangible personal property for a period of time, such as a month, then the portion which may be removed from the amount otherwise reportable is the amount of the bill times a fraction, the numerator of which is the number of days in the billing period prior to July 1, 1991 and the denominator of which is the number of days in the billing period.

F. Example: City G operates a water utility. It uses an accrual method of accounting and reporting revenues. It bills monthly but divides its customers among 20 different billing cycles, each of which begins on a different day of the month. In July 1991, some of the bills will be for water delivered almost entirely during the month of June 1991. Other customers will have only a few days of June delivery on their July bills. City A could reduce the amount of reportable governmental gross receipts for a billing cycle which runs from June 10, 1991 through July 9, 1991 by subtracting 70% of the total amount received from the billing.

G. Section 3.2.20.25 NMAC is retroactively applicable to transactions occurring on or after July 1, 1991.

[6/28/91, 9/17/91, 10/2/92, 11/15/96; 3.2.20.25 NMAC – Rn, 3 NMAC 2.100.25 & A, 4/30/01]

3.2.20.26 - REGISTRATION AND FILING

An agency, institution, instrumentality or political subdivision of the state of New Mexico does not have to register to file tax returns under the Gross Receipts and Compensating Tax Act only if the entity's receipts are entirely from:

A. activities or sources other than taxable activities; and

B. activities which are exempt under the sections cited in Section 7-9-12 NMSA 1978.

[9/17/91, 10/2/92, 11/15/96; 3.2.20.26 NMAC – Rn, 3 NMAC 2.100.26 & A, 4/30/01]

3.2.20.27 - GOVERNMENTALLY-OWNED WATER UTILITIES - INSTALLATION AND STAND-BY CHARGES - MINIMUM CHARGES

A. Receipts of a water utility owned or operated by an agency, institution, instrumentality or political subdivision of the state of New Mexico from connect, disconnect, installation or stand-by charges or the like are not receipts from selling water or another taxable activity and therefore are not governmental gross receipts.

B. “Stand-by” charges are receipts other than from the sale of water by a utility and are imposed only where water has not been connected or is not being furnished. Minimum usage charges imposed upon persons connected to the utility are charges for the sale of water and are not stand-by charges.

[9/17/91, 10/2/92, 11/15/96; 3.2.20.27 NMAC – Rn, 3 NMAC 2.100.27, 4/30/01]

3.2.20.28 - TIME-PRICE DIFFERENTIALS - INCOME FROM INVESTMENTS

A. Receipts of an agency, institution, instrumentality or political subdivision of the state of New Mexico from any type of time-price differential are not receipts from a taxable activity and are not governmental gross receipts.

B. Example 1: University X charges full-time students $500 tuition per semester. Students may elect to pay the tuition owed on a 4-month installment plan. Each installment payment amount is $130. The receipts of University X from the $20 time-price differential are not governmental gross receipts.

C. Example 2: City Z charges a fee at the rate of 12% per annum when charges for water sold by Z are not paid timely. Receipts from imposition of the late charges are receipts of a time-price differential and are not governmental gross receipts.

D. Receipts of an agency, institution, instrumentality or political subdivision of the state of New Mexico from interest, dividends or other forms of income from investment are not receipts from a taxable activity and are not governmental gross receipts.

E. Receipts of an agency, institution, instrumentality or political subdivision of the state of New Mexico from the gain on the sale of real estate or securities are not receipts from a taxable activity and are not governmental gross receipts.

[9/17/91, 10/2/92, 11/15/96; 3.2.20.28 NMAC – Rn, 3 NMAC 2.100.28, 4/30/01]

3.2.20.30 - RECEIPTS FROM SALE OF REAL ESTATE

A. Receipts of an agency, institution, instrumentality or political subdivision of the state of New Mexico from the sale of real estate are not receipts from a taxable activity and are not governmental gross receipts.

B. Example 1: In the course of a project undertaken pursuant to the Metropolitan Redevelopment Code, City A sells a half-acre lot to a private interest. Receipts from the sale are receipts from the sale of real property and are not governmental gross receipts.

C. Example 2: City R maintains a cemetery. It sells plots in the cemetery to individuals. Receipts from the sale of the plots are receipts from the sale of real estate and are not governmental gross receipts.

[9/17/91, 10/2/92, 11/15/96; 3.2.20.30 NMAC – Rn, 3 NMAC 2.100.30, 4/30/01]

3.2.20.31 - RECEIPTS FROM RECREATIONAL, ATHLETIC AND ENTERTAINMENT SERVICES

A. Receipts of an agency, institution, instrumentality or political subdivision of the state of New Mexico from participating in an athletic event open to the general public which is conducted by another agency, institution, instrumentality or political subdivision of the state of New Mexico are receipts from performing an athletic service and are governmental gross receipts.

B. Example 1: The basketball team of University X, an institution of the state of New Mexico, plays the basketball team of University Y, another institution of the state of New Mexico. X is the host and collects $20,000 in admissions to the contest. X pays Y $8,000 for its team's participation. X has $20,000 in governmental gross receipts; Y has $8,000 in governmental gross receipts.

C. Repealed

D. Repealed

E. Receipts of a New Mexico agency, institution, instrumentality or political subdivision from performance of or admissions to a recreational, athletic or entertainment service or event are governmental gross receipts regardless of where the service or event takes place.

F. Example: University E is an institution of the state of New Mexico. University E's team is invited to play in a post-season tournament in another state. E's receipts from its team's participation in the tournament are governmental gross receipts.

G. This section is retroactively applicable to transactions occurring on or after July 1, 1991.

[9/17/91, 10/2/92, 11/15/96, 4/30/99; 3.2.20.31 NMAC – Rn, 3 NMAC 2.100.31, 4/30/01]

3.2.20.32 - FINES

A. Receipts from the imposition of criminal or civil fines or forfeitures are not receipts from a taxable activity and are not governmental gross receipts.

B. Example 1: The taxation and revenue department charges penalty (at 2% per month, or portion thereof, up to a maximum of 20%) for late payment of taxes. A $5 minimum penalty applies even when no tax is due if a report due is late. The penalties collected are not governmental gross receipts.

C. Example 2: A governmentally-operated library charges a fine for late return of borrowed materials. Such fines are not governmental gross receipts.

D. Example 3: Police agencies under some laws are entitled to seize certain tangible personal property if the property is connected with certain unlawful behavior. The value of such property when seized is “receipts” but is not reportable as governmental gross receipts. If the agency sells the property from a facility open to the general public or to another part of the state, however, receipts from that sale are governmental gross receipts.

[9/17/91, 10/2/92, 11/15/96; 3.2.20.32 NMAC - Rn, 3 NMAC 2.100.32, 4/30/01; A, 12/30/10]

7-9-3.3. DEFINITION--ENGAGING IN BUSINESS.--As used in the Gross Receipts and Compensating Tax Act, "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit, except that:

A. "engaging in business" does not include having a worldwide web site as a third-party content provider on a computer physically located in New Mexico but owned by another nonaffiliated person; and

B. "engaging in business" does not include using a nonaffiliated third-party call center to accept and process telephone or electronic orders of tangible personal property or licenses primarily from non-New Mexico buyers, which orders are forwarded to a location outside New Mexico for filling, or to provide services primarily to non-New Mexico customers.
(Laws 2003, Chapter 272, Section 4)

3.2.1.12 - ENGAGING IN BUSINESS

A. Affiliated corporations:

(1) When a corporation is carrying on or causing to be carried on, with a wholly owned subsidiary, any activity with the purpose of direct or indirect benefit, both the corporation and the subsidiary are “engaging in business”.

(2) Example: B corporation, which operates a hotel supply house, sells supplies only to C Hotel Corporation, which owns all the stock in B Corporation. B claims that since it sells only to C, its parent corporation, it is not engaging in business. B and C are each engaging in business because the purpose of their activities is to benefit either or both corporations.

B. Corporation not for profit: When a corporation not for profit is carrying on or is causing to be carried on any activity with the purpose of direct or indirect benefit it is “engaging in business”.

C. Leasing property:

(1) Persons leasing property employed in New Mexico are engaging in business within the state for the purpose of direct or indirect benefit.

(2) Example: X, an out of state business, leases construction machinery to Y who employs the leased property in New Mexico. X asks if X is engaged in business in New Mexico for purpose of registration, reporting and paying the gross receipts tax. X is engaged in business in New Mexico.

D. Hotels and motels providing interstate telecommunications service to guests:

(1) Hotels, motels and similar establishments offering interstate telecommunications service to guests in conjunction with the rental of rooms or other facilities are not “engaging in interstate telecommunications business” for purposes of the Interstate Telecommunications Gross Receipts Tax Act.

(2) A hotel, motel or similar establishment is primarily engaged in the business of renting rooms and meeting facilities to the general public. Providing interstate telephone service or other interstate telecommunications services to guests is incidental to the primary business of the hotel, motel or similar establishment. Receipts from providing such

service are additional receipts from engaging in the primary business and are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(3) Subsection D of 3.2.1.12 NMAC is retroactively applicable to transactions occurring on or after July 1, 1992.

E. Persons not engaging in business - foster parents: Individuals who enter into an agreement with the state of New Mexico to provide foster family care for children placed with them by the state are not thereby engaging in business. Receipts of the individuals from providing foster care pursuant to such an agreement are not receipts from engaging in business.

F. Persons not engaging in business - certain caretakers: Individuals who enter into an agreement with the state of New Mexico to provide non-medical personal care and housekeeping assistance to low income disabled adults pursuant to the critical in home care program are not thereby engaging in business. Receipts of the individuals from such caretaking activities are not receipts from engaging in business.

G. Persons not engaging in business - home care for developmentally disabled family members: Any individual who enters into an agreement with the state of New Mexico to provide home based support services for developmentally disabled individuals in the home of the developmentally disabled individuals or the home of the support provider and receives payments which under 26 USCA 131 are "qualified foster care payments" is not thereby engaging in business. Receipts of the individuals which are "qualified foster care payments" from providing such home based support services pursuant to such an agreement are not receipts from engaging in business.

H. Owner engaged in business when selling to an owned entity:

(1) Except as provided in Paragraph (2) of this Subsection, when an owner of an entity sells property in New Mexico to, leases property employed in New Mexico to, or performs services in New Mexico for the entity or other owners of the entity, the owner is engaging in business in New Mexico except when the transaction may be characterized for federal income tax purposes as a contribution of capital.

(2) When a partner or interest holder in an entity taxed as a partnership is allocated profits or receives a guaranteed payment or other distributions for activities undertaken as a partner on behalf of the partnership such as administrative services done solely for the benefit of the partnership or for activities for third-parties transacting business with the partnership, the partner is not engaging in business separately from the partnership and the allocations, payments, or distributions are not gross receipts. A partner may, however engage in business separately from the partnership and any transactions between that partner and the partnership, where the partner is not acting as a partner on behalf of the partnership, constitute gross receipts from engaging in business. Indicia that a partner is not acting as a partner on behalf of the partnership may include:

(a) that the partner engages in similar transactions with third parties other than the partnership; or

(b) that the allocation, payment, or distribution made by the partnership is not made under the partnership agreement; or

(c) that the partner's transaction(s) with the partnership involve the sale or lease of goods or the sale of services not provided by the partnership to third parties.

(3) For the purposes of Subsection H of 3.2.1.12 NMAC, an "entity" means any business organization or association other than a sole proprietorship.

I. Persons not engaging in business - sale or exchange of renewable-fueled electricity generated from a system installed in a personal residence. Any individual who sells or transfers electricity to an entity engaged in the business of selling electricity, for which the individual receives monetary compensation or credit against a future month's electricity use, is not engaged in business if the electricity is generated from a renewable-fueled system installed in a personal residence.

[12/5/1969, 3/9/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 9/3/1992, 7/19/1994, 11/15/1996, 5/14/1999, 6/15/1999, 10/29/1999; 3.2.1.12 NMAC - Rn & A, 3 NMAC 2.1.12, 4/30/2001; A, 9/30/2010; A, 9/25/2018]

7-9-3.4. DEFINITIONS--CONSTRUCTION AND CONSTRUCTION MATERIALS.--As used in the Gross Receipts and Compensating Tax Act:

A. "construction" means:

(1) the building, altering, repairing or demolishing in the ordinary course of business any:

(a) road, highway, bridge, parking area or related project;

(b) building, stadium or other structure;

(c) airport, subway or similar facility;

(d) park, trail, athletic field, golf course or similar facility;

(e) dam, reservoir, canal, ditch or similar facility;

(f) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;

(g) sewerage, water, gas or other pipeline;

(h) transmission line;

(i) radio, television or other tower;

(j) water, oil or other storage tank;

(k) shaft, tunnel or other mining appurtenance;

(l) microwave station or similar facility;

(m) retaining wall, wall, fence, gate or similar structure; or

(n) similar work;

(2) the leveling or clearing of land;

(3) the excavating of earth;

(4) the drilling of wells of any type, including seismograph shot holes or core drilling; or

(5) similar work; and

B. "construction material" means tangible personal property that becomes or is intended to become an ingredient or component part of a construction project, but "construction material" does not include a replacement fixture when the replacement is not construction or a replacement part for a fixture.

(Laws 2003, Chapter 272, Section 5)

3.2.1.11 CONSTRUCTION:

A. Construction service as distinguished from other services.

(1) The term "construction" is limited to the activities, or management of the activities, which are listed in Section 7-9-3.4 NMSA 1978 and which physically change the land or physically create, change or demolish a building, structure or other facility as part of a

construction project.

(2) “Construction" does not include services that do not physically change the land or physically create, change or demolish a building, structure or other facility as part of a construction project, even though they may be related to a construction project. The fact that a service may be a necessary prerequisite or ancillary to construction or a construction project does not in itself make the service a construction service. Excluded from the meaning of "construction" are activities such as, but not limited to: hauling to or from the construction site, maintenance work, landscape upkeep, the repair of equipment or appliances, laboratory work or accounting, architectural, engineering, surveying, traffic safety or legal services. Some of these activities may qualify as construction-related services; see Section 7-9-52 NMSA 1978.

B. Construction includes: Pursuant to Section 7-9-3.4 NMSA 1978 the term "construction" includes the painting of structures, the installation of sprinkler systems and the building of irrigation pipelines.

C. Construction does not include:

(1) The term "construction" does not include the installation of carpets or the installation of draperies, but see 3.2.209.25 NMAC.

(2) The term “construction”, as defined in Section 7-9-3.4 NMSA 1978, does not include leasing or renting tangible personal property, such as construction equipment, with or without an operator but see Section 7-9-52.1 NMSA 1978 for transactions on or after January 1, 2013.

D. Oil and gas industry construction:

(1) "Construction", as this term is used in Section 7-9-3.4 NMSA 1978, includes the following activities related to the oil and gas industry:

(a) building and altering of gas compression plant facilities and pump stations, including: clearing of property sites; excavating for foundations; building and setting foundation forms; mixing, pouring, and finishing concrete foundations for buildings and plant equipment on foundations; fabricating and installing piping; installing electrical equipment, insulation, and instruments; erecting buildings; placing sidewalks, drives, parking areas; installing storage tanks; and dismantling equipment and reinstalling elsewhere;

(b) building of or extension of gas-gathering pipelines, including: connecting gathering lines to lease separators, fabricating and installing meter runs, digging trenches, beveling pipe, welding pipe, wrapping pipe, backfilling trenches, testing pipelines, fabricating and installing pipeline drips and installing conduit for pipelines crossing roads or railroads;

(c) building of or extension of product pipelines, including: building pressure-reducing stations; connecting pipelines to storage tanks, fabricating and installing valve assemblies, digging trenches, beveling pipe, welding pipe, wrapping pipe, laying pipe, backfilling trenches, testing pipelines and installing conduit for pipeline crossing roads or railroads;

(d) building secondary-recovery systems, including: excavating and building foundations, installing engines and water pumps, installing pipelines for water intake, installing pipelines for carrying pressured water to input wells, installing instruments and controls and erecting buildings;

(e) installing lease facilities, including: installing wellheads, flow lines, chemical injectors, separators, heater-treaters, tanks, stairways and walkways; building

foundations; and setting pump units and engines, central power units and rod lines;

(f) demolishing pipelines, including: digging trenches to uncover pipelines, dismantling and removing drips and meter runs, backfilling trenches, tamping and smoothing right-of-way;

(g) increasing pipeline capacity, including: removing small pipelines and replacing with larger lines, and digging adjoining trenches and laying new pipelines;

(h) repairing plant, including: replacing tubing in atmospheric condensers, replacing plugged boiler tubing; removing cracked, broken or damaged portions of foundations and replacing anew; replacing compressors, compressor engines, or pumps; and regrouting and realigning compressors;

(i) drilling wells, including: drilling ratholes, excavating cellars and pits, casing crew services, cementing services, directional drilling, drill stem testing and fishing jobs in connection with drilling operations;

(j) general dirt work, including: building roads, paving with caliche or other surfacing materials; digging pits, trenches, and disposal ponds, building firewalls and foundation footing; and constructing pads from caliche or other materials.

(2) "Construction", as the term is used in Section 7-9-3.4 NMSA 1978, does not include the following activities related to the oil and gas industry:

(a) well servicing, including: acidizing and fracturing formations; pulling and rerunning rods or tubing; loading or unloading a well; shooting; scraping paraffin; steaming flow lines and tubing; inspecting equipment; fishing jobs, other than in connection with drilling operations; bailing cave-ins; reverse circulating and resetting packers;

(b) lease and plant maintenance, including: cleaning; weed-control; preventive care of machinery, pipelines, gathering systems, and engines; tank cleaning; testing of flow lines by pressure or X-ray means; cleaning lines and tubing by acid treatment or mechanical means, or replacing and restoring machinery components;

(c) transporting equipment, including: transporting drilling rigs, rigging-up and rigging-down, and hauling water and mud;

(d) salvaging of materials from a "production unit", as defined in the Oil and Gas Emergency School Tax Act, such as: killing the gas pressure, removing casing heads, welding pull nipples on the casing, cutting or shooting casing strings, pulling casings from the well bore, cementing to fill the abandoned well or plug the well, filling the cellar, and welding steel pipe markers;

(e) rental of equipment such as: power tongs, blowout preventors, tanks, pipe racks, core barrels, integral parts of a drilling rig or integral parts of a circulation unit, for transactions on or after January 1, 2013, see Section 7-9-52.1 NMSA 1978;

(f) measuring, "logging" and surveying services in connection with the drilling of an oil or gas well are construction-related services as of January 1, 2013, see Section 7-9-52 NMSA 1978. "Logging" as that term is used in this subsection is a method of testing or measuring an oil or gas well by recording various aspects of the geological formations penetrated by the well.

E. Construction includes prefabricated buildings; prefabricated versus modular buildings:

(1) The sale of prefabricated buildings, whether constructed from metal or

other material, is the sale of construction. A prefabricated building is a building designed to be permanently affixed to land and manufactured (usually off-site) in components or sub-assemblies which are then assembled at the building site. Prefabricated buildings are not designed to be portable nor are they capable of being relocated.

(2) A portable building or a modular building is a building manufactured (usually off-site) which is designed to be moveable or is capable of being relocated and, when delivered to the installation site, generally requires only blocking, levelling and, in the case of modular buildings, joining of modules. For the purposes of Subsection F of 3.2.1.11 NMAC, neither portable buildings, modular buildings nor manufactured homes defined as vehicles by Section 66-1-4.11 NMSA 1978 are prefabricated buildings.

F. Construction materials and services; landscaping:

(1) Landscaping items, such as ornaments, rocks, trees, plants, shrubs, sod and seed, which are sold to a person engaged in the construction business, that are an integral part of the construction project, are construction materials. Persons who seed, lay sod or install landscape items in conjunction with a construction project are performing construction services.

(2) Receipts from selling landscaping items to, and from seeding, laying sod or installing landscape items for, persons engaged in the construction business may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate to the seller as provided in Section 7-9-51 and Section 7-9-52 NMSA 1978, respectively.

G. Nontaxable transaction certificates:

(1) Nontaxable transaction certificates are available from the department for persons who are engaged in the construction business and performing activities, as set forth in Sections 7-9-3.4, 7-9-52 and 7-9-52.1 NMSA 1978 to execute to providers of construction materials, construction services, construction-related services and lessors of construction equipment. See 3.2.201.11 NMAC for additional requirements on construction contractors to obtain nontaxable transaction certificates.

(2) Only persons who are licensed by the state of New Mexico as construction contractors may apply for and execute nontaxable transaction certificates under the provisions of Sections 7-9-51 NMSA 1978, 7-9-52 NMSA 1978, and 7-9-52.1 NMSA 1978, except that a person who performs construction activities as defined in Section 7-9-3.4 NMSA 1978 in the ordinary course of business, and who is exempt from the laws of the state of New Mexico requiring licensing as a contractor may apply for and execute such certificates.

H. Construction materials; general:

(1) The term "construction materials" means tangible personal property which is intended to become an ingredient or component part of a construction project.

(2) Tangible personal property intended ultimately to become an ingredient or component part of a construction project although not purchased for a specific project is nonetheless a construction material. *Example:* A government agency makes bulk purchases of asphalt which is stored by the agency for use in future road construction or repair projects. The asphalt is a construction material.

(3) Tools, equipment and other tangible personal property not designed or intended to become ingredients or component parts of a construction project are not construction materials if such materials accidentally become part of a construction project. *Example:* A workman accidentally drops a pair of gloves and a hammer into a form into which concrete is

being poured. Because the gloves and the hammer are not intended to be included in the concrete structure, they are not construction materials.

[9/29/1967, 12/5/1969, 3/9/1972, 3/20/1974, 7/26/1976, 6/18/1979, 11/8/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 3/19/1992, 1/13/1996, 11/15/1996, 5/15/1997, 9/15/1997, 3.2.1.11 NMAC - Rn & A, 3 NMAC 2.1.11, 10/31/2000; A, 12/30/2003; A, 12/14/2012; A, 12/27/2018]

7-9-3.5. DEFINITION--GROSS RECEIPTS.--

A. As used in the Gross Receipts and Compensating Tax Act:

(1) "gross receipts" means the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing or licensing property employed in New Mexico, from granting a right to use a franchise employed in New Mexico, from selling services performed outside New Mexico, the product of which is initially used in New Mexico, or from performing services in New Mexico. In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, "gross receipts" means the reasonable value of the property or service exchanged;

(2) "gross receipts" includes:

(a) any receipts from sales of tangible personal property handled on consignment;

(b) the total commissions or fees derived from the business of buying, selling or promoting the purchase, sale or lease, as an agent or broker on a commission or fee basis, of any property, service, stock, bond or security;

(c) amounts paid by members of any cooperative association or similar organization for sales or leases of personal property or performance of services by such organization;

(d) amounts received from transmitting messages or conversations by persons providing telephone or telegraph services;

(e) amounts received by a New Mexico florist from the sale of flowers, plants or other products that are customarily sold by florists where the sale is made pursuant to orders placed with the New Mexico florist that are filled and delivered outside New Mexico by an out-of-state florist; and

(f) the receipts of a home service provider from providing mobile telecommunications services to customers whose place of primary use is in New Mexico if: 1) the mobile telecommunications services originate and terminate in the same state, regardless of where the services originate, terminate or pass through; and 2) the charges for mobile telecommunications services are billed by or for a customer's home service provider and are deemed provided by the home service provider. For the purposes of this section, "home service provider", "mobile telecommunications services", "customer" and "place of primary use" have the meanings given in the federal Mobile Telecommunications Sourcing Act; and

(3) "gross receipts" excludes:

(a) cash discounts allowed and taken;

(b) New Mexico gross receipts tax, governmental gross receipts tax and leased vehicle gross receipts tax payable on transactions for the reporting period;

(c) taxes imposed pursuant to the provisions of any local option gross receipts tax that is payable on transactions for the reporting period;

(d) any gross receipts or sales taxes imposed by an Indian nation, tribe or pueblo; provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions;

(e) any type of time-price differential;

(f) amounts received solely on behalf of another in a disclosed agency capacity; and

(g) amounts received by a New Mexico florist from the sale of flowers, plants or other products that are customarily sold by florists where the sale is made pursuant to orders placed with an out-of-state florist for filling and delivery in New Mexico by a New Mexico florist.

B. When the sale of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts, excluding any type of time-price differential, under such contracts as gross receipts as and when the payments are actually received. If the seller or lessor transfers the seller's or lessor's interest in any such contract to a third person, the seller or lessor shall pay the gross receipts tax upon the full sale or leasing contract amount, excluding any type of time-price differential.

(Laws 2007, Chapter 339, Section 2)

3.2.1.14 GROSS RECEIPTS - GENERAL

A. Gross receipts: Unless the receipt is from one or more of the following, it is not taxable:

(1) selling property in New Mexico;

(2) leasing property employed in New Mexico;

(3) performing services outside of New Mexico the product of which is initially used in New Mexico; or

(4) performing services in New Mexico.

B. Credit card sales: Gross receipts of the seller of property or services or the lessor of property include the full sale or lease contract amount of any property or service sold or of any property leased when payment is made through the use of a credit card which has been issued by a third party. The seller or lessor may not deduct from gross receipts the amount charged by the credit card company for converting the account into cash.

C. Consideration other than money:

(1) If the consideration received by the seller or lessor for the item sold or leased or for the service performed is in a form other than money, the fair market value of the

consideration received or the fair market value of the item sold or of the lease or of the service performed must be included in gross receipts. The value of the consideration received or the item sold or of the lease or of the service performed is the fair market value at the time of the transaction.

(2) Example 1: X has Y, a garage owner, repair X's automobile. In exchange for the service performed by Y, X gives Y a deer rifle. The fair market value of the rifle at the time of the transaction is the measure of Y's gross receipts.

(3) Example 2: X, a New Mexico construction company, contracts with Y Electric Co-op Association for the construction of transmission lines. The contract requires X to furnish all materials and labor for a fixed price; however, it permits a reduction of the contract price in the amount of the value of materials furnished by Y. The gross receipts of X include the value of any material supplied by the cooperative.

(4) Example 3: X is a firm engaged in the construction business in New Mexico. The receipts of X from the sale of a completed construction project include the value of construction services performed by the buyer of the construction project pursuant to a "sweat labor contract" if the performance of services are required to fulfill a contractual obligation of X. A "sweat labor contract", as used in this example, is a contract whereby the buyer of a completed construction project agrees to perform certain construction services for the seller of the construction project as partial payment of the sale price of the construction project.

(5) Example 4: M agrees to drill an oil well for the XYZ Oil Company. The contract provides that M will drill the well for $7.50 per foot and a one-eighth interest in the minerals which belong to XYZ. The well, when completed, produces forty barrels of oil per day for a period which is expected to last for 10 years. M admits that the $7.50 per foot that is received from drilling the well are gross receipts subject to the gross receipts tax. M questions whether the value of the one-eighth interest is gross receipts. The value of the mineral interest is consideration and must be included in M's gross receipts. It will be valued at its fair market value at the time the well is completed.

(6) Example 5: The A Oil Company hires the B Drilling Company to drill a well on its property. A furnishes drill bits to B, but A has the right to deduct the rental value of the bits from the total footage or day rate price it agrees to pay B for the drilling. The use of the drill bits is partial consideration, furnished by A, for the performance of the drilling service by B and the reasonable value of their use must be included in B's gross receipts. A also must include the rental value of the bits in its gross receipts because it is leasing the drill bits to B. However, if A furnishes drill bits to B and does not have the right to deduct the rental value of the bits from the total footage or day rate price which it has agreed to pay B for the drilling, then no amounts from the drill bit transaction are includable in either A's or B's gross receipts. The same applies if B furnishes the drill bits.

D. Consideration less than fair market value:

(1) In a transaction where the actual consideration received does not represent the fair market value of the property sold or leased or of the service sold, the fair market value shall be included in the gross receipts of the seller or lessor. Fair market value is the value which the property or service can command in an arms length transaction between two independent parties in an open market.

(2) The following example illustrates the application of Section 7-9-

3.5 NMSA 1978 with respect to consideration less than fair market value. Example: X, a land and cattle company, is a corporation which is affiliated with Y, an equipment company. Because of their affiliation, X leases a $30,000 tractor from Y for $l.00 a month. Y reports that its gross receipts from this transaction are $l.00. Y's gross receipts are the market value of a monthly lease of a $30,000 tractor. Y must pay gross receipts tax on the adjusted amount.

E. Sale of commercial paper:

(1) The full sale or leasing contract amount of property or service sold, excluding any type of time price differential, is included in the seller's gross receipts even though the seller subsequently sells the contract and does not receive the total contract price in money. No deduction is allowed for discounts suffered from the sale of commercial paper arising from a sale or lease.

(2) Example: X sells a washing machine to Y under a conditional sales contract in which the full sale contract amount, excluding time price differential, is $120. The principal on the washing machine is to be paid for over a twelve month period at $10 a month. X collects $20 of principal under the contract and then assigns its rights to W for $90. Depending upon the method regularly used for reporting gross receipts, X would either pay tax on the full contract amount for the month in which the sale was made (accrual basis) or pay tax measured by the receipts as they were received (cash basis). If X had elected to pay tax measured by its receipts as they were received, X would have reported $20 during the first two months from this transaction. When X assigned the contract, X would have to include $100 in the gross receipts for the third month since a deduction is not allowed for a discount suffered upon the transfer of a conditional sales contract.

F. Interdepartmental transfers:

(1) Receipts derived from an interdepartmental transfer of services or property are not subject to the gross receipts tax. To qualify as an interdepartmental transfer, the transfer must be a transfer of services or property within the same corporation or other taxable entity.

(2) Example: C, a company located in New Mexico, operates both an electric utility and a water utility. C records on its books the sale of the electricity to the water utility in order to comply with the public service commission regulations but does not thereby incur gross receipts as that term is used in the Gross Receipts and Compensating Tax Act. Such book entries do not record receipts from selling property in New Mexico but record interdepartmental transfers. However, the value of the electricity at the time of its conversion to use by the water utility is subject to the compensating tax.

G. Service charges computed on balances:

(1) Service charges on accounts receivable balances or installment sales contracts which are not computed at the time of sale, are time-price differential charges, are not subject to the gross receipts tax and are not to be included in the sales price of an item brought into New Mexico for the purpose of computing the compensating tax.

(2) Example: X corporation located outside New Mexico is engaged in the business of publishing books. X has several nonemployee salesmen soliciting orders on a commission basis in New Mexico. Every such order is forwarded to X's main office where it is reviewed and then either accepted or rejected. Accepted orders are shipped directly to the purchaser from X's binderies located outside of New Mexico. Since X has salesmen in New

Mexico, it is an agent for collection of the compensating tax, pursuant to Section 7 9 10 NMSA 1978. The purchaser may elect to pay for the books on an installment basis. If after 90 days from purchase, the balance has not been paid, a one percent per month service charge is added to the balance. This charge is not precomputed and no portion thereof is due unless the purchaser elects to pay on an installment plan extending over 90 days. Such a charge is a time-price differential and is not a part of the sales price of the item. Therefore, it should not be included in the sales price when considering the amount of compensating tax that should be paid over to the state of New Mexico.

H. Corporations and organizations not organized for profit - fund raising activities:

(1) Receipts of a corporation or organization not organized for profit, other than an organization granted a 501(c)(3) determination by the internal revenue service, derived from fund raising activities which are in the nature of donations, gifts, and contributions are not subject to the gross receipts tax.

(2) The department will presume that the total receipts of such a nonprofit organization from a fund raising activity are receipts derived from a taxable activity if the project involves the performance of any service or the sale or lease of any property by the organization. This presumption may be overcome by establishing the following:

(a) the purchaser or lessee of the property or service intended by the purchase or lease to make a gift, donation, or contribution to the organization; and

(b) the purchase or lease price clearly exceeded the fair market value of the service or property or the fair rental value of the property.

(3) If these conditions are satisfied, the amount of consideration received by the organization in excess of the fair market price or fair rental value is not subject to the gross receipts tax.

I. Discount coupons: The gross receipts attributable to a sale in which a seller accepts discount coupons provided by buyers are measured by the cash received plus the value of the coupon. However, if the discount coupon is not redeemable by the seller, the acceptance of the coupon constitutes a cash discount allowed and taken and is excluded from gross receipts.

J. Gross receipts embezzled: Receipts that have been embezzled or lost through bookkeeping errors are not a cash discount allowed and taken; such receipts are not deductible under Section 7 9 67 NMSA 1978 because they are not a refund, allowance or uncollectible debt.

K. Vending machines:

(1) A vending machine is a device that, when the appropriate payment has been inserted into it, whether payment is made by coins, tokens, paper money, credit card, debit card or other means, dispenses tangible personal property, performs a service (including entertainment) or dispenses tickets, tokens or similar objects redeemable for money, tangible personal property or services; but “vending machine” does not include any device which is designed to primarily or solely to play a game of chance, such as slot machines, video gaming machines and the like.

(2) Amounts received from allowing the vending machine to be placed in a location as well as amounts received from use of or sales from vending machines are gross receipts and are subject to the gross receipts tax. The vending machine owner is responsible for reporting the receipts and paying the gross receipts tax.

(3) Receipts derived from allowing vending machines to be placed in a location not owned or rented by the vending machine owner are gross receipts and are subject to the gross receipts tax. Except as provided otherwise in Subsection K of Section 3.2.1.14 NMAC, the person receiving the receipts is responsible for reporting the receipts and paying the gross receipts tax with respect to such receipts.

(4) If the vending machine owner and a person controlling the premises where the machine is located enter into a written agreement similar to the one below, the department will presume that a joint venture has been created, that the joint venture is registered with the department and that the vending machine owner has agreed to pay all gross receipts tax due with respect to the joint venture. In such a case, the person owning the machine, on behalf of the joint venture, will report and pay the gross receipts tax due on all the receipts derived from either allowing the vending machine to be placed in a location or sales from the vending machine for all parties in the joint venture and the person controlling the premises is relieved of the duty to report or pay gross receipts tax on those same receipts.

(5) Agreement: Total amounts collected from the vending machine shall be allocated between the vending machine owner and the person controlling the location. The vending machine owner will receive a percentage of the amounts collected net of gross receipts tax due, plus an amount equal to the gross receipts tax payable on the entire proceeds from the vending machine. The person controlling the location will receive a percentage of the amounts collected net of gross receipts tax due. The vending machine owner will report and pay any gross receipts tax due on all the receipts derived from either the use of or sales from the vending machine.

(6) In the event that no such agreement exists, the department will presume that no joint venture exists. In such a case, the vending machine owner will be subject to gross receipts tax on the entire amounts collected from the use of or sales from the vending machine, and the person controlling the premises will be subject to gross receipts tax on the amount that person receives from the vending machine owner for allowing the placement of the machine on the premises.

(7) In the event the vending machines are leased to the person who services them, the term “vending machine owner” means the lessee of the vending machines.

L. “Gross receipts” excludes leased vehicle surcharge: For the purposes of Subparagraph (b) of Paragraph (3) of Subsection A of Section 7-9-3.5 NMSA 1978, the term “leased vehicle gross receipts tax” includes the leased vehicle surcharge. The amount of any leased vehicle surcharge may be excluded from gross receipts.

M. Receipts from furnishing parts or labor under automotive service contract:

(1) When an automobile dealer, who is the promisor under an automotive service contract as that term is defined under Subsection C of Section 3.2.1.16 NMAC, furnishes parts or labor or both to satisfy the promisor's obligation to repair the breakdown involving a part specified in the contract, the dealer has taxable gross receipts equal to the retail value of the parts and labor furnished. A transfer of property or performance of service for a consideration has occurred and therefore a receipt from selling property or performing services has been realized by the dealer.

(2) The consideration received by the dealer is the discharge of the dealer's obligation to make the repair which obligation arose when the covered breakdown

occurred.

(3) Receipts of a repair facility, including an automobile dealer, from furnishing parts and labor to fulfill the obligation of another person under an automotive service contract are gross receipts and not deductible under Sections 7 9 47 and 7 9 48 NMSA 1978, even though the seller has received NTTCs for other transactions.

N. Receipts from deductibles/co-payments under automotive service contracts: The receipts of a New Mexico automotive dealer or other repair facility, including the promisor under an automotive service contract, from the "deductible" or "co-payment" amount paid by a customer as required by automotive service contract as that term is defined in Subsection C of Section 3.2.1.16 NMAC in connection with the provision of repair services under contract are gross receipts.

O. Receipts of dealer from own reserve:

(1) The receipts of a New Mexico auto dealer for repairs provided by the dealer under an automotive service contract as that term is defined in Subsection C of Section 3.2.1.16 NMAC, on which the dealer is obligated as promisor are not gross receipts if:

(a) the receipts are paid from a reserve account established by the dealer under an agreement with an auto service contract administrator or an insurance company, or both, and

(b) the dealer is entitled to a return of any amounts in the reserve account not used to pay for parts and labor or to pay other charges against the dealer in connection with the auto service contract.

(2) In this situation, the dealer is being "paid" from the dealer's own funds and has no receipts. However, the dealer as promisor is liable for gross receipts tax on the retail value of the parts or labor or both furnished to discharge the dealer's obligation.

P. Water conservation fee: Section 74-1-13 NMSA 1978 imposes the water conservation fee on the operator of a public water supply system. The fee is measured by the amount of water produced. The operator is not authorized to impose the water conservation fee on the operator's customers. If the operator of the system separately bills an amount characterized as a reimbursement of the water conservation fee to the operator's customers, the separately stated amount is simply an element of the price of the water sold and the "reimbursement" is included in gross receipts. The definition of "gross receipts" does not exclude the water conservation fee or amounts characterized as reimbursements of water conservation fee paid.

Q. Sales of items subject to the federal manufacturer's excise tax:

(1) The gross receipts from sales of items such as motor vehicle tires include the total amount of money or the value of other consideration received even though this amount includes the Federal Manufacturer's Excise Tax, 26 U.S.C.A. Section 4061 et seq.,(1986) which is separately stated on the invoice. Gross receipts do not include the amount of money attributable to the Federal Communications Excise Tax, 26 U.S.C.A. Section 4251, *et seq.,* (1986), and the Federal Air Transportation Excise Tax, 26 U.S.C.A. Section 4261 *et seq.,* (1986), which are user's taxes.

(2) Example: A tire dealer sells a tire in New Mexico to a retail customer for $40.00 and separately states $l.00 for Federal Manufacturer's Excise Tax on the sales ticket. The seller's gross receipts for this transaction are $41.00.

R. Transactions among related persons are gross receipts

(1) Each person engaging in business in New Mexico is subject to the provisions of the Gross Receipts and Compensating Tax Act. Each person who is a member of any group of related or affiliated persons and who engages in business in New Mexico is a taxpayer. The provisions of the Gross Receipts and Compensating Tax Act apply to the transactions between that taxpayer and all other persons, including the other related or affiliated persons, even though consideration is not received in the form of cash or other monetary remuneration.

(2) Example 1: A cooperative association and X both engage in business in New Mexico. The cooperative sells services to X, one of its members. The cooperative is a taxpayer and the receipts from this transaction are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(3) Example 2: Both X and a cooperative association engage in business in New Mexico. X is a member of the cooperative and sells services to it. X is a taxpayer and the receipts from this transaction are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(4) Example 3: X engages in business in New Mexico, specifically by selling office supplies. X is also a partner in a partnership. Sales by X to the partnership are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(5) Example 4: C is a corporation engaging in business in New Mexico. S, an individual who is the majority stockholder in C, buys in New Mexico services and goods from C. C's receipts from these transactions with S are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(6) Example 5: C and S are corporations engaging in business in New Mexico. S is a wholly-owned subsidiary of C. C sells tangible personal property in New Mexico to S. C's receipts from the transaction are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(7) Example 6: X and Y are both divisions of corporation Z. X and Y are both parts of the same person, Z, and are not “related persons”. Receipts from transactions between these two divisions are activities within Z and do not constitute gross receipts.

(8) Example 7: P, an individual, operates two businesses as sole proprietorships. One of P's businesses transfers tangible personal property to the other. Since both businesses and P are the same person, they are not “related persons” and the transaction does not constitute gross receipts.

S. Owner’s receipts from transactions with owned entity are gross receipts

(1) Except as provided in Paragraph (2) of this Subsection, when a person who owns all or part of an entity has receipts from the sale of property in New Mexico to, the lease of property employed in New Mexico to or the performance of services in New Mexico for the entity, the person’s receipts are gross receipts except when the transaction may be characterized for federal income tax purposes as a contribution of capital. The person’s receipts include the actual amount of money received by the person plus the value of any additional consideration. Additional consideration includes forbearance of charges against the person’s ownership interest. These gross receipts are subject to the gross receipts tax unless an exemption or deduction applies.

(2) When a partner or interest holder in an entity is allocated profits or receives a guaranteed payment or other distributions for activities undertaken as a partner on behalf of the partnership such as administrative services done solely for the benefit of the partnership or for activities for third-parties transacting business with the partnership, these receipts of the partner are not gross receipts and are not subject to the gross receipts tax. When a partner engages in business separately from the partnership any transactions of that partner with the partnership, where the partner is not acting as a partner on behalf of the partnership, are gross receipts. Indicia that a partner is not acting as a partner on behalf of the partnership may include:

(a) that the partner engages in similar transactions with third parties other than the partnership;

(b) that the allocation, payment, or distribution made by the partnership is not made under the partnership agreement;

(c) that the partner's transaction(s) with the partnership involve the sale or lease of goods or the sale of services not provided by the partnership to third parties.

(3) For the purposes of Subsection S of Section 3.2.1.14 NMAC, an "entity" means any business organization or association other than a sole proprietorship.

(4) Example: C is a corporation and S is C's wholly owned subsidiary corporation. C and S create L, a limited liability company; C and S each own fifty percent of L. L purchases a twenty percent interest in P, a limited partnership. C sells goods to P. P pays the amount charged. C has gross receipts from this transaction equal to the amount received for the goods.

[9/29/1967, 12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1982, 5/4/1984, 4/2/1986, 4/20/1990, 11/26/1990, 9/20/1993, 2/22/1995, 11/15/1996, 5/31/1997, 6/15/1999; 3.2.1.14 NMAC - Rn & A, 3 NMAC 2.1.14, 4/30/2001; A, 12/30/2003; A, 9/25/2018]

3.2.1.15 - GROSS RECEIPTS - TANGIBLE PERSONAL PROPERTY

A. **Lease purchase agreement as a sale.** The receipts from a two party "lease-purchase" or "paid-out lease" agreement for tangible personal property will be treated as receipts from the sale of tangible personal property under the Gross Receipts and Compensating Tax Act if the lessee-buyer treats the property as an asset and depreciates the property pursuant to generally accepted accounting practices.

B. **Consignment sales.** Receipts of both a consignor and a consignee from the sale of tangible personal property handled on consignment are subject to the gross receipts tax.

C. **Delivery expenses.**

(1) Receipts from charges by a seller of tangible personal property for delivery costs, including postage and transportation charges, paid by the seller and passed on to the buyer, are an element of the sales price of the property.

(2) *Example:* X sells tangible personal property in the state of New Mexico and transports property to buyers located in New Mexico in its own equipment from its factory and warehouse. In some instances the contracts of sale which X has with its buyers stipulate that title passes on completion of manufacturing; in other cases there is no stipulation regarding passage of title. On its billing to buyers, X separately states amounts categorized as "warehouse charges"

and "delivery charges". These separately stated charges are elements of the sale price of the property.

D. **Freight charges.**

(1) Transportation costs that are paid by the seller to the carrier are an element of the sales price of the property.

(2) Transportation costs that are paid to the carrier by the buyer are not an element of the sales price of the property. If the buyer transports the property with the buyer's own equipment, the cost of the transportation does not increase the value of the property.

(3) If the seller transports the property with its own equipment, and the cost of the transportation is already included in the price of the property, it is considered as an element of the sales price of the property. If extra separate charges are made, receipts from such charges are gross receipts.

E. **Refundable deposits.** Amounts received in the form of refundable deposits on bottles, cartons, cases and the like are to be included in gross receipts of the seller or lessor and are subject to the gross receipts tax.

F. **Buyer's financing costs.** In a situation where:

(1) a lending institution lends money directly to a buyer of tangible personal property;

(2) the buyer executes a promissory or installment note together with a security agreement or a retail financing agreement directly to the lending institution;

(3) neither the note nor the agreement is endorsed or guaranteed in any manner by the seller of the property; and

(4) the lending institution as agent for the buyer, pays the seller by crediting the account of the seller with an amount equal to the loan against the property, with no amount added or later rebated, the receipts of the seller from the sale of the property include any down payment and the amount credited to the account of the seller unless that amount is less than the fair market value of the property sold, in which case the fair market value would be the measure of the seller's gross receipts.

G. **Sale of items subject to the state cigarette tax act.** The gross receipts from sales of cigarettes include the total amount of money or the value of other consideration received even though this amount includes the excise tax levied by the Cigarette Tax Act.

H. **Florist receipts.** Receipts of a New Mexico florist are gross receipts when the florist:

(1) receives an order and payment for flowers under an agreement that the flowers are to be delivered at another location by another florist; and

(2) uses long distance communication to authorize the other florist to make delivery; and

(3) pays the other florist for the flowers.

I. **Sale of food and beverage at horse racetracks.** Receipts from the sale of food and beverage either by a concessionaire or the owner of a New Mexico horse racetrack, including the track at the state fair grounds, are subject to the gross receipts tax. If a concessionaire pays a racetrack owner a consideration for operating a food and beverage concession, the racetrack owner's receipts are subject to the gross receipts tax.

J. **Packaged software.**

(1) The transaction constitutes a sale of tangible personal property when a person sells a packaged software where:

(a) no extraordinary services are performed in order to furnish the packaged software; and

(b) the buyer pays a fixed amount for the packaged software and the license to use the software; and

(c) the buyer is allowed to resell the license to use the software with the packaged software itself.

(2) Sale of such property for resale is subject to the deduction provided in Section 7-9-47 NMSA 1978.

(3) This version of Subsection J of Section 3.2.1.15 NMAC is retroactively applicable to transactions occurring on or after July 1, 1991.

K. **Sale of postage stamps.**

(1) Receipts in excess of the face value of the postage stamps from reselling uncanceled postage stamps issued by the United States postal service or any foreign government are gross receipts. Receipts in excess of the face value of the postage from imprinting, mechanically or by other means, the amount of postage on documents to be mailed are gross receipts.

(2) Receipts from selling canceled postage stamps issued by the United States postal service or any foreign government are gross receipts.

L. **Refined metals.** The receipts of a person who sells refined metals in New Mexico are gross receipts subject to the gross receipts tax regardless of whether the seller is a severer or processor as defined in the Resources Excise Tax Act or the Severance Tax Act.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 9/17/91, 10/28/94; 3 NMAC 2.1.15.10, 11/15/96; 4/30/97, 10/31/97, 3.2.1.15 NMAC - Rn & A, 3 NMAC 2.1.15, 10/31/2000]

3.2.1.16 - GROSS RECEIPTS - REAL ESTATE AND INTANGIBLE PROPERTY

A. **Insurance proceeds**

(1) Receipts of an insured derived from payments made by an insurer pursuant to an insurance policy are not subject to the gross receipts tax. Such receipts are not receipts derived from the sale of property in New Mexico, the leasing of property employed in New Mexico, or the performance of a service.

(2) Example: ABC is an auto dealer in the business of selling new and used cars. In addition to selling cars, ABC also maintains a service garage with a large inventory of automobile parts. As part of its regular sales practice, ABC allows potential purchasers to test drive the cars. ABC carries automobile insurance which is applicable in the situation where the potential purchaser is test driving the car. When an accident occurs, even though some or all the parts used to repair the automobile are taken from ABC's inventory of parts and ABC does the actual repair work, payment received from the insurance company for the damaged automobile is not gross receipts. Such a payment is not received as consideration for selling property in New Mexico, leasing property employed in New Mexico, or for performing services. ABC is not liable for compensating tax on the value of the parts used or the labor.

B. **Receipts from sale of automotive service contracts**:

(1) "Automotive service contract" means an undertaking, promise or obligation of the promisor, for a consideration separate from the sale price of a motor vehicle, to furnish or to pay for parts and labor to repair specified parts of the covered motor vehicle only if breakdowns (failures) of those specified parts occur within certain time or mileage limits. The promisor's obligation is conditioned upon regular maintenance of the motor vehicle by the purchaser of the automotive service contract at the purchaser's expense. The automotive service contract may also obligate the promisor to reimburse the purchaser for certain breakdown related rental and towing charges. The automotive service contract may require the payment of a specified "deductible" or "co-payment" by the purchaser in connection with each repair.

(2) The receipts of a person from selling an automotive service contract are not gross receipts. The undertaking, promise or obligation of the promisor under the automotive service contract to pay for or to furnish parts and service if an uncertain future event (breakdown) occurs is not within the definition of property under Subsection J of Section 7-9-3 NMSA 1978. Since the receipts from selling an automotive service contract do not arise "from selling property in New Mexico, from leasing property employed in New Mexico or from performing services in New Mexico", the receipts are not gross receipts as defined in Section 7-9-3.5 NMSA 1978 and are not subject to the tax imposed by Section 7-9-4 NMSA 1978.

(3) The furnishing by the promisor of parts or labor or both to fulfill the promisor's obligation when a breakdown occurs is a taxable event.

C. **Receipts from insurance company under an automotive service contract program**: The receipts of a New Mexico automotive dealer from an insurance company are not taxable gross receipts if the payments by the insurance company are to reimburse the dealer, who is promisor under an automotive service contract as that term is defined in Subsection C of 3.2.1.16 NMAC, for all parts and labor furnished by the dealer under the contract or for parts and labor furnished by the dealer under the contract in an amount in excess of a specified reserve established by the dealer under an agreement with the insurance company. The receipt of the payments from the insurance company are not receipts from the sale of parts and labor but are payments to indemnify the dealer for the dealer's expense in fulfilling the dealer's obligation. The value of parts and labor furnished to make the repairs was subject to the gross receipts tax when the parts and labor were furnished to discharge the dealer's obligation as the promisor under the automotive service contracts.

D. **Gift certificates**:

(1) Receipts from the sale of gift certificates are receipts from the sale of intangible personal property of a type not included in the definition of "property" and, therefore, are not gross receipts.

(2) When a gift certificate is redeemed for merchandise, services or leasing, the person accepting the gift certificate in payment receives consideration, which is gross receipts subject to the gross receipts tax unless an exemption or deduction applies. The value of the consideration is the face value of the gift certificate.

(3) When a gift certificate is purchased during the time period set out in Laws 2005, Chapter 104, Section 25 subsequent redemption of the gift certificate for the purchase of qualified tangible personal property after that period is not deductible under Laws 2005, Chapter 104, Section 25.

(4) When a gift certificate is redeemed during the time period set out in Laws

2005, Chapter 104, Section 25 for the purchase of qualified tangible personal property, the receipts from the sale are deductible under Laws 2005, Chapter 104, Section 25.

E. **Merchant discount and interchange rate fee receipts**: Bank receipts derived from credit and debit card merchant discounts and bank interchange rate fees are not gross receipts within the meaning of the Gross Receipts and Compensating Tax Act and therefore are not taxable.

F. **Prepaid telephone cards - "calling cards"**

(1) Receipts from the sale of an unexpired prepaid telephone card, sometimes known as a "calling card", are receipts from the sale of a license to use the telecommunications system and, therefore, are gross receipts and are not interstate telecommunications gross receipts. Receipts from selling an expired prepaid telephone card are receipts from the sale of tangible personal property and are gross receipts and are not interstate telecommunications gross receipts.

(2) Receipts from recharging a rechargeable prepaid telephone card are receipts from the sale of a license to use the telecommunications system and are gross receipts and are not interstate telecommunications gross receipts.

(3) Subsection F of 3.2.1.16 NMAC is retroactively applicable to transactions and receipts on or after September 1, 1998.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 6/12/89, 6/28/89, 11/26/90, 2/1/95, 11/15/96, 9/15/98, 1/29/99; 3.2.1.16 NMAC - Rn & A, 3 NMAC 2.1.16, 4/30/01; A, 12/30/03; A, 8/15/05; A, 12/14/12]

3.2.1.17 - GROSS RECEIPTS – LEASING

A. **Leasing of property employed in New Mexico**:

(1) Receipts derived from the rental or leasing of property employed in New Mexico are subject to the gross receipts tax.

(2) Example 1: A is in the business of leasing heavy equipment used in construction projects. The receipts from the leasing of such equipment employed in New Mexico prior to January 1, 2013, are subject to the gross receipts tax. See Section 7-9-52.1 NMSA 1978 for deductibility of receipts from such leases on or after January 1, 2013.

(3) Example 2: Y, a New York corporation, leases four block-making machines to X who uses the machines in X's block-making business in New Mexico. The rental contract is signed in Nebraska. The receipts which Y receives from the rental of the equipment employed in New Mexico are taxable.

(4) Example 3: P corporation leases photocopying machines to Q, a state agency. The receipts of P corporation from leasing these machines to the state agency are subject to the gross receipts tax.

B. **Additional charges**

(1) Receipts derived from additional charges made in conjunction with the rental or leasing of property employed in New Mexico are subject to the gross receipts tax.

(2) Example 1: C owns and operates a business which leases gas cylinders. There is a clause in the lease whereby the lessee will be liable for an additional charge if the gas cylinders are kept past a specific date provided in the lease contract. Receipts from these penalties or demurrage charges for keeping the gas cylinders past the specified date provided are receipts from leasing property employed in New Mexico and are subject to the gross receipts tax.

(3) Example 2: D is in the business of leasing concrete forms which are employed in New Mexico. The terms of the lease agreement require that the property leased be returned to the lessor in the condition in which it was leased. Any receipts from charges for repairing and cleaning concrete forms returned to the lessor in a damaged condition, for any material used in repair of such forms, or from charges for the purchase price of forms which are not returned to the lessor, are receipts from leasing property employed in New Mexico and are subject to the gross receipts tax.

C. **Lease of license – franchise agreement**: Receipts derived from the lease of a license, such as a liquor license, or from a franchise agreement, are subject to the gross receipts tax.

D. **Multistate use of leased equipment**

(1) Where property is rented or leased for employment both within and outside New Mexico the renter or lessor will be subject to the gross receipts tax on that portion of the receipts which is derived from the renting or leasing of property employed in New Mexico.

(2) In order to determine the portion of the receipts which are subject to the gross receipts tax, the total receipts from the lease are to be multiplied by whichever of the following fractions more accurately reflects the receipts from the period of employment of the leased item inside New Mexico:

(a) the numerator is the total miles traveled by the leased items in New Mexico and the denominator is the total miles traveled by the leased items during the lease period; or

(b) the numerator is the total time the leased items were employed in New Mexico and the denominator is the total time of the lease period.

(3) The department will allow a person engaged in the business of leasing property employed both within and without New Mexico to use other methods of apportioning the receipts of such leasing activities upon showing that the other methods more accurately reflect the portion of employment of leased items within New Mexico.

(4) Example: B owns and operates a business located in Santa Fe, New Mexico, which rents or leases vehicles, airplanes, and mobile equipment. The items leased are employed both within and without New Mexico. B is subject to the gross receipts tax on that portion of the receipts which is from employment of the vehicles, airplanes, and mobile equipment within New Mexico.

E. **Leasing of property employed outside New Mexico**

(1) Receipts derived from the rental or leasing of property employed outside New Mexico are not subject to the gross receipts tax.

(2) Example: L, a resident of Hobbs, New Mexico, owns a sawmill in Wyoming which is leased to S for $3,000 per year. These receipts are not derived from selling property in New Mexico, leasing property employed in New Mexico, performing services outside of New Mexico the product of which is initially used in New Mexico, or performing services in New Mexico. These receipts are not includable in L's gross receipts.

F. **Use of vehicles in New Mexico**

(1) Receipts from the rental or leasing of vehicles, airplanes, or mobile equipment which are employed both within and outside New Mexico are subject to the gross receipts tax on that portion of the receipts which are from employment of the vehicles, airplanes, or mobile

equipment within New Mexico.

(2) In order to determine the portion of receipts described in the above paragraph which are subject to the gross receipts tax, the total receipts from the lease are to be multiplied by whichever of the following fractions more accurately reflects the receipts from the period of employment of the leased item inside New Mexico:

(a) the numerator is the total miles traveled by the leased items in New Mexico and the denominator is the total miles traveled by the leased items during the period of lease; or

(b) the numerator is the total time the leased items were physically present in New Mexico and the denominator is the total time of the lease period.

(3) The department will allow a person engaged in leasing the above described items to use other methods of apportionment upon a showing that the other methods will more accurately reflect the period of employment of the leased item within New Mexico.

G. **Safe harbor lease - purchaser/lessor:** A purchaser/lessor who enters into a qualified "safe harbor lease" transaction as defined in Section 168 of the Internal Revenue Code will be subject to the gross receipts tax on the receipts if the property being leased is located in New Mexico.

H. **Leasing computers:** Receipts from renting or leasing the use of computers or related equipment in New Mexico, on either a part-time or a full-time basis, are subject to the gross receipts tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.1.17 NMAC - Rn & A, 3 NMAC 2.1.17, 4/30/01; A, 12/14/12]

3.2.1.18 - GROSS RECEIPTS; SERVICES

A. **Receipts from performing a service in New Mexico.** Receipts derived from performing a service in New Mexico are subject to the gross receipts tax unless a specific exemption or deduction provided for in the Gross Receipts and Compensating Tax Act applies.

B. **Services performed both within and without New Mexico.** Receipts from services, other than research and development services and services subject to the Interstate Telecommunications Gross Receipts Tax Act, performed both within and without New Mexico are subject to the gross receipts tax on the portion of the services performed within New Mexico.

C. **Allocating receipts from selling services performed within and without New Mexico.**

(1) When a prime contractor performs services both within and without New Mexico, cost accounting records which reasonably allocate all costs to the location of the performance of the service shall be used to determine the amount of services performed in New Mexico. If adequate cost accounting records are not kept for the allocation of costs to specific locations, the receipts from performing such services shall be prorated based on the percentage of service actually performed within New Mexico. The percentage shall be calculated by dividing the time spent by the prime contractor in performing such services in New Mexico by the total contract time spent performing services everywhere. Other reasonable methods of prorating such services may be acceptable if approved by the department in advance of performing the services.

(2) Services subcontracted to third parties under a single contract by a prime contractor and used or consumed by the prime contractor in the performance of the contract shall

be prorated by the prime contractor on the same basis, i.e., based either on allocated costs using cost accounting records or on the percentage of the total service actually performed within New Mexico by the prime contractor or other reasonable method approved by the department.

(3) If a subcontract service is actually a service purchased for resale, and all conditions of Section 7-9-48 NMSA 1978 are met and the subcontracted service is actually sold intact to the prime contractor's customer, the prime contractor may issue a Type 5 nontaxable transaction certificate to the subcontractor and the receipts from such subcontracted service will be deductible from the subcontractor's gross receipts.

(4) The subcontractor must use the same method of prorating the performance of services within and without New Mexico as used by the prime contractor.

(5) This subsection shall not apply to a contractor who is performing construction services.

D. **Expenses incurred outside New Mexico and allocated to operations in New Mexico.**

(1) General administrative and overhead expenses incurred outside New Mexico and allocated to operations in this state for bookkeeping purposes, costs of travel outside New Mexico, which travel was an incidental expense of performing services in New Mexico, employee benefits, such as retirement, hospitalization insurance, life insurance and the like, paid to insurers or others doing business outside New Mexico for employees working in New Mexico and other expenses incurred outside New Mexico which are incidental to performing services in New Mexico, all constitute the taxpayer's expenses of performing services in New Mexico.

(2) No provision of the Gross Receipts and Compensating Tax Act allows a deduction for expenses incurred in performing services to determine gross receipts subject to tax. Therefore, the total amount of money or reasonable value of other consideration derived from performing services in New Mexico is subject to the gross receipts tax.

E. **Receipts from performing services outside New Mexico.**

(1) Receipts from performing services, except research and development services, outside New Mexico are not subject to the gross receipts tax under the provisions of Section 7-9-13.1 NMSA 1978.

(2) *Example 1:* P, a resident of New Mexico, is an expert forest fire fighter. P's receipts from fighting forest fires outside New Mexico are not includable in P's gross receipts.

(3) *Example 2:* D is a data processing bureau located in Lone Tree, Iowa. X, a New Mexico accounting and bookkeeping firm, mails accounting data to D. D then processes this material into general ledgers, payroll journals and other journals and then returns this material by mail to X. The receipts of D are receipts from performing services entirely outside New Mexico and therefore are not subject to the gross receipts tax.

(4) *Example 3:* L, an Albuquerque attorney, is retained by a Colorado firm to negotiate and draw up oil and gas leases for lands in southern Colorado. To accomplish this objective, L goes to Pueblo, Colorado, and there negotiates and draws the leases. Receipts from the fee are not includable in L's gross receipts because the service was performed entirely outside the state of New Mexico.

F. **Sales of state licenses by nongovernmental entities.**

(1) Amounts retained by nongovernmental entities as compensation for services performed in selling state licenses are gross receipts.

(2) *Example:* G owns and operates a small grocery store in rural New Mexico which is located near a popular fishing area. As a convenience to the public, G sells New Mexico Game and Fish licenses. For its services in selling these licenses, G retains a small percentage of the total license fee. The amounts retained are gross receipts because they are receipts derived from services performed in New Mexico. G may not deduct the amounts retained pursuant to Section 7-9-66 NMSA 1978 which deals with commissions derived from the sale of tangible personal property not subject to the gross receipts tax. A New Mexico game and fish license is not tangible personal property pursuant to Subsection J of Section 7-9-3 NMSA 1978.

G. **Stockbrokers' commissions.** Gross receipts include commissions received by stockbrokers, located in New Mexico, for handling transactions for out-of-state as well as in-state residents.

H. **Attorneys' fees.** Regardless of the source of payment or the fact of court appointment, the fees of attorneys are subject to the gross receipts tax to the extent that their services are performed in this state.

I. **Directors' or trustees' fees.**

(1) The receipts of a member of a board of directors or board of trustees from attending a directors' or trustees' meeting in New Mexico are receipts derived from performing a service in New Mexico and are subject to the gross receipts tax.

(2) *Example:* X is on the board of directors of a New Mexico corporation and a Texas corporation. X attends directors' meetings in Texas and New Mexico. For each directors' meeting that X attends, X is paid a fee of $50.00. X is performing a service. The fee which X receives from performing this service in New Mexico is subject to the gross receipts tax. The fee which X receives from performing the service in Texas is not subject to the gross receipts tax. However, the burden is on X to segregate receipts which are not taxable from those which are taxable.

(3) *Example:* Y is on the board of trustees of Z, a New Mexico electric cooperative organized under the provisions of the Rural Electric Cooperative Act. Y receives $85 a day for Y to attend Z's regular meetings in New Mexico, plus reimbursement for mileage to and from the meeting at the standard IRS rate. Y also receives $85 a day for Y to attend no more than one other meeting, conference or training inside or outside New Mexico within any one month, plus reimbursement of actual expenses, including hotel, transportation, tips and reasonable expenses for meals and entertainment. Y is performing a service. The fees and reimbursements Y receives for attending meetings, conferences and trainings in New Mexico are subject to gross receipts tax. The fees and reimbursements Y receives for attending meetings, conferences and trainings outside New Mexico are not subject to gross receipts tax.

(a) See Paragraph (1) of Subsection C of 3.2.1.19 NMAC regarding reimbursed expenditures.

(b) Y is not a volunteer as defined in Paragraph (2) of Subsection D of 3.2.1.19 NMAC because Y receives compensation for Y's services in addition to reimbursement of Y's out-of-pocket expenses incurred in the performance of Y's services.

J. **Anesthetists' fees.**

(1) The receipts of a nonemployee anesthetist from anesthetic services performed for a surgeon are subject to the gross receipts tax.

(2) The receipts of an anesthetist from the performance of this service for a surgeon may be deducted from gross receipts if the surgeon resells the service to the patient and delivers a nontaxable transaction certificate to the anesthetist. The surgeon delivering the nontaxable transaction certificate must separately state the value of the service purchased in the charge for the service on its subsequent sale. The subsequent sale must be in the ordinary course of business and subject to the gross receipts tax.

(3) *Example:* A is an anesthetist who is employed by a hospital and also performs services for and receives compensation from a surgeon who is not associated with the hospital. The surgeon does not consider the anesthetist to be an employee and does not withhold income or other taxes from the anesthetist's compensation. Although the surgeon may exercise some control over the services performed by the anesthetist, the surgeon relies on the anesthetist's training and experience to accomplish the result desired. The receipts of the anesthetist from this service performed are subject to the gross receipts tax.

K. **Athletic officials.**

(1) Receipts from refereeing, umpiring, scoring or other officiating at school events sanctioned by the New Mexico activities association are exempt from gross receipts tax pursuant to Section 7-9-41.4 NMSA 1978.

(2) Receipts of a referee, umpire, scorer or other similar athletic official from umpiring, refereeing, scoring or officiating at a sporting event located in New Mexico that is not sanctioned by the New Mexico activities association, are receipts derived from performance of a service and are subject to the gross receipts tax. Such receipts will not be exempted from the gross receipts tax as "wages" unless the umpires, referees, scorers and other athletic officials demonstrate to the department that such receipts are derived from an employment relationship whereby they are employees within the meaning of 3.2.105.7 NMAC.

L. **Racing receipts.**

(1) Unless the receipts are exempt under Section 7-9-40 NMSA 1978:

(a) the receipts of vehicle or animal owners from winning purse money at races held in New Mexico are receipts from performing services in New Mexico and are subject to the gross receipts tax if any charge is made for attending, observing or broadcasting the race.

(b) receipts of vehicle drivers, animal riders and drivers and other persons from receiving a percentage of the owner's purse are receipts from performing services in New Mexico and are subject to the gross receipts tax, unless the person receiving the percentage of purse money is an employee, as that term is defined in 3.2.105.7 NMAC, of the owner.

(2) Where there is an agreement between the driver, rider or other person and the owner for distribution of the winning purse, then only the amount received pursuant to the agreement is gross receipts of the driver, rider or other person receiving the distribution.

M. **Advertising receipts of a newspaper or broadcaster.**

(1) The receipts of a New Mexico newspaper or a person engaged in the business of radio or television broadcasting from performing advertising services in New Mexico do not include the customary commission paid to or received by a nonemployee advertising agency or a nonemployee solicitation representative, when said advertising services are performed pursuant to an allocation or apportionment agreement entered into between them prior to the date of payment.

(2) Receipts of a New Mexico newspaper or a person engaged in the business of

radio or television broadcasting from the sale of advertising services to an advertising agency for resale may be deducted from gross receipts if the advertising agency delivers a nontaxable transaction certificate to the newspaper or the person engaged in the business of radio or television broadcasting. The subsequent sale must be in the ordinary course of business and subject to the gross receipts tax, or the advertising agency will be subject to the compensating tax on the value of the advertising service at the time it was rendered. This version of Paragraph (2) of Subsection M of 3.2.1.18 NMAC applies to transactions occurring on or after July 1, 2000.

N. **Advertising space in pamphlets.** Receipts from selling advertising service to New Mexico merchants in a pamphlet printed outside New Mexico and distributed wholly inside New Mexico are receipts from performing an advertising service in New Mexico. Such receipts are subject to the gross receipts tax.

O. **Billboard advertising.** Receipts derived from contracts to place advertising on outdoor billboards located within the state of New Mexico are receipts from performing an advertising service in New Mexico. Such receipts are subject to the gross receipts tax, regardless of the location of the advertiser.

P. **Day care centers.**

(1) Receipts from providing day care are receipts from performing a service and are subject to the gross receipts tax.

(2) Receipts from providing day care for children in a situation where a commercial day care center provides day care for the children and the expenses of the care for some of these children is paid for by the state of New Mexico are subject to the gross receipts tax.

(3) Receipts from providing day care for children in a situation where a person provides day care for children in a residence and the care for all these children is paid for by the state of New Mexico are subject to the gross receipts tax.

(4) Receipts from providing day care for children in a situation where a person provides day care for children in the children's home and the care for all of these children is paid for by the state of New Mexico are subject to the gross receipts tax.

Q. **Child care.**

(1) Receipts derived by a corporation for providing child care facilities for its employees are subject to the gross receipts tax on the amount received from its employees.

(2) *Example:* The X corporation operates a licensed child care facility to accommodate dependent children of its employees. In order to defray a portion of the cost of the facility, the corporation charges each employee two dollars ($2.00) per child per week for the use of the facility. All receipts from the two-dollar charge per child per week are subject to the gross receipts tax.

R. **Service charges; tips.**

(1) Except for tips, receipts of hotels, motels, guest lodges, restaurants and other similar establishments from amounts determined by and added to the customer's bill by the establishment for employee services, whether or not such amounts are separately stated on the customer's bill, are gross receipts of the establishment.

(2) A tip is a gratuity offered to service personnel to acknowledge service given. An amount added to a bill by the customer as a tip is a tip. Because the tip is a gratuity, it is not gross receipts.

(3) Amounts denominated as a "tip" but determined by and added to the customer's bill by the establishment may or may not be gross receipts. If the customer is required to pay the added amount and the establishment retains the amount for general business purposes, clearly it is not a gratuity. Amounts retained by the establishment are gross receipts, even if labeled as "tips". If the customer is not required to pay the added amount and any such amounts are distributed entirely to the service personnel, the amounts are tips and not gross receipts of the establishment.

(4) *Examples*:

(a) Restaurant R has a policy of charging parties of six or more a set percentage of the bill for food and drink served as a tip. If a customer insists on another arrangement, however, the set amount will be removed. R places all amounts collected from the set tip percentage into a pool which is distributed to the service staff at the end of each shift. The amounts designated as tips and collected and distributed by R to the service staff, are tips and not gross receipts. If R retains any amounts derived from the set tip percentage, the amounts retained are gross receipts.

(b) Hotel H rents rooms for banquets and other functions. In addition to the rental fee for the room, H also charges amounts for set-up and post-function cleaning. H retains these amounts for use in its business. These amounts are gross receipts. They are gross receipts even if H denominates them as "tips".

S. **Real estate brokers.**

(1) Receipts of a person engaged in the construction business from the sale of the completed construction project include amounts which the person has received and then paid to a real estate broker. The total receipts from the sale of the construction project are subject to the gross receipts.

(2) Receipts of a real estate broker from the performance of services for a person engaged in the construction business may not be deducted from gross receipts pursuant to Section 7-9-52 NMSA 1978.

(3) See Sections 7-9-53 and 7-9-66.1 NMSA 1978 for deductibility of receipts from certain real estate broker transactions.

T. **Entertainers.** The receipts of entertainers or performers of musical, theatrical or similar services are subject to the gross receipts tax when these services are performed in New Mexico.

U. **Managers or agents of entertainers.** Commissions received by managers or agents of entertainers for the managers' or agents' services in New Mexico are subject to the gross receipts tax.

V. **Water utilities; installation of water taps and pipes.** The receipts of a water utility from providing a "tap" to a water main and installing a pipe from the water main to a meter which it provides are subject to the gross receipts tax. However, if the utility is owned or operated by a county, municipality or other political subdivision of the state of New Mexico, its receipts from providing a "tap" to a water main and installing a pipe from a water main to a meter which it also provides are exempted from the gross receipts tax.

W. **Utilities; installation charges.**

(1) The receipts of a utility from installation charges are subject to the gross receipts tax. However, if the utility is owned or operated by a county, municipality or other

political subdivision of the state of New Mexico, its receipts from installation charges are exempt from the gross receipts tax.

(2) The receipts of a private water utility from providing a "tap" to a water main and installing a pipe from the water main to a meter which it provides are subject to the gross receipts tax.

(3) Receipts of a private electric utility from fees for changing, connecting or disconnecting electricity of customers, whether or not these services are required because of nonpayment of bills by a customer, are subject to the gross receipts tax.

X. **Construction on Indian reservations or pueblos.** The receipts of a non-Indian from construction services, as defined in Section 7-9-3.4 NMSA 1978 and regulations thereunder, performed on an Indian reservation or pueblo are subject to the gross receipts tax unless the imposition of the gross receipts tax is preempted by federal law.

Y. **Star route contractors.** Receipts of a person holding a contract for transportation of United States mail, as a "Star Route Contractor", from points within New Mexico to other points within New Mexico and to points outside of New Mexico, are subject to the gross receipts tax on that portion of the receipts from transportation from a point within New Mexico to a point within New Mexico. See Paragraph (2) of Subsection B of 3.2.55.10 NMAC for deducting receipts from the portion in interstate commerce.

Z. **Racetrack operators.** Receipts of operators of racetracks other than horse racetracks, from gate admission fees and entrance fees paid by drivers are subject to the gross receipts tax. Any portion of these fees paid out by the operator as prizes are not exempt or deductible since the payments are part of the operator's cost of doing business.

AA. **Data access charges.** Receipts from fees or charges made in connection with property owned, leased or provided by the person providing the service are subject to the gross receipts tax when the information or data accessed is utilized in this state.

BB. **Specialty software package.** [Repealed]

CC. **Receipts from telephone or telegraph services.** Receipts derived from telephone or telegraph services originating or terminating in New Mexico and billed to an account or number in this state are receipts from performing services in New Mexico and are subject to the gross receipts tax unless exempt under Section 7-9-38.1 NMSA 1978.

DD. **Allied company underwriting automotive service contracts.** When a New Mexico automotive dealer pays an entity which is allied or affiliated with that dealer (allied company) to undertake all of the dealer's obligations under automotive service contracts as that term is defined in Subsection C of [~~Section~~] 3.2.1.16 NMAC on which the dealer is promisor, the undertaking of the allied company does not involve the sale of property in New Mexico or the lease of property employed in New Mexico. The undertaking principally involves an obligation of the allied company to indemnify the dealer by paying the dealer for furnishing parts and labor to fulfill the dealer's obligation to furnish the parts and labor. However, the undertaking also involves the performance of services by the allied company for the dealer since the allied company undertakes to handle the claims of automotive service contract purchasers and otherwise perform the dealer's task under the contract. Absent a showing of a different value by the allied company or the department, 7.5 percent of the contract amount paid by the dealer to the allied company will be treated as consideration received for services performed in New Mexico.

EE. **Custom software.**

(1) Except as otherwise provided in Subsection EE of 3.2.1.18 NMAC, receipts derived by a person from developing custom software are receipts from performing a service.

(2) When custom software is developed by a seller for a customer but the terms of the transaction restrict the customer's ability without the seller's consent to sell the software to another or to authorize another to use the software, the seller's receipts from the customer are receipts from the performance of a service. The seller's receipts from authorizing the customer's sublicensing of the software to another person are receipts from granting a license. The seller's receipts from authorizing the use by another person of the same software are receipts from granting a license to use the software.

FF. **Check cashing is a service.** Receipts from charges made for cashing checks, money orders and similar instruments by a person other than the person upon whom the check, money order or similar instrument is drawn are receipts from providing a service, not from originating, making or assuming a loan. Such charges are not interest.

GG. **Receipts of collection agencies.**

(1) The fee charged by a collection agency for collecting the accounts of others is gross receipts subject to the gross receipts tax, regardless of whether the receipts of the client are subject to gross receipts tax and regardless of whether the agency is prohibited by law from adding its gross receipts tax amount to the amount collected from the debtor.

(2) *Example 1:* X is a cash basis taxpayer utilizing the services of Z collection agency for the collection of delinquent accounts receivable. From its New Mexico offices, Z collects from X's New Mexico debtors in the name of X, retains a percentage for its services and turns over the balance to X. The percentage retained by Z is its fee for performing services in New Mexico. The fee is subject to the gross receipts tax. It makes no difference that federal law prohibits Z from passing the cost of the tax to the debtor by adding it to the amount to be collected. X's gross receipts include the full amount collected by Z.

(3) Amounts received by collection agencies from collecting accounts sold to the collection agency are not gross receipts.

(4) *Example 2:* X, a cash basis taxpayer, sells its delinquent accounts receivable to Z, a collection agency, for a percentage of the face amount of the accounts. X's gross receipts include the full amount of the receivables, excluding any time-price differential. The amount subsequently collected by Z from those accounts, however, is not subject to gross receipts tax because the amount is not included within the definition of gross receipts. In this situation Z is buying and selling intangible property of a type not included within the definition of property in Subsection J of Section 7-9-3 NMSA 1978.

HH. **Commissions of independent contractors when another pays gross receipts tax on the receipts from the underlying transaction.**

(1) Commissions and other consideration received by an independent contractor from performing a sales service in New Mexico with respect to the tangible or intangible personal property of other persons are gross receipts whether or not the other person reports and pays gross receipts tax with respect to the receipts from the sale of the property. This situation involves two separate transactions. The first is the sale of the property by its owner to the customer and the second is the performance of a sales service by the independent contractor for the owner of the property. The receipts from the sale of the property are gross receipts of the person whose property was sold. Receipts, whether in the form of commissions or other

remuneration, of the person performing a sales service in New Mexico are gross receipts of the person performing the sales service.

(2) *Example 1:* S is a national purveyor of tangible personal property. S has stores and employees in New Mexico. S also has catalogue stores in less populated parts of New Mexico. Catalogue stores maintain minimal inventories; their primary purpose is to make S's catalogues available to customers, to take orders of merchandise selected from the catalogues, to place the orders with S and to provide general customer service. The catalogue stores are operated by independent contractors and not by S. S pays the contractors commissions based on the orders placed. In charging its customers, S charges the amount shown in the catalogue and does not add any separate amount to cover the cost of the contractors' commissions. S pays gross receipts tax on its receipts from the sale of catalogue merchandise. The contractors contend that the cost of their selling services is included in the amount S charges for its merchandise and so their commissions are not gross receipts. The contention is erroneous. The contractors have receipts from performing a service in New Mexico; it is immaterial that S paid the amount of gross receipts tax S owed on S's receipts. See, however, the deduction at Subsection B of Section 7-9-66 NMSA 1978.

(3) *Example 2:* M is a nationwide, multi-level sales company with presence in New Mexico. M sells products to households mainly through a network of individual, independent contractors. The network of sellers is controlled by one or more sets of individuals, also independent contractors, who train and supervise the individuals selling the merchandise; these supervisory contractors may also sell merchandise. The sellers display, promote and take orders for M's products. Payment for orders are sent to M along with the orders. M ships the merchandise directly to the final customers. M has agreed to, and does, pay the gross receipts tax on the retail value of the merchandise sold, whether sold by M or one of the independent contractors. Based on the volume and value of merchandise sold, M pays both the selling and supervisory independent contractors a commission. The commissions received by the independent contractors engaging in business in New Mexico with respect to merchandise sold in New Mexico are gross receipts subject to the gross receipts tax. The commissions are receipts from performing a service in New Mexico. The fact that M pays gross receipts tax on M's receipts from the sale of the property is immaterial in determining the liability of the independent contractors.

(4) Commissions and other consideration received by an independent contractor from performing a sales service in New Mexico with respect to a service to be performed by other persons are gross receipts whether or not the other person reports and pays gross receipts tax with respect to the receipts from the performance of the underlying service. This situation involves two transactions. The first is the performance of the underlying service by the other person for the customer and the second is the performance of the sales service by the independent contractor for the performer of the underlying service. The receipts from the performance of the underlying service for the customer are gross receipts of the person performing that service. Receipts, whether in the form of commissions or other remuneration, of the person performing the sales service are gross receipts of the person performing the sales service.

(5) *Example 3*: P is the publisher of a magazine published in New Mexico. P enters into arrangements with independent contractors to solicit ads to be placed in P's publication. P pays each contractor a percentage of the billings for the ads placed by the

contractor as a commission. The independent contractors claim that they owe no gross receipts tax with respect to ads solicited in New Mexico because P has paid gross receipts tax on P's advertising revenues. The contractors are incorrect. There are two transactions in this situation, P's service of publishing advertisements and the contractors' service of soliciting ads for P. The fact that P paid the amount of gross receipts tax due on P's advertising revenues is immaterial regarding the contractors' gross receipts tax obligations on their receipts.

(6) If the receipts from the underlying sale of the tangible property are exempt or deductible, the commission received by an independent contractor from selling the tangible property of another may be subject to the deduction provided by Section 7-9-66 NMSA 1978.

II. **Receipts from winning contest.**

(1) Receipts of a contestant from winning purse money in a rodeo or an athletic game, match or tournament held in New Mexico are gross receipts from performing services if any charge is made for attending, observing or broadcasting the event. Such receipts are subject to the gross receipts tax unless an exemption or deduction applies. Where the contestant is a team and there is an agreement among the team members governing distribution of the purse money, then only the amount received by each team member pursuant to the agreement is gross receipts of the team member.

(2) Subsection II of 3.2.1.18 NMAC does not apply to receipts exempt under Section 7-9-40 NMSA 1978 nor does it apply to activities that are primarily or solely gambling.

[9/29/67, 12/5/69, 3/3/71, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 3/16/79, 6/18/79, 11/20/79, 4/7/82, 1/6/84, 5/4/84, 10/16/84, 4/2/86, 10/21/86, 6/28/89, 11/26/90, 11/15/96, 1/31/97, 4/30/97; R, 3 NMAC 2.1.18.28, 4/30/97; 3 NMAC 2.1.18.31, 4/30/97; 10/31/97, 7/31/98; R, 4/30/99, 11/15/99, 3.2.1.18 NMAC - Rn & A, 3 NMAC 2.1.18, 10/31/2000; A, 5/31/02; A, 12/30/03; A, 3/15/10; A, 10/15/10; A, 12/14/12]

3.2.1.19 - GROSS RECEIPTS; RECEIPTS OF AGENTS

A. **Nonemployee agents.**

(1) The receipts of nonemployee agents are subject to the gross receipts tax to the extent the education provided by Section 7-9-66 NMSA 1978 is not applicable. The indicia outlined in 3.2.105.7 NMAC will be considered in determining whether a person is an employee or a nonemployee agent.

(2) *Example 1:* S is a nonemployee salesperson for Z Corporation, an out-of-state business. Z Corporation arranges for S to sell securities belonging to corporation shareholders. Z accepts payment from the purchasers of the security, deposits this payment in a trust account, pays S the commission and then distributes the balance to the seller of the securities. Z does not incur gross receipts tax liability as the result of its activity because it is not selling property or performing services in New Mexico for a consideration. The commissions received by S for selling securities in New Mexico are receipts for performing services in New Mexico and are subject to the gross receipts tax.

(3) *Example 2:* The receipts of a nonemployee agent or sub-agent derived from commissions received from (a) correspondence schools for enrolling persons in those schools, (b) freight companies, bus transportation firms, and similar business concerns for rendering services, and (c) the owner of trailers or trucks for leasing those trailers or trucks, are subject to gross receipts tax.

B. **Receipts of condominium and other real property owners associations.**

(1) As of March 8, 1988, the provisions of this subsection do not apply to receipts which are exempt under the provisions of Section 7-9-20 NMSA 1978.

(2) **Associations in which common areas are owned by unit owners.**

(a) Amounts received by this type of association from unit owners (owners of homes, offices, apartments or other real property) for accumulation in a trust account owned by the unit owners and expended to provide insurance and pay taxes on the common areas, elements or facilities are not taxable gross receipts since such amounts are not receipts of the association.

(b) Amounts received by an association of this type from unit owners for accumulation in a trust account owned by the unit owners for current or future expenditures for the improvement, maintenance or rehabilitation of the common areas, elements or facilities are not taxable gross receipts since such amounts are not receipts of the association. However, with respect to receipts not exempt under Section 7-9-20 NMSA 1978, when payments are made from the trust account to the association or its employees, officers or representatives for the improvement, maintenance or rehabilitation, these payments are taxable gross receipts of the association under Section 7-9-3.5 NMSA 1978. When payments are made directly from the account to third parties, those third parties will be liable for the gross receipts tax on those receipts.

(c) With respect to receipts which are not exempt under Section 7-9-20 NMSA 1978, associations of this type which bill unit owners may issue nontaxable transaction certificates (NTTCs) when appropriate under Section 7-9-48 NMSA 1978 (sale of a service for resale) to suppliers of these services, unless the service is deductible by the association under the Internal Revenue Code as an ordinary and necessary business expense. The association must report and pay gross receipts taxes on all its receipts for services, including those for which NTTCs are given. This version of Paragraph (2) of Subsection B of 3.2.1.19 NMAC applies to transactions occurring on or after July 1, 2000.

(3) *Example A 1*: Property Owners Association A receives monthly payments from each individual owner of property located in XYZ condominiums. The funds are held in a separate trust account by Association A for the XYZ unit owners to pay, on behalf of themselves, the property tax accruing to the common areas, insurance covering the common areas, maintenance and repair of the common areas and future improvements and additions to the common areas. On November 10, Association A, as trustee of such funds, issues a check directly from the trust account to the county treasurer for payment of property taxes on the common areas. This payment goes from the trust account directly to the county treasurer with Association A acting as agent for the actual owners of property; therefore, these funds do not become a part of Association A's gross receipts.

(4) *Example A 2*: Association A employs a maintenance person to maintain and clean the common areas. The maintenance person is responsible for mowing lawns, maintaining the landscape, cleaning halls, lobbies and other common areas and making minor repairs to common facilities. Funds received by Association A from the trust account to pay the maintenance person's wages and to pay various payroll taxes and employee benefits are gross receipts for the performance of service on which Association A is required to pay tax.

(5) *Example A 3*: NMO Construction Co. contracts to paint and remodel the halls,

lobbies and other common areas of the condominiums. Association A, acting as agent, draws funds from the trust account which are paid directly to NMO Construction Co. Since such funds do not become receipts of Association A, the association is not liable for tax on these funds. The funds pass directly to NMO Construction Co. who becomes liable for the gross receipts tax on its receipts for performing construction services.

(6) *Example A 4*: For the last ten years, funds have accumulated in the trust for construction of a swimming pool. A Pool Co. builds the pool and is paid directly from the trust account. A Pool Co. is subject to gross receipts tax on the receipts from the construction of the pool. Association A, acting as agent for the property owners, has no receipts and pays no tax on this transaction.

(7) *Example A 5:* Association A purchases, with its own funds, chemicals which its employee will use to maintain the new swimming pool. To recover this expense, Association A increases the amount it charges the property owners each month and draws funds from the trust account which it places with its own funds. These receipts of Association A are subject to the tax since Association A is performing services for the property owners. This treatment of receipts applies to purchases of other maintenance or cleaning supplies which Association A consumes in the performance of maintenance and cleaning services. Association A may not execute a non-taxable transaction certificate for the purchase of these chemicals or other cleaning supplies, because the chemicals and supplies are consumed in the performance of services by the association.

(8) **Associations in which common areas are owned by the association with long-term real property rights held by individual unit owners.**

(a) An association of unit owners in a real estate development in which the common elements, areas or facilities are owned by the association but subject to long-term (10 or more years) real property rights of the unit owners (as defined in Paragraph (2) of Subsection B of 3.2.1.19 NMAC) granted by deed or covenant, appurtenant to and inseparable from unit ownership, transferable only by the unit owner or upon acceptance of deed, and not extinguishable by the association shall be subject to tax in the same manner as associations described in Subsection B of this section. If the unit owners cease to hold or possess such real property rights, the association shall become subject to tax in the same manner as associations described in Paragraph (9) of Subsection B of 3.2.1.19 NMAC.

(b) All examples in Paragraphs (3) through (7) of Subsection B of 3.2.1.19 NMAC also apply to associations of unit owners identified in Paragraph (8) of Subsection B of 3.2.1.19 NMAC.

(9) **Associations in which common areas are owned by association.** Different treatment is required for an association of unit owners in a real estate development in which the common elements, areas or facilities are owned by the association and the unit owners (as defined in Subparagraph (a) of Paragraph (2) of Subsection B of 3.2.1.19 NMAC) do not possess the real property rights to the common elements described in Paragraphs (2) and (8) of Subsection B of 3.2.1.19 NMAC. All receipts of this type of association (e.g., payments by unit owners for maintenance and use of the common areas) are fully taxable and no NTTCs may be issued for services purchased. Because of the association's status as owner and the absence of real property rights of the unit owners in the common areas, the association is not acting as the unit owners' agent, nor is it reselling a service.

(10) Example C 1: Association C holds title to all common areas of a development which includes a clubhouse, golf course, swimming pool and tennis courts. Each owner of property within the development is a member of Association C and pays a membership fee. In consideration for the fees received, Association C grants each member a license to use facilities owned by the association. Association C is liable for gross receipts tax on its receipts from granting the licenses to use the facilities.

(11) *Example C 2*: Association C contracts with a security services company to provide a security officer to patrol the facilities which the association owns. Association C does not resell these services provided by the security services company and may not execute a non-taxable transaction certificate to purchase these services.

(12) *Example C 3*: Association A, Association B and Association C maintain vending machines from which soft drinks, snacks and other items of tangible personal property are sold. The associations are deriving gross receipts from the sale of tangible personal property and must pay gross receipts tax on these receipts. However, they may also execute a non-taxable transaction certificate when purchasing the soft drinks, snacks and other tangibles, since these items are resold by the associations.

(13) Repealed.

C. **Reimbursed expenditures.**

(1) The receipts of any person received as a reimbursement of expenditures incurred in connection with the performance of a service or the sale or lease of property are gross receipts as defined by Section 7-9-3.5 NMSA 1978, unless that person incurs such expense as agent on behalf of a principal while acting in a disclosed agency capacity. An agency relationship exists if a person has the power to bind a principal in a contract with a third party so that the third party can enforce the contractual obligation against the principal.

(2) Receipts from the reimbursement of expenses incurred as agent on behalf of a principal while acting in a disclosed agency capacity are not included in the agent's gross receipts if the expenses are separately stated on the agent's billing to the client and are identified in the agent's books and records as reimbursements of expenses incurred on behalf of the principal party.

(3) If these requirements are not met, the reimbursement of expenses are included in the agent's gross receipts.

(4) *Example 1:* A, an accountant, whose office location is in Albuquerque is engaged to audit the financial statements of C, A's client. To facilitate the audit A must travel to Deming to examine the operations and records of C's business location in Deming. In addition to the normal fee for A's service, A charges C for A's expenses for travel, meals and lodging which A incurred in traveling to Deming. A's gross receipts include the total amount of consideration received from C, including amounts received to cover A's expense of travel.

(5) *Example 2:* L, an attorney, pays a filing fee to the clerk of the district court on behalf of C, L's client. In billing for the professional services rendered, L separately states on the billing the amount of the filing fee which was paid to the court clerk. L is an agent for C in the instance of filing documents with the court. When L paid the filing fee, L was acting within the terms of a disclosed agency relationship. L should exclude the amount received for reimbursement for L's expenditure in paying the court filing fee.

(6) *Example 3:* R, an architect, whose office is located in Santa Fe, is engaged by

C to design and oversee the construction of a project in Albuquerque. In the course of performing those services for C, R incurs charges for long distance telephone calls. R charges C for the long distance telephone calls under the terms of R's contract with C. R's gross receipts include the amounts it collects from C for long distance calls. No disclosed agency relationship exists which would enable the telephone company to hold C liable for the long distance charges incurred by R.

(7) *Example 4:* X contracts with company Y to perform administrative functions relating to the employment relationship between Y and its workers. Y pays X the costs for Y's employees' payroll, payroll taxes, worker's compensation, contributions to employee benefits and healthcare and other amounts X pays to or on behalf of Y's workers. Y separately pays X a two percent (2%) fee for the administrative services. Y or X recruits workers, selects them for work assignments, establishes their rate of pay, assigns their schedule, instructs them when and where to work, assigns them their duties, supervises and monitors the performance of their duties, authorizes leaves of absence, handles worker's complaints, union grievances or disputes, and disciplines, lays off or terminates the workers. X issues payroll checks, with X as payor. The checks are distributed by Y to workers. X also secures worker's compensation coverage for the workers, calculates, withhold and submits payroll taxes to appropriate taxing authorities, calculates and makes contributions to union health, pension and welfare benefit trust funds for workers, funds unemployment insurance contributions and responds to unemployment compensation claims, and processes garnishment orders. X can require Y to post a bond or other security for the payment of payroll. Y agrees to indemnify X against worker's claims for non-payment of wages, any claims arising from the acts of worker at the work site, grievances by unions representing the worker arising from acts of Y, wage and hour claims, tax claims, and failure of Y to provide training to workers. X has no gross receipts from the amount representing the payroll, payroll taxes, worker's compensation and benefits; this amount is not subject to the gross receipts tax. The additional two percent (2%), however is X's fee for performing services and is subject to tax.

(8) *Example 5:* A enters into an agreement with its client B to provide temporary workers to B. The agreement provides that A retains the right to select and hire employees, to control when the employees are paid, and the right to replace employees. A issues the payroll checks to employees with A as payor. The employees are unaware of any principal-agent relationship between A and B. All receipts A receives from B for payroll and A's commission or fee for its services to B are subject to gross receipts tax.

(9) All receipts or fees for services provided by an agent are subject to the gross receipts tax.

D. **Reimbursement of expenditures made to volunteers.**

(1) A volunteer who contributes time, effort or talent without expectation of consideration or remuneration is not selling the services performed. When a volunteer receives reimbursement for out-of-pocket expenses incurred in the performance of a service as a volunteer which were directly related to the work volunteered, reimbursement of those expenses is not gross receipts.

(2) For purposes of Paragraph (1) of Subsection D of 3.2.1.19 NMAC, the term "volunteer" means any person who contributes time, effort or talent for the direct benefit of an organization which is exempt from taxation under the Internal Revenue Code. The term also

extends to any person who contributes time, effort or talent without the receipt of consideration or remuneration to the state of New Mexico or any agency or any political subdivision of the state, or to the United States or any agency of the United States. "Volunteer" further includes any elected official serving without consideration or remuneration and any appointive non-employee member of any public commission or board serving without consideration or remuneration, whether the appointment was made by the governor, any other elected official or a public body.

(3) For purposes of Paragraph (1) of Subsection D of 3.2.1.19 NMAC, "reimbursement" includes per diem amounts set by statute to reimburse uncompensated elected and appointed governmental officials for the expense of carrying out official duties.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 6/8/87, 1/29/88, 12/14/88, 12/29/89, 4/20/90, 11/26/90, 11/15/96, 10/31/97, 9/30/98, 3.2.1.19 NMAC - Rn & A, 3 NMAC 2.1.19, 10/31/00; A, 12/30/03; A, 9/30/10]

7-9-4. IMPOSITION AND RATE OF TAX--DENOMINATION AS "GROSS RECEIPTS TAX".--

A. For the privilege of engaging in business, an excise tax equal to five and one-eighth percent of gross receipts is imposed on any person engaging in business in New Mexico.

B. The tax imposed by this section shall be referred to as the "gross receipts tax".

(Laws 2010 1st S.S., Chapter 7, Section 9)

3.2.4.7 - DEFINITIONS: For the purposes of Section 3.2.4.9 NMAC:

A. "Indian tribe" means an Indian nation, tribe or pueblo, including:

(1) any political subdivision, agency or department of that Indian nation, tribe or pueblo;

(2) any incorporated or unincorporated enterprise of the Indian nation, tribe or pueblo or its political subdivisions, agencies or departments; and

(3) any corporation required to be considered an Indian and therefore a member of the Indian nation, tribe or pueblo under ***Eastern Navaho Industries, Inc. v. Bureau of Revenue***, 552 P.2d 805 (N.M. App. 1976); and

B. "tribe's territory" means that part of Indian country in New Mexico reserved formally or informally for that Indian nation, tribe or pueblo, including its dependent Indian communities, and, with respect to a member of that tribe, any land in New Mexico allotted, reserved or held in trust by the United States for that member.

[3/16/95, 8/30/95, 11/15/96; 3.2.4.7 NMAC – Rn & A, 3 NMAC 2.4.7, 4/30/01]

3.2.4.8 - WHO IS THE TAXPAYER

The gross receipts tax is imposed on persons engaging in business in New Mexico. Such persons are solely liable for payment of the tax; they are not "collectors" on behalf of the state.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.4.8 NMAC – Rn, 3 NMAC 2.4.8, 4/30/01]

3.2.4.9 - FEDERAL PREEMPTION - TRANSACTIONS WITH INDIAN TRIBES

A. **Imposition barred by federal law – sale in Indian country of tangible personal property to a tribe or tribal member - general**

(1) Except for receipts of a public utility from selling electricity, natural gas or water, receipts from selling tangible personal property to an Indian tribe or member thereof on that tribe's territory are not subject to the gross receipts tax if taxation of such receipts is prohibited by federal law.

(2) The person selling tangible personal property to an Indian tribe or member thereof on that tribe's territory must demonstrate that the sale is to an Indian tribe or member thereof. The person must also demonstrate that the sale takes place on the tribe's territory. The documents demonstrating that the receipts from these sales are not subject to tax under Subsection A of Section 3.2.4.9 NMAC shall be retained in the person's records.

(a) The first requirement may be met by obtaining a statement signed by the

purchaser of the tangible personal property that the purchaser is an Indian tribe or member thereof. In the case of the Indian tribe itself, the statement must be attested to by a tribal official. In the case of a tribal member, the statement must either specify the tribal member's official tribal or BIA census number or, in the case in which the Indian tribe does not maintain an official census system, the signature of an official of the member's Indian tribe confirming this statement. This statement may also be provided to the person by the Indian tribe on behalf of one or more of its members if attested to by a tribal official. Upon request, the Secretary may approve additional methods. This documentation shall be conclusive evidence, and the only material evidence, that the purchaser is an Indian tribe or member thereof.

(b) The second requirement may be met if the person keeps records adequate to document that delivery of the tangible personal property to the buyer took place on the tribe's territory and that at least two of the following activities also took place on the tribe's territory:

(i) solicitation of the sale;

(ii) making of the contract of sale; or

(iii) payment for the property sold.

(3) Receipts from the sale of tangible personal property in New Mexico in Indian country to the following persons are subject to the gross receipts tax:

(a) a person who is not an Indian tribe or member thereof;

(b) a person who is an Indian tribe other than the Indian tribe on whose territory the sale takes place; and

(c) a person who is a member of an Indian tribe other than the Indian tribe on whose territory the sale takes place except that, if the person is the spouse of a member of the Indian tribe on whose territory the sale takes place, that person will be considered for the purposes of Subsection A of Section 3.2.4.9 NMAC to be a member of the spouse's Indian tribe.

(4) Receipts from the sale of tangible personal property in New Mexico to an Indian tribe or member thereof are subject to the gross receipts tax when the sale takes place outside the tribe's territory, even if the sale takes place within the territory of another Indian tribe.

B. **Imposition barred by federal law – sale in Indian county of tangible personal property to a tribe or tribal member – electricity, natural gas or water sold by public utility:**

(1) Receipts of a public utility (as defined in Section 62-3-3 NMSA 1978) from selling electricity, natural gas or water to an Indian tribe or member thereof on that tribe's territory are not subject to the gross receipts tax if taxation of such receipts is prohibited by federal law. A sale occurs on the tribe's territory when the meter measuring the quantity sold is located on the tribe's territory.

(2) The public utility selling electricity, natural gas or water to an Indian tribe or member thereof on that tribe's territory must demonstrate that the sale is to an Indian tribe or member thereof. The public utility must also demonstrate that electricity, natural gas or water being sold is sold through a meter on the tribe's territory. The documents demonstrating that the receipts from these sales are not subject to tax under Subsection B of Section 3.2.4.9 NMAC shall be retained in the public utility's records.

(a) The first requirement may be met by obtaining a statement signed by the purchaser of the electricity, natural gas or water that the purchaser is an Indian tribe or member

thereof. In the case of the Indian tribe itself, the statement must be attested to by a tribal official. In the case of a tribal member, the statement must either specify the tribal member's official tribal or BIA census number or, in the case in which the Indian tribe does not maintain an official census system, the signature of an official of the member's Indian tribe confirming this statement. This statement may also be provided to the public utility by the Indian tribe on behalf of one or more of its members if attested to by a tribal official. Upon request, the Secretary may approve additional methods. This documentation shall be conclusive evidence, and the only material evidence, that the purchaser is an Indian tribe or member thereof.

(b) The second requirement may be met if the public utility keeps records adequate to document that the meter through which the electricity, natural gas or water is sold is located on the tribe's territory.

(3) Receipts from the sale of electricity, natural gas or water in New Mexico in Indian country to the following persons are subject to the gross receipts tax:

(a) a person who is not an Indian tribe or member thereof;

(b) a person who is an Indian tribe other than the Indian tribe on whose territory the sale takes place; and

(c) a person who is a member of an Indian tribe other than the Indian tribe on whose territory the sale takes place except that, if the person is the spouse of a member of the Indian tribe on whose territory the sale takes place, that person will be considered for the purposes of Subsection B of Section 3.2.4.9 NMAC to be a member of the spouse's Indian tribe.

(4) Receipts from the sale of electricity, natural gas or water in New Mexico to an Indian tribe or member thereof are subject to the gross receipts tax when the sale takes place outside the tribe's territory, even if the sale takes place within the territory of another Indian tribe.

C. **Imposition barred by federal law – leasing in Indian country to tribe or tribal members:**

(1) Receipts from leasing property to an Indian tribe or member thereof on that tribe's territory are not subject to gross receipts tax if taxation of such receipts is prohibited by federal law. Leasing occurs on a tribe's territory when the property being leased is located on the tribe's territory.

(2) The lessor must demonstrate that the leased property is leased to an Indian tribe or member thereof. The lessor must also demonstrate that the property being leased is located on the tribe's territory. The documents demonstrating that lease receipts are not subject to tax under Subsection C of Section 3.2.4.9 NMAC shall be retained in the lessor's records.

(a) The first requirement may be met by obtaining a statement signed by the lessee that the lessee is an Indian tribe or member thereof. In the case of the Indian tribe itself, the statement must be attested to by a tribal official. In the case of a member, the statement must also either specify the lessee's official tribal or BIA census number or, when the lessee's Indian tribe does not maintain an official census system, be attested to by an official of the lessee's Indian tribe confirming this statement. This statement may also be provided to the lessor by the Indian tribe on behalf of one or more of its members if attested to by a tribal official. Upon request, the Secretary may approve additional methods. This documentation shall be conclusive evidence, and the only material evidence, that the lessee is an Indian tribe or member thereof.

(b) The second requirement may be met if the lessor keeps records adequate to document that the property being leased is located during the lease on the lessee's tribe's

territory. If the property being leased is to be located both on and off the lessee's tribe's territory during the lease, the lessor must keep records documenting the time the property is on the lessee's tribe's territory.

(3) Receipts from leasing property in New Mexico in Indian country to the following persons are subject to the gross receipts tax:

(a) a person who is not an Indian tribe or member thereof;

(b) a person who is an Indian tribe other than the Indian tribe on whose territory the leased property is located; and

(c) a person who is a member of an Indian tribe other than the Indian tribe on whose territory the leased property is located except that, if the person is the spouse of a member of the Indian tribe on whose territory the leased property is located, that person will be considered for the purposes of Subsection C of Section 3.2.4.9 NMAC to be a member of the spouse's Indian tribe.

(4) Receipts from leasing property in New Mexico to an Indian tribe or member thereof are subject to the gross receipts tax when the property being leased is located outside the tribe's territory, even if located within the territory of another Indian tribe.

D. **Imposition barred by federal law – services in Indian country for tribe or tribal members - general:**

(1) Receipts from performing services, other than construction or telecommunications services, sold to an Indian tribe or member thereof on that tribe's territory are not subject to gross receipts tax if taxation of such receipts is prohibited by federal law.

(2) The seller of the services must demonstrate that the service is sold to an Indian tribe or member thereof. The seller must also demonstrate that the service is performed on the tribe's territory. The documents demonstrating that the receipts are not subject to tax under Subsection D of Section 3.2.4.9 NMAC shall be retained in the seller's records.

(a) The first requirement may be met by obtaining a statement signed by the purchaser that the purchaser is an Indian tribe or member thereof. In the case of the Indian tribe itself, the statement must be attested to by a tribal official. In the case of a member, the statement must also either specify the purchaser's official tribal or BIA census number or, when the purchaser's Indian tribe does not maintain an official census system, be attested to by an official of the purchaser's Indian tribe confirming this statement. This statement may also be provided to the seller by the Indian tribe on behalf of one or more of its members if attested to by a tribal official. Upon request, the Secretary may approve additional methods. This documentation shall be conclusive evidence, and the only material evidence, that the purchaser is an Indian tribe or member thereof.

(b) The second requirement may be met if the seller keeps records adequate to document that the services are performed on the purchaser's tribe's territory. If the services are performed both on and off the purchaser's tribe's territory, the seller must keep records documenting the value of the services performed on the purchaser's tribe's territory.

(3) Receipts from performing services, other than construction or telecommunications services, in New Mexico in Indian country which are sold to the following persons are subject to the gross receipts tax:

(a) a person who is not an Indian tribe or member thereof;

(b) a person who is an Indian tribe other than the Indian tribe on whose

territory the sale takes place; and

(c) a person who is a member of an Indian tribe other than the Indian tribe on whose territory the sale takes place except that, if the person is the spouse of a member of the Indian tribe on whose territory the sale takes place, that person will be considered for the purposes of Subsection D of Section 3.2.4.9 NMAC to be a member of the spouse's Indian tribe.

(4) Receipts from performing services, other than construction or telecommunications services, in New Mexico for an Indian tribe or member thereof are subject to the gross receipts tax when the services are performed outside the tribe's territory, even if performance takes place within the territory of another Indian tribe.

E. **Imposition barred by federal law – services in Indian country for tribe or tribal members – construction services:**

(1) Receipts from construction services sold to an Indian tribe or member thereof on that tribe's territory are not subject to gross receipts tax if taxation of such receipts is prohibited by federal law. Construction occurs on a tribe's territory when the construction site is located on the tribe's territory.

(2) The seller must demonstrate that the construction service is sold to an Indian tribe or member thereof. The seller must also demonstrate that the construction site is located on the tribe's territory. The documents demonstrating that the receipts are not subject to tax under Subsection E of Section 3.2.4.9 NMAC shall be retained in the seller's records.

(a) The first requirement may be met by obtaining a statement signed by the purchaser that the purchaser is an Indian tribe or member thereof. In the case of the Indian tribe itself, the statement must be attested to by a tribal official. In the case of an individual, the statement must also either specify the purchaser's official tribal or BIA census number or, when the purchaser's Indian tribe does not maintain an official census system, be attested to by an official of the purchaser's Indian tribe confirming this statement. This statement may also be provided to the seller by the Indian tribe on behalf of one or more of its members if attested to by a tribal official. Upon request, the Secretary may approve additional methods. This documentation shall be conclusive evidence, and the only material evidence, that the purchaser is an Indian tribe or member thereof.

(b) The second requirement may be met if the seller keeps records adequate to document that the construction site is located on the purchaser's tribe's territory. If the construction site is located partly on and partly off the purchaser's tribe's territory, the seller must keep records documenting the portion of construction occurring on the purchaser's tribe's territory.

(3) Receipts from construction services in Indian country sold to the following persons are subject to the gross receipts tax:

(a) a person who is not an Indian tribe or member thereof;

(b) a person who is an Indian tribe other than the Indian tribe on whose territory the sale takes place; and

(c) a person who is a member of an Indian tribe other than the Indian tribe on whose territory the sale takes place except that, if the person is the spouse of a member of the Indian tribe on whose territory the sale takes place, that person will be considered for the purposes of Subsection E of Section 3.2.4.9 NMAC to be a member of the spouse's Indian tribe.

(4) Receipts from performing construction services in New Mexico for an Indian

tribe or member thereof are subject to the gross receipts tax when the construction site is outside the tribe's territory, even if the construction site is within the territory of another Indian tribe.

F. **Imposition barred by federal law – services in Indian country for tribe or tribal members – telecommunications services:**

(1) Receipts from selling telecommunications services to an Indian tribe or member thereof on that tribe's territory are not subject to gross receipts tax if taxation of such receipts is prohibited by federal law. Telecommunications service occurs on a tribe's territory when:

(a) calls originate or terminate through an instrument on the tribe's territory; and

(b) the service is billed to the Indian tribe or a member thereof.

(2) The seller must demonstrate that the telecommunications service is sold to an Indian tribe or member thereof. The seller must also demonstrate that the telecommunications service originates or terminates through an instrument located on the tribe's territory and is billed to the Indian tribe or member thereof. The documents demonstrating that receipts from providing telecommunications services are not subject to tax under Subsection F of Section 3.2.4.9 NMAC shall be retained in the seller's records.

(a) The first requirement may be met by obtaining a statement signed by the purchaser that the purchaser is an Indian tribe or member thereof. In the case of the Indian tribe itself, the statement must be attested to by a tribal official. In the case of an individual, the statement must also either specify the purchaser's official tribal or BIA census number or, when the purchaser's Indian tribe does not maintain an official census system, be attested to by an official of the purchaser's Indian tribe confirming this statement. This statement may also be provided to the seller by the Indian tribe on behalf of one or more of its members if attested to by a tribal official. Upon request, the Secretary may approve additional methods. This documentation shall be conclusive evidence, and the only material evidence, that the purchaser is an Indian tribe or member thereof.

(b) The second requirement may be met for fixed location instruments if the seller keeps records adequate to document that calls originate or terminate through instruments located on the purchaser's tribe's territory and that the call is billed to the Indian tribe or member thereof. The second requirement may be met for mobile instruments if the seller keeps adequate records to document that:

(i) with respect to charges billed regardless of volume of calls, the purchaser's address is within the purchaser's tribe's territory and

(ii) with respect to charges for calls, the call either originates or terminates within the purchaser's tribe's territory. Sellers of telecommunications services through mobile instruments may estimate the percentage of receipts for the report month from calls through such instruments which do not originate or terminate on the purchaser's tribe's territory. The estimate shall be the total receipts from calls from purchasers whose address is within the purchaser's tribe's territory for the reporting period multiplied by the percentage of actual receipts from calls by those purchasers originating or terminating off the purchaser's tribe's territory during the previous calendar year. The amount of actual receipts during the previous calendar year from off-territory calls shall be determined based upon evidence satisfactory to the department.

(3) Receipts from selling telecommunications services in New Mexico in Indian country to the following persons are subject to the gross receipts tax:

(a) a person who is not an Indian tribe or member thereof;

(b) a person who is an Indian tribe other than the Indian tribe on whose territory the sale takes place; and

(c) a person who is a member of an Indian tribe other than the Indian tribe on whose territory the sale takes place except that, if the person is the spouse of a member of the Indian tribe on whose territory the sale takes place, that person will be considered for the purposes of Subsection 3.2.4.9F NMAC to be a member of the spouse's Indian tribe.

(4) Receipts from selling telecommunications services in New Mexico to an Indian tribe or member thereof are subject to the gross receipts tax when the instrument through which the calls originate or terminate is located outside the tribe's territory, even if the location is within the territory of another Indian tribe.

(5) For the purposes of Subsection F of Section 3.2.4.9 NMAC, "telecommunications service" means the transmission of messages or conversations by persons providing telephone or telegraph services; "telecommunications service" excludes the transmission or re-transmission of radio or television programming.

G. **Imposition barred by federal law – receipts of federally licensed Indian traders:** The receipts of a federally licensed Indian trader as defined in Sections 25 U.S.C. 261 to 264 from trading with an Indian tribe on that tribe's territory are exempt from the gross receipts tax to the extent that the tax is pre-empted by federal law.

H. **Imposition barred by federal law – Indian business within tribe's territory:**

(1) The receipts of a qualifying business from transactions occurring within the tribe's territory are exempt from gross receipts tax to the extent that such tax is pre-empted by federal law. The receipts of a qualifying business from transactions occurring anywhere else are not exempt under Subsection H of Section 3.2.4.9 NMAC.

(2) A "qualifying business" is a business that:

(a) is physically located within an Indian tribe's territory; and

(b) is fifty percent or more owned by individuals who are enrolled members of the Indian tribe within whose territory the business is located, provided that for purposes of establishing the percentage of ownership the Indian spouse of an enrolled member of that Indian tribe is to be considered an enrolled member of that Indian tribe.

[3/16/95, 8/30/95, 11/15/96, 4/30/99; 3.2.4.9 NMAC – Rn & A, 3 NMAC 2.4.9, 4/30/01]

3.2.4.10 - FEDERAL PREEMPTION AND STATE EXEMPTION - CREDIT UNIONS

A. 12 U.S.C. 1768 exempts federal credit unions from state taxation, other than property taxation. Accordingly, the receipts of federal credit unions are exempt from the gross receipts tax.

B. Section 58-11-61 NMSA 1978 exempts from state taxation credit unions organized under or subject to the Credit Union Regulatory Act to the same extent that credit unions chartered under federal law are exempt. Therefore receipts of credit unions organized under or subject to the Credit Union Regulatory Act are also exempt from the gross receipts tax.

[5/31/97; 3.2.4.10 NMAC – Rn & A, 3 NMAC 2.4.10, 4/30/01]

3.2.4.11 - FEDERAL PREEMPTION - JOB CORPS CONTRACTORS

29 U.S.C. 1707(c) prohibits states and their subdivisions from imposing gross receipts taxes on receipts of Job Corps contractors from operating any Job Corps center, program or activity. Accordingly the receipts of Job Corps contractors from operating a Job Corps center, program or activity are exempt from the gross receipts tax.

[5/31/97; 3.2.4.11 NMAC – Rn, 3 NMAC 2.4.11, 4/30/01]

3.2.200.8 - FEDERAL PREEMPTION OF LOCAL TAXES

A. Section 602 of the Federal Telecommunications Act of 1996 preempts the imposition of any local option gross receipts tax upon the gross receipts of a provider of direct satellite service from providing direct satellite service. Accordingly, no portion of any local option tax may be imposed on such services. Only the state tax imposed by Section 7-9-4 NMSA 1978 is due with respect to receipts from providing these services.

B. Because imposition of all local option taxes is prohibited, the credit provided in Section 7-9-82 NMSA 1978 does not apply against the state tax due on receipts from providing direct satellite services.

C. The term “direct satellite service” means “direct-to-home satellite service” as defined by Section 602 of the Telecommunications Act of 1996.

D. This section applies to direct-to-home satellite services provided on or after February 8, 1996.

[1/31/97; 3.2.200.8 NMAC – Rn & A, 3 NMAC 2.200.8, 11/15/01]

7-9-4.3. IMPOSITION AND RATE OF TAX--DENOMINATION AS "GOVERNMENTAL GROSS RECEIPTS TAX".--For the privilege of engaging in certain activities by governments, there is imposed on every agency, institution, instrumentality or political subdivision of the state, except any school district and any entity licensed by the department of health that is principally engaged in providing health care services, an excise tax of five percent of governmental gross receipts. The tax imposed by this section shall be referred to as the "governmental gross receipts tax".
(Laws 1993, Chapter 352, Section 1)

3.2.21.8 - APPLICATION OF GOVERNMENTAL GROSS RECEIPTS TAX

The governmental gross receipts tax is imposed only on agencies, institutions, instrumentalities and political subdivisions of the state of New Mexico. The tax is not imposed on any other person.
[6/28/91, 10/2/92, 11/15/96; 3.2.21.8 NMAC – Rn, 3 NMAC 2.101.8, 4/30/01]

3.2.21.9 - LICENSED ENTITIES PROVIDING HEALTH CARE SERVICES

A. On and after July 1, 1992, the governmental gross receipts tax does not apply to receipts of any entity primarily engaged in providing health care services if the entity is licensed by the New Mexico department of health.

B. Examples of entities providing health care services: general and special hospitals, nursing homes, diagnostic and treatment centers, rehabilitation centers and home health care services.

C. If the receipts of an entity licensed by the New Mexico department of health are principally from engaging in the provision of health care services, none of the entity's receipts are subject to the governmental gross receipts tax.

D. Example: Hospital H is an institution of the state of New Mexico, principally engaged in the provision of health care services. The hospital is licensed by the New Mexico department of health. The hospital operation includes a cafeteria and vending machines for the convenience of staff, patients and visitors. None of the receipts of H, including receipts from operating the cafeteria and vending machines, are subject to the governmental gross receipts tax.

E. A licensed entity may be either an agency, institution, instrumentality or political subdivision of the state of New Mexico or may be only a component of such an agency, institution, instrumentality or political subdivision. When that entity is an agency, institution, instrumentality or political subdivision of the state, the receipts of that agency, institution, instrumentality or political subdivision are not subject to the governmental gross receipts tax. If that entity is only a component of an agency, institution, instrumentality or political subdivision, the exception under Section 7-9-4.3 NMSA 1978 to the imposition of the governmental gross receipts tax applies only to the receipts of the entity and not to receipts from other components if those other components either are not principally engaged in providing health care services or are not licensed by the New Mexico department of health. The receipts of the agency, institution, instrumentality or political subdivision from taxable activities through its components which are not principally engaged in providing health care services or licensed by the New Mexico department of health are subject to the governmental gross receipts tax.

F. Example 1: County C owns and operates a hospital licensed by the New Mexico department of health to provide health care services for its residents. County C has no other components principally engaged in the provision of health care services. The county, through its non-hospital components, has receipts from taxable activities, such as receipts from operating landfills and selling tangible personal property in facilities open to the general public. The receipts of County C from taxable activities conducted by its components other than the hospital are subject to governmental gross receipts.

G. Example 2: University N, an institution of the state of New Mexico, operates a teaching hospital licensed by the New Mexico department of health. The hospital's primary purpose is to provide health care services even though it is also a facility for teaching health care professionals. The other components of the university provide educational services, sell tangible personal property to the general public, conduct athletic and entertainment services in facilities open to the general public and provide lodging. The exception from the imposition of the governmental gross receipts tax applies only to the receipts of the university from the hospital; it does not apply to the receipts from taxable activities of other components of the university.

[10/2/92, 11/15/96, 4/30/99; 3.2.21.9 NMAC – Rn & A, 3 NMAC 2.100.9, 4/30/01]

7-9-5. PRESUMPTION OF TAXABILITY.--

A. To prevent evasion of the gross receipts tax and to aid in its administration, it is presumed that all receipts of a person engaging in business are subject to the gross receipts tax. Any person engaged solely in transactions specifically exempt under the provisions of the Gross Receipts and Compensating Tax Act shall not be required to register or file a return under that act.

B. If receipts from nontaxable charges for mobile telecommunications services are aggregated with and not separately stated from taxable charges for mobile telecommunications services, then the charges for nontaxable mobile telecommunications services shall be subject to gross receipts tax unless the home service provider can reasonably identify nontaxable charges in its books and records that are kept in the regular course of business. For the purposes of this subsection, "charges for mobile telecommunications services", "home service provider" and "mobile telecommunications services" have the meanings given in the federal Mobile Telecommunications Sourcing Act.

(Laws 2002, Chapter 18, Section 3)

3.2.5.8 - PERSONS NOT REQUIRED TO REGISTER WITH THE DEPARTMENT

A. A person engaging in business must register with the department to report gross receipts unless that person is clearly engaged solely in an activity the receipts from which are exempt as provided in Sections 7-9-13 through 7-9-42 NMSA 1978 or other law. Even though a person's receipts may be entirely deductible under provisions of the Gross Receipts and Compensating Tax Act, the person must register, report those receipts, and claim the applicable deduction or deductions.

B. The following examples illustrate the application of Section 7-9-5 NMSA 1978:

(1) Example 1: A is engaged in the business of farming. A's sole activity is raising cotton which is then sold through a broker to a cotton mill. Because this sale activity is specifically exempted in Section 7-9-18 NMSA 1978, A does not have to register under the Gross Receipts and Compensating Tax Act or file a return.

(2) Example 2: B is a farmer. B raises cotton that is sold through a broker to a mill. B also owns a retail grocery store. B contends that there is no need to register with the taxation and revenue department since B is engaged in a specifically exempted activity. B must register with the department since B is also engaged in selling groceries, an activity that is not specifically exempt from the Gross Receipts and Compensating Tax Act. However, B does not have to report the receipts derived from the sale of cotton, because these receipts are specifically exempt.

(3) Example 3: V Company employs five persons and is engaged solely in the business of buying wool from farmers and selling it to yarn factories. Because V's receipts are exempt from taxation under Section 7-9-18 NMSA 1978, it is not required to register for gross receipts taxation with the department. However, V is required to register and file the necessary returns under the Withholding Tax Act, Sections 7-3-1 through 7-3-12 NMSA 1978, and comply with any other tax laws that pertain to its business.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90 11/15/96, 4/30/99; 3.2.5.8 NMAC – Rn & A, 3 NMAC 2.5.8, 4/30/01]

7-9-6. SEPARATELY STATING THE GROSS RECEIPTS TAX.--When the gross receipts tax is stated separately on the books of the seller or lessor, and if the total amount of tax that is stated separately on transactions reportable within one reporting period is in excess of the amount of gross receipts tax otherwise payable on the transactions on which the tax was stated separately, the excess amount of tax stated on the transactions within that reporting period shall be included in gross receipts.

3.2.6.8 - SEPARATELY STATING THE GROSS RECEIPTS TAX

A. If a seller or lessor separately states the gross receipts tax on the books of original entry, and if the amount of tax separately stated for the reporting period is in excess of that which is payable on transactions for the reporting period, the excess must be included in the seller's or lessor's gross receipts.

B. Example: A owns a gas station located where the tax rate is 5%. The price of a car wash at A's station is $1.00. In the books A shows a sale of $1.00 and gross receipts tax of $0.50. Since the amount A collected for gross receipts tax ($.50) is more than the tax due ($.05) on the sale of $1.00, A must recalculate the gross receipts and tax. To do so, A must divide the total income ($1.50) by one plus the tax rate (1.05). The result is A's gross receipts without tax, which is then multiplied by the tax rate (5%) to determine the tax due amount.

$1.00 (receipts from sale)
$+.50 (tax collected)
$1.50 (total income)
$1.50/1.05 = $1.43 (gross receipts)
$1.43 X 5% = $ .07 (tax due)

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 3/31/86, 4/2/86, 4/26/90, 11/20/90, 11/15/96; 3.2.6.8 NMAC – Rn, 3 NMAC 2.6.8, 4/30/01]

3.2.6.9 - WHO IS THE TAXPAYER

A. The gross receipts tax is imposed on persons engaging in business in New Mexico. Such persons are solely liable for payment of the tax; they are not “collectors” on behalf of the state.

B. Section 7-9-6 NMSA 1978 treats as gross receipts, subject to the gross receipts tax, any amount of money shown on the books and records of a seller or lessor as the tax on receipts from a transaction which is in excess of the tax the seller or lessor is liable to report and pay to the department.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/20/90, 11/15/96; 3.2.6.9 NMAC – Rn & A, 3 NMAC 2.6.9, 4/30/01]

7-9-7. IMPOSITION AND RATE OF TAX--DENOMINATION AS COMPENSATING TAX".--

A. For the privilege of using tangible property in New Mexico, there is imposed on the person using the property an excise tax equal to five and one-eighth percent of the value of tangible property that was:

(1) manufactured by the person using the property in the state;

(2) acquired inside or outside of this state as the result of a transaction with a person located outside this state that would have been subject to the gross receipts tax had the tangible personal property been acquired from a person with nexus with New Mexico; or

(3) acquired as the result of a transaction that was not initially subject to the compensating tax imposed by Paragraph (2) of this subsection or the gross receipts tax but which transaction, because of the buyer's subsequent use of the property, should have been subject to the compensating tax imposed by Paragraph (2) of this subsection or the gross receipts tax.

B. For the purpose of Subsection A of this section, value of tangible property shall be the adjusted basis of the property for federal income tax purposes determined as of the time of acquisition or introduction into this state 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 shall be used.

C. For the privilege of using services rendered in New Mexico, there is imposed on the person using such services an excise tax equal to five percent of the value of the services at the time they were rendered. The services, to be taxable under this subsection, must have been rendered as the result of a transaction that was not initially subject to the gross receipts tax but which transaction, because of the buyer's subsequent use of the services, should have been subject to the gross receipts tax.

D. The tax imposed by this section shall be referred to as the "compensating tax".

(Laws 2011, Chapter 175, Section 1)

3.2.10.8 - TANGIBLE PERSONAL PROPERTY ACQUIRED OUTSIDE NEW MEXICO FOR USE IN NEW MEXICO

A. Tangible personal property acquired inside or outside New Mexico as a result of a transaction with a person located outside New Mexico which would have been subject to the gross receipts tax had the tangible personal property been acquired from a person with nexus with New Mexico is subject to the compensating tax if that tangible personal property is subsequently used in New Mexico. For compensating tax purposes, a transaction would have been “subject to the gross receipts tax” when the transaction would have been within New Mexico’s taxing jurisdiction, the receipts from the transaction would have been defined as gross

receipts, the receipts would not have been deductible or exempt and taxation by New Mexico would not be pre-empted by federal law.

B. Example 1: X, a New Mexico business, purchases the furniture for a new office from an El Paso, Texas, merchant. X brings this furniture into New Mexico in X's truck and puts it in the office. If X had purchased the furniture from a New Mexico business, the transaction would have been subject to the gross receipts tax. Therefore, X is liable for compensating tax measured by the sale price of the furniture. However, X may take a credit of up to 5% of the sale price of the furniture against the compensating tax liability on this furniture for any sales tax which was paid in Texas on the purchase of the furniture. Also, X pays no separate tax if tax collected by the seller is shown on the invoice as the New Mexico compensating tax collected by the El Paso, Texas, merchant.

C. Example 2: G operates a carnival concession. G has purchased tangible personal property in Iowa, to be used as prizes for persons performing certain skills at the carnival concession. G is subject to the compensating tax on the value of the tangible personal property acquired in Iowa, which is used as prizes in New Mexico.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/28/94, 11/15/96, 3.2.10.8 NMAC - Rn, 3 NMAC 2.7.8, 4/30/01; A, 4/30/07; A, 8/15/12]

3.2.10.9 - PERSONAL RATHER THAN COMMERCIAL USE OF TANGIBLE PERSONAL PROPERTY OR SERVICES

A. When a person has delivered a nontaxable transaction certificate for a taxable purpose but then uses the service or tangible personal property in a manner other than indicated on the nontaxable transaction certificate, then the person who delivered the nontaxable transaction certificate is liable for the compensating tax on the value of the service or the tangible personal property.

B. Example 1: Z operates a furniture store in New Mexico. Z issues a nontaxable transaction certificate 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.

C. Example 2: A, a garage operator, has the radiator on A's service truck repaired by B, a radiator repair specialist. A has previously delivered a nontaxable transaction certificate 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; therefore 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 nontaxable transaction certificates suspended by the secretary for up to one year. See prior example.

D. Example 3: G owns and operates a grocery store. G bought two dozen brooms for resale and delivered a nontaxable transaction certificate. 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.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.10.9 NMAC - Rn, 3 NMAC 2.7.9, 4/30/01]

3.2.10.10 - THE USE IN NEW MEXICO OF A SERVICE PERFORMED ENTIRELY

OUTSIDE NEW MEXICO

A. The use of a service, other than a research and development service, in New Mexico is not subject to the compensating tax when the service is performed entirely outside New Mexico. The use of a service, other than a research and development service, in New Mexico is subject to compensating tax only when the service rendered is a result of a transaction which was not initially subject to the gross receipts tax but should have been subject to the gross receipts tax because of the subsequent use of the service by the buyer. Receipts from performing a service other than research and development service outside New Mexico are not subject to the gross receipts tax regardless of how the buyer subsequently uses the services.

B. Example: The X Company sends rubber-lined pipe and pump casings out-of-state for repairs. Repairs include vulcanizing worn sections of the pipe and pump casings. The out-of-state vendor does not distinguish between the cost of labor and materials, and transactions are billed only as repairs. In this example, the materials used are incidental to the rendering of the repair service. The use of this service in New Mexico is not subject to the compensating tax when performed entirely outside New Mexico.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.10.10 NMAC - Rn, 3 NMAC 2.7.10, 4/30/01]

3.2.10.11 - TANGIBLE PERSONAL PROPERTY ON WHICH THE COMPENSATING TAX HAS BEEN PREVIOUSLY PAID

A. Persons who have previously paid the compensating tax on tangible personal property introduced into this state are not required to pay the compensating tax again on the reintroduction into the state of the same property if the property has been under the same ownership continuously since the time it was initially introduced into the state.

B. Example: A, a Colorado construction company, is awarded the contract for the improvement of a portion of the interstate highway in northern New Mexico. One of the pieces of equipment which A brings to perform the job is a tractor that A used on another New Mexico job earlier in the year. If A can prove that the compensating tax was paid at the time of the earlier use of the tractor and that A owned the tractor continuously since that time, A does not have to pay the compensating tax again.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/28/94, 11/15/96, 3.2.10.11 NMAC - Rn, 3 NMAC 2.7.11, 4/30/01]

3.2.10.12 - PROMOTIONAL GIFTS

A. If a taxpayer uses merchandise for advertising or promotional purposes by giving away the merchandise without the requirement of a concurrent purchase, the taxpayer is liable for the compensating tax on the value of the merchandise if the merchandise was acquired by the taxpayer in a transaction which was not subject to the gross receipts tax because the taxpayer furnished a nontaxable transaction certificate to the supplier pursuant to Section 7-9-47 NMSA 1978 or because the taxpayer acquired this merchandise outside New Mexico.

B. If a taxpayer “gives away” merchandise or services with a requirement of a concurrent purchase, no compensating tax is due on the merchandise or service “given away”.

C. Example: X Restaurant gives a free drink to Y, a customer, on Y's birthday. The restaurant is not subject to the 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 there is no requirement of a

concurrent purchase, then the restaurant is liable for the compensating tax on the value of the drink if the liquor was acquired by the restaurant in a transaction which was not subject to the gross receipts tax because the restaurant furnished a nontaxable transaction certificate to its supplier pursuant to Section 7-9-47 NMSA 1978, because of the operation of Section 7-9-43.1 NMSA 1978 or because the taxpayer acquired the merchandise outside New Mexico. 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 there is a requirement of a concurrent purchase.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.10.12 NMAC - Rn & A, 3 NMAC 2.7.12, 4/30/01]

3.2.10.13 - CONSTRUCTION PROJECTS OCCUPIED OR LEASED PRIOR TO SALE

A. A person engaged in the construction business who purchases construction materials, construction services, construction-related services or who leases construction equipment using nontaxable transaction certificates (nttcs) provided by the department for use under Sections 7-9-51, 7-9-52 and 7-9-52.1 NMSA 1978 is liable for the compensating tax on the value of the materials and services purchased at the time when the construction project is initially leased or otherwise occupied prior to the sale. It is immaterial that the construction project is leased to enhance its value for sale as is the case with so-called income producing property.

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

C. 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 issued 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 materials and construction services which became an ingredient or component part of each building may be credited against the gross receipts tax due on the sale.

D. Example 3: R is a homebuilder who typically sells the homes he builds either prior to the start of construction, or on a speculative basis prior to the completion of the home. R has executed nttcs to material suppliers and subcontractors for a specific home. Upon completion of the home, R is unable to find a buyer, and decides to retain title to the home and use it as his personal home or rent the home to a third party until a buyer can be found. R is liable for the compensating tax on the value of the construction materials, construction services and construction-related services purchased with the nttcs at the time the home is initially rented or occupied by the homebuilder prior to the sale.
[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.10.13 NMAC - Rn & A, 3 NMAC 2.7.13, 4/30/01; A, 12/14/12]

3.2.10.14 - PROCESSING PIPE

A New Mexico buyer who purchases pipe from outside the state is subject to the New Mexico compensating tax on the total value of the pipe at the time it is introduced into New Mexico for use. Value includes charges for labor and material used in processing the pipe when processed outside New Mexico prior to initial introduction into the state.
[6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.10.14 NMAC - Rn, 3 NMAC 2.7.14, 4/30/01]

3.2.10.15 - MATERIALS USED ON NONTAXABLE PROJECTS

A. Construction materials purchased with a nontaxable transaction certificate and subsequently used in a project, other than a project located on tribal territory the state taxation of which is pre-empted by federal law, which upon completion is not subject to gross receipts tax are subject to the compensating tax for the value of materials used in the project.

B. *Example*: X construction company purchases a truckload of lumber from A lumber company with whom X has previously executed the appropriate nontaxable transaction certificate. 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.
[1/26/86, 2/21/86, 4/2/86, 11/26/90, 11/15/96, 3.2.10.15 Rn & A, 3 NMAC 2.7.15, 10/31/00; A, 8/15/12]

3.2.10.16 - ORDINARY AND NECESSARY BUSINESS EXPENSE

Services performed in New Mexico deductible by the purchaser as ordinary and necessary business expenses under the provisions of the Internal Revenue Code are “used” for purposes of Subsection B of Section 7-9-7 NMSA 1978. Nontaxable transaction certificates may not be issued for such transactions. If a taxpayer acquires the services through the inappropriate use of a nontaxable transaction certificate, the compensating tax is due on the value of the services and the taxpayer's right to issue nontaxable transaction certificates will be jeopardized under the provisions of Section 7-9-44 NMSA 1978.
[3/11/88, 11/26/90, 11/15/96, 3.2.10.16 NMAC - Rn & A, 3 NMAC 2.7.16, 4/30/01]

3.2.10.17 - SERVICES WHICH QUALIFY AS CAPITAL EXPENDITURES

Services performed in New Mexico which are capitalized under the provisions of the Internal Revenue Code are ”used” for purposes of Subsection B of Section 7-9-7 NMSA 1978. Nontaxable transaction certificates may not be issued for such transactions. If a taxpayer acquires these services through the issuance of a nontaxable transaction certificate, the compensating tax is due on the value of the services, and the taxpayer's right to issue nontaxable transaction certificates will be jeopardized under the provisions of Section 7-9-44 NMSA 1978.
[3/11/88, 11/26/90, 11/15/96, 3.2.10.17 NMAC - Rn & A, 3 NMAC 2.7.17, 4/30/01]

3.2.10.18 - COMPENSATING TAX ON DEALER USE OF PARTS

The value of parts, motor oils and similar items taken from inventory held for sale, or purchased under Type 2 (resale) NTTCs, by automobile dealers for use in repairing or maintaining vehicles used by the dealers in the operation of the dealerships, as distinguished

from vehicles held for sale, is subject to compensating tax. A new vehicle which has been titled and registered, other than pursuant to Subsection C of Section 66-3-118 NMSA 1978 pertaining to new vehicles held for sale and allowed to be registered without payment of the motor vehicle excise tax, will be treated as a vehicle used in the dealer's business for purposes of applying Section 3.2.10.18 NMAC.
[6/28/89, 11/26/90, 11/15/96, 3.2.10.18 NMAC - Rn & A, 3 NMAC 2.7.18, 4/30/01]

3.2.10.19 - TANGIBLE PERSONAL PROPERTY FURNISHED TO DEALERS BY OUT-OF-STATE SERVICE CONTRACT ADMINISTRATORS

Tangible personal property, such as contract forms and promotional and administrative materials, furnished to New Mexico dealers by out-of-state companies which undertake to administer automotive service contracts for a fee is property acquired as a result of a transaction with a person located outside New Mexico that would have been subject to the gross receipts tax had the property been acquired from a person with nexus with New Mexico. The value of the tangible personal property is subject to compensating tax to be paid by the dealers when the property is stored, used or consumed in New Mexico.
[6/28/89, 11/26/90, 10/28/94, 11/15/96, 3.2.10.19 NMAC - Rn, 3 NMAC 2.7.19, 4/30/01; A, 8/15/12]

3.2.10.20 - TELECOMMUNICATIONS SERVICE USED BY HOTELS AND MOTELS

If a hotel, motel or similar establishment has represented to a company engaged in the business of providing interstate telecommunications service that the hotel, motel or similar establishment is purchasing interstate telecommunication service for use as a service to guests of the hotel, motel or similar establishment for an additional separately stated charge, it is liable for compensating tax on the value of any interstate telecommunications service purchased but not separately stated in its billings to its guests.
[3/9/92, 11/15/96, 3.2.10.20 NMAC - Rn & A, 3 NMAC 2.7.20, 4/30/01; A, 8/15/12]

3.2.10.21 - FEDERAL PREEMPTION AND STATE EXEMPTION - CREDIT UNIONS

A. 12 U.S.C. 1768 exempts federal credit unions from state taxation, other than property taxation. Accordingly, the use of property in New Mexico by federal credit unions is exempt from compensating tax.

B. Section 58-11-61 NMSA 1978 exempts from state taxation credit unions organized under or subject to the Credit Union Regulatory Act to the same extent that the credit unions chartered under federal law are exempt. Therefore the use of property in New Mexico by credit unions organized under or subject to the Credit Union Regulatory Act is exempt from compensating tax.
[5/31/97, 3.2.10.21 NMAC - Rn & A, 3 NMAC 2.7.21, 4/30/01]

3.2.10.22 - FEDERAL PREEMPTION - JOB CORPS CONTRACTORS

29 U.S.C. 1707(c) bars imposition of any use or similar tax on the use by a Job Corps contractor of any property or service in connection with the operation of a Job Corps center, program or activity. Therefore, Job Corps contractors are exempt from the compensating tax with respect to property used in connection with operating a Job Corps center, program or activity.
[5/31/97, 3.2.10.22 NMAC – Rn, 3 NMAC 2.7.22, 4/30/01]

7-9-7.1. DEPARTMENT BARRED FROM TAKING COLLECTION ACTIONS WITH RESPECT TO CERTAIN COMPENSATING TAX LIABILITIES.--

A. The department shall take no action to enforce collection of compensating tax due on purchases made by an individual if:

(1) the property is used only for nonbusiness purposes;

(2) the property is not a manufactured home; and

(3) the individual is not an agent for collection of compensating tax pursuant to Section 7-9-10 NMSA 1978.

B. The prohibition in Subsection A of this section does not prevent the department from enforcing collection of compensating tax on purchases from persons who are not individuals, who are agents for collection pursuant to Section 7-9-10 NMSA 1978 or who use the property in the course of engaging in business in New Mexico or from enforcing collection of compensating tax due on purchase of manufactured homes.

(Laws 1995, Chapter 50, Section 2)

7-9-8. PRESUMPTION OF TAXABILITY AND VALUE.--

A. To prevent evasion of the compensating tax and the duty to collect it, it is presumed that property bought or sold by any person for delivery into this state is bought or sold for a taxable use in this state.

B. In determining the amount of compensating tax due on the use of property, it is presumed, in the absence of preponderant evidence of another value, that the value means the total amount of money or the reasonable value of other consideration paid for property exclusive of any type of time-price differential. However, in an exchange in which the amount of money paid does not represent the value of the property or property and service purchased, the compensating tax shall be imposed on the reasonable value of the property or property and service purchased.

C. In determining the amount of compensating tax due on the use of a service, it is presumed, in the absence of preponderant evidence of another value, that the value means the total amount of money or the reasonable value of other consideration paid for the service exclusive of any type of time-price differential. However, in an exchange in which the amount paid does not represent the value of the service purchased, the compensating tax shall be imposed on the reasonable value of the service purchased.

3.2.11.8 - VALUE - FREIGHT CHARGES

A. Transportation costs that are paid by the seller to the carrier are an element of the sales price of the property.

B. Transportation costs that are paid to the carrier by the buyer are not an element of the sales price of the property.

C. If the buyer transports the property in equipment owned or leased by the buyer, the cost of the transportation does not increase the value of the property.

D. If the seller transports the property in equipment owned or leased by the seller, the cost of the transportation is already included in the price of the property and it is considered an element of the sales price of the property.

E. If the seller, acting as an agent for the buyer, pays the transportation charges, the cost of the transportation is not an element of the sales price.

F. Note: Section 3.2.11.8 NMAC also applies to the treatment of freight charges for purposes of computing gross receipts tax.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 10/17/84, 4/2/86, 11/26/90, 11/15/96; 3.2.11.8 NMAC – Rn & A, 3 NMAC 2.8.8, 4/30/01]

3.2.11.9 - VALUE OF DRUG SAMPLES

The compensating tax on drug samples manufactured outside New Mexico and distributed to New Mexico physicians free of charge is assessed on the value of the finished product in the hands of the manufacturer. This value is the full price which would have been charged by the manufacturer if the samples had been sold, not just the cost of materials and packaging supplies. As of January 1, 1999, the compensating tax does not apply to the use of drugs which are “prescription drugs”.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 10/17/84, 4/2/86, 11/26/90, 11/15/96, 10/29/99; 3.2.11.9 NMAC – Rn, 3 NMAC 2.8.9, 4/30/01]

3.2.11.10 - RESTAURANT FOOD FOR EMPLOYEES

A. Restaurant owners are liable for compensating tax on the value of food served to employees where no amount includable in the owner's gross receipts is received from the employees for the food served to them, if such food was purchased by the owner subject to the deduction from gross receipts for sales of tangible personal property for subsequent sale and no compensating tax was paid.

B. For convenience in accounting and auditing, two dollars per day per employee shall be used as the value of the food served to employees in computing the compensating tax due.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 10/17/84, 2/15/85, 4/2/86, 11/26/90, 11/15/96; 3.2.11.10 NMAC – Rn, 3 NMAC 2.8.10, 4/30/01]

7-9-9. LIABILITY OF USER FOR PAYMENT OF COMPENSATING TAX.--Any person in New Mexico using property on the value of which compensating tax is payable but has not been paid is liable to the state for payment of the compensating tax, but this liability is discharged if the buyer has paid the compensating tax to the seller for payment over to the department.

3.2.12.8 - SEPARATE STATING OF THE TAX

A seller of property who is required to collect and pay over to the department the compensating tax due on the value of property sold for delivery into New Mexico must separately state the compensating tax on the invoice. If the compensating tax is not separately stated on the invoice, it will be presumed that it was not collected and paid over and the buyer must pay the compensating tax. The seller who is liable to collect and pay over the compensating tax may become liable for penalties and interest if the seller fails to collect and pay over.
[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.12.8 NMAC – Rn, 3 NMAC 2.9.8, 4/30/01]

3.2.12.9 - GENERAL EXAMPLE

A. The following example illustrates the application of Section 7-9-9 NMSA 1978.

B. Example: A purchases a piece of equipment from X, an El Paso dealer, for $l,000. X is registered with the department as an agent for collection of compensating tax. X bills A as follows:

Equipment	$ 1,000
N.M. Comp. Tax	50
	$ 1,050

Since X is registered as an agent to collect and pay over compensating tax pursuant to Section 7-9-10 NMSA 1978 and collected compensating tax from A, A is relieved of any compensating tax liability, even if X fails to remit the tax to the department.
[2/15/85, 4/2/86, 11/26/90, 11/15/96; 3.2.12.9 NMAC – Rn & A, 3 NMAC 2.9.9, 4/30/01]

7-9-10. AGENTS FOR COLLECTION OF COMPENSATING TAX--DUTIES.--

A. Every person carrying on or causing to be carried on any activity within this state attempting to exploit New Mexico's markets who sells property or sells property and service for use in this state and who is not subject to the gross receipts tax on receipts from these sales shall collect the compensating tax from the buyer and pay the tax collected to the department. "Activity", for the purposes of this section, includes but is not limited to engaging in any of the following in New Mexico: maintaining an office or other place of business; soliciting orders through employees or independent contractors; soliciting orders through advertisements placed in newspapers or magazines published in New Mexico or advertisements broadcast by New Mexico radio or television stations, soliciting orders through programs broadcast by New Mexico radio or television stations or transmitted by cable systems in New Mexico; canvassing, demonstrating, collecting money, warehousing or storing merchandise or delivering or distributing products as a consequence of an advertising or other sales program directed at potential customers. "Activity", for the purposes of this section, does not include having a world wide web site as a third-party provider on a computer physically located in New Mexico but owned by another nonaffiliated person, and "activity" does not include using a nonaffiliated third-party call center to accept and process telephone or electronic orders of tangible personal property or licenses primarily from non-New Mexico buyers, which orders are forwarded to a location outside New Mexico for filling, or to provide services primarily to non-New Mexico customers.

B. To ensure orderly and efficient collection of the public revenue, if any application of this section is held invalid, the section's application to other situations or persons shall not be affected.

(Laws 2001, Chapter 65, Section 2)

3.2.13.8 - GUIDELINES FOR "ACTIVITY": "Activity" includes engaging in any of the following in New Mexico, directly or by an agent:

A. maintaining or utilizing an office, distribution house, sales house, warehouse, service enterprise, or other place of business; or

B. maintaining a stock of goods; or

C. regularly soliciting orders whether or not such orders are accepted in New Mexico, unless the activity in New Mexico consists solely of soliciting by direct mail; or

D. regularly engaging in the delivery of property in New Mexico other than by common carrier or U.S. mail as a consequence of an advertising or other sales program directed at potential customers.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 3/3/86, 4/2/86, 11/26/90, 11/15/96; 3.2.13.8 NMAC – Rn, 3 NMAC 2.10.8, 4/30/01]

3.2.13.9 - THIRD PARTY SALES BY AGENTS FOR COLLECTION OF COMPENSATING TAX

When a person registered with the department as an agent for collection of New Mexico compensating tax sells tangible personal property to a customer located outside New Mexico who requests delivery be made to the customer's customer located in New Mexico, the agent for collection of compensating tax may receive a properly executed nontaxable transaction certificate from the out-of-state buyer.

[6/18/79, 4/7/82, 5/4/84, 3/3/86, 4/2/86, 11/26/90, 11/15/96; 3.2.13.9 NMAC – Rn, 3 NMAC 2.10.9, 4/30/01]

3.2.13.10 - COLLECTION OF COMPENSATING TAX BY BROADCASTERS

A. Receipts from the sale by a New Mexico radio or television broadcaster to an out-of-state advertising agency of broadcast time which is intended for subsequent sale to a national or regional seller or advertiser not having its principal place of business in or being incorporated in New Mexico but which broadcast time is resold instead to an in-state seller or advertiser (a New Mexico seller or advertiser or a national or regional seller or advertiser having its principal place in or incorporated in New Mexico) are subject to compensating tax pursuant to Subsection B of Section 7-9-7 NMSA 1978. The initial sale to the advertising agency was not subject to gross receipts tax but the subsequent use of that service by the in-state seller or advertiser means the sale should have been subject to the gross receipts tax. The New Mexico radio or television broadcaster providing the broadcast service used by the in-state seller or advertiser under these circumstances shall act as agent for collection of compensating tax from the in-state seller or advertiser pursuant to Section 7-9-10 NMSA 1978 and shall collect, report and pay over such compensating tax unless the out-of-state advertising agency pays gross receipts tax or collects, reports and pays over the compensating tax on the transaction.

B. The New Mexico radio or television broadcaster may effect collection of such compensating tax from the in-state seller or advertiser or the national or regional seller or advertiser having its principal place of business in or being incorporated in New Mexico by collecting the compensating tax through the out-of-state advertising agency representing the seller or advertiser. When collecting the compensating tax from the advertising agency, the radio or television broadcaster must identify the seller or advertiser and the amount of compensating tax due in its billing to the advertising agency. Payment of the compensating tax by the advertising agency to the broadcaster discharges the liability, under Section 7-9-9 NMSA 1978, of the in-state seller or advertiser for the compensating tax arising from the use of the broadcast services.

C. If the out-of-state advertising agency resells the time to another out-of-state entity (“cooperative advertising group”) which, in turn, resells the time to in-state sellers or advertisers, the broadcaster is relieved from responsibility for identifying the seller or advertiser if the broadcaster's records identify the out-of-state other entity to which the out-of-state advertising agency resold the time. When the advertising agency resells the time to an out-of-state cooperative advertising group, the in-state seller or advertiser is discharged from liability for compensating tax if, on audit, the seller or advertiser presents an accounting from the out-of-state cooperative advertising group showing payment of the applicable compensating tax by the out-of-state cooperative advertising group to the advertising agency.

[2/14/86, 3/3/86, 4/2/86, 12/29/89, 11/26/90, 12/31/91, 11/15/96; 3.2.13.10 NMAC – Rn & A, 3

NMAC 2.10.10, 4/30/01]

7-9-11. DATE PAYMENT DUE.--The taxes imposed by the Gross Receipts and Compensating Tax Act are to be paid on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

3.2.2.8 - EXTENSION OF TIME FOR PAYMENT

The time for payment of the tax may be extended under unusual circumstances upon proper application to the department prior to the due date.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.2.8 NMAC – Rn, 3 NMAC 2.11.8, 4/30/01]

3.2.2.9 - DETERMINATION OF TIMELINESS

Determination of what timeliness is in relation to the filing of returns, notices, and applications and the making of payments is governed by Section 7-1-9 NMSA 1978 of the Tax Administration Act and regulations thereunder. Requirements for making payments equal to or in excess of $25,000 are governed by Section 7-1-13.1 NMSA 1978 of the Tax Administration Act and regulations thereunder.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.2.9 NMAC – Rn & A, 3 NMAC 2.11.9, 4/30/01]

3.2.2.10 - EFFECT OF SATURDAY, SUNDAY, OR HOLIDAY ON PAYMENT DATE

When the total tax due is less than $25,000 and the last day for payment of the combined taxes on the CRS-1 Combined Report Form falls on Saturday, Sunday or a legal holiday, the payment shall be considered timely if it is postmarked or filed in person the next succeeding day which is not a Saturday, Sunday or a legal New Mexico or national holiday.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 4/30/99; 3.2.2.10 NMAC – Rn, 3 NMAC 2.11.10, 4/30/01]

3.2.2.11 - REPORTING OF PROGRESS PAYMENTS

A contractor who receives progress payments or other consideration for services performed on and materials provided for a construction project as defined in Section 7-9-3.4 NMSA 1978 must report such payments or other consideration as gross receipts. If the contractor is a cash-basis taxpayer, the contractor must report any such payments or other consideration actually received in a particular month as receipts for that month. If the contractor is an accrual basis taxpayer, any amounts which the contractor earned or billed or to which the contractor became entitled during a particular month must be reported as receipts for that month as required by Section 7-9-11 NMSA 1978.

[4/2/75, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.2.11 NMAC - Rn & A, 3 NMAC 2.11.11, 4/30/01; A, 12/30/03]

3.2.2.12 - PETITION TO CHANGE ACCOUNTING METHODS

A. A taxpayer who elects to report gross receipts tax on either the cash, modified accrual or accrual basis is bound by that election and must report the gross receipts tax on that basis unless the taxpayer petitions the secretary or the secretary's delegate in writing to allow a change in reporting method as required by Subsection C of Section 7-1-10 NMSA 1978 and the

petition is granted. A change in accounting method operates prospectively from the date the petition for change of method is granted.

B. A taxpayer who elects to report governmental gross receipts tax on either the cash, modified accrual or accrual basis is bound by that election and must report the governmental gross receipts tax on that basis unless the taxpayer petitions the secretary or the secretary's delegate in writing to allow a change in reporting method as required by Subsection C of Section 7-1-10 NMSA 1978 and the petition is granted. A change in accounting method operates prospectively from the date the petition for change of method is granted.

[7/26/76, 6/18/79, 4/7/82, 1/6/84, 5/4/84, 4/2/86, 11/26/90, 6/28/91, 11/15/96; 3.2.2.12 NMAC – Rn & A, 3 NMAC 2.11.12, 4/30/01]

3.2.2.13 - REPORTING OF GROSS RECEIPTS - SEMI-ANNUAL REPORTING OR QUARTERLY REPORTING

Taxpayers who have a tax liability which averages less than two hundred dollars ($200) per month and have been granted authority to report gross receipts or governmental gross receipts on either a semi-annual filing basis or quarterly filing basis must file a return with payment on or before the twenty-fifth day of the month following the last month of the semi-annual filing period or of the quarterly filing period. The taxpayer does not have authority to change from one reporting interval to another without the prior approval of the secretary or the secretary's delegate.

[1/6/84, 5/4/84, 4/2/86, 11/26/90, 6/28/91, 11/15/96; 3.2.2.13 NMAC – Rn, 3 NMAC 2.11.13, 4/30/01]

3.2.2.14 - ACCRUAL AND CASH BASIS REPORTING

A. Cash basis taxpayers report as gross receipts or governmental gross receipts all cash and other consideration received during the tax reporting period.

B. Accrual basis taxpayers report as gross receipts or governmental gross receipts amounts of sales, including cash and charge sales, made during the tax reporting period.

[1/21/85, 4/2/86, 11/26/90, 6/28/91, 11/15/96; 3.2.2.14 NMAC – Rn, 3 NMAC 2.11.14, 4/30/01]

3.2.2.15 - RETURN REQUIRED TO BE FILED

Taxpayers who are registered for gross receipts, governmental gross receipts, compensating or withheld income tax purposes must file a CRS-1 Combined Report Form for each reporting period whether or not any tax is due.

[1/21/85, 4/2/86, 11/26/90, 6/28/91, 11/15/96; 3.2.2.15 NMAC – Rn, 3 NMAC 2.11.15, 4/30/01]

7-9-12. EXEMPTIONS.-- Exemptions from either the gross receipts tax or the compensating tax are not exemptions from both taxes unless explicitly stated otherwise by law.
(Laws 2017 SS, Chapter 3, Section 14)

3.2.100.8 - REGISTRATION AND FILING

A. If a person conducts only activities which are exempt from the Gross Receipts and Compensating Tax Act under the sections cited in Section 7-9-12 NMSA 1978, that person does not have to register to file tax returns under the Gross Receipts and Compensating Tax Act.

B. If a person is engaged in business or businesses in which some of the transactions are subject to the tax and some are exempt, that person must register and file reports. However, the person is not required to include in reported gross receipts those receipts which are exempt. The person also is not required to include in computing the compensating tax the value of property which is exempt from compensating tax.

C. Example: A Co., which employs eight persons, is engaged solely in the business of buying and selling livestock on its own account. Since A's receipts are exempt from taxation under Section 7-9-18 NMSA 1978, it is not required to register for gross receipts taxation with the department under this Act. However, A is required to register and file the necessary returns under the Withholding Tax Act, Sections 7-3-1 through 7-3-12 NMSA 1978 and comply with any other tax laws that pertain to A's business.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.100.8 NMAC – Rn, 3 NMAC 2.12.8 & A, 5/15/01]

3.2.100.9 - EXEMPTIONS FROM GROSS RECEIPTS

The exemptions provided in the Gross Receipts and Compensating Tax Act apply only to those receipts which are included in and defined as gross receipts pursuant to Section 7-9-3.5 NMSA 1978.

[10/21/86, 11/26/90, 11/15/96; 3.2.100.9 NMAC - Rn, 3 NMAC 2.12.9 & A, 5/15/01; A, 12/30/10]

7-9-13. EXEMPTION--GROSS RECEIPTS TAX--GOVERNMENTAL AGENCIES.--

A. Except as otherwise provided in this section, exempted from the gross receipts tax are receipts of:

(1) the United States, or any agency, department or instrumentality thereof;

(2) the state of New Mexico or any political subdivision thereof; or

(3) any Indian nation, tribe or pueblo from activities or transactions occurring on its sovereign territory; or

(4) any foreign nation or agency, instrumentality or political subdivision thereof, but only when required by a treaty in force to which the United States is a party.

B. Receipts from the sale of gas or electricity by a utility owned or operated by a county, municipality or other political subdivision of a state are not exempted from the gross receipts tax.

C. Receipts from the operation of a cable television system owned or operated by a municipality are not exempted from the gross receipts tax.

(Laws 1998, Chapter 89, Section 1)

3.2.101.8 - GOVERNMENTALLY-OWNED UTILITIES - INSTALLATION AND STAND-BY CHARGES - MINIMUM CHARGES

A. Receipts of a gas or electric utility owned or operated by a county, municipality or other political subdivision of the state of New Mexico from connect, disconnect, installation or stand-by charges are exempt from the gross receipts tax.

B. "Stand-by" charges are receipts other than from the sale of gas or electricity by a utility and are imposed only where gas or electricity has not been connected or is not being furnished. Minimum usage charges imposed upon persons connected to the utility are charges for the sale of gas or electricity and are not stand-by charges.

C. Section 3.2.101.8 NMAC applies to receipts from transactions occurring on or after July 1, 1991.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 9/17/91, 11/15/96; 3.2.101.8 NMAC – Rn, 3 NMAC 2.13.8 & A, 5/15/01]

3.2.101.9 - RECEIPTS OF GOVERNMENTAL ENTITIES

A. Except for the receipts from the sale of gas or electricity by a utility owned or operated by a political subdivision of the state and receipts of a municipality from the ownership or operation of a cable television station owned by the municipality, the receipts of the United States or any agency or instrumentality of the United States, the state of New Mexico or any political subdivision of the state or any Indian nation, tribe or pueblo from activities or transactions occurring on its sovereign territory are exempt from the gross receipts tax. This exemption applies to the receipts of such governmental entity from the sale, leasing or licensing of property, granting a franchise or from the sale of a service by that governmental entity. This

exemption, however, does not apply to the imposition of the governmental gross receipts tax under the provisions of Section 7-9-4.3 NMSA 1978.

B. Example 1: A New Mexico municipality publishes and sells to the public a compilation of all its municipal ordinances. The receipts from these sales are not subject to the gross receipts tax but the receipts will be subject to the governmental gross receipts tax.

C. Example 2: X Sporting Goods Store sells a hunting license for $7.50. Of this $7.50, X remits $7.25 to the state of New Mexico and $0.25 is retained by X as a commission. The $7.25 that is remitted to the state is exempt from the gross receipts tax. However, the $0.25 retained by X is subject to the gross receipts tax. This amount is not deductible under Section 7-9-66 NMSA 1978 because a license is not tangible personal property under Section 7-9-3 NMSA 1978. The $0.25 is a receipt derived from services performed in New Mexico.

D. Example 3: M Utility Company obtains a franchise from a New Mexico municipality to operate an electric utility. The receipts the municipality obtains from M for granting of this franchise are exempt from the gross receipts tax.

E. Example 4: The university of New Mexico sells copies of transcripts to students. These receipts are not subject to the gross receipts tax because the university of New Mexico is the state of New Mexico. Provided that the conditions set forth in 3.2.20.21 NMAC are met, the receipts from selling the transcript copies are not governmental gross receipts.

F. Example 5: The receipts of a public housing authority which is an agency either of the state of New Mexico or any political subdivision thereof or of the United States or any agency or instrumentality thereof are exempted from the gross receipts tax to the extent provided in Section 7-9-13 NMSA 1978. The receipts of the public housing authority from the sale of tangible personal property from a facility open to the general public or providing refuse collection, refuse disposal or sewage services are governmental gross receipts subject to the governmental gross receipts tax; its receipts in the form of rentals are not governmental gross receipts.

G. Example 6: The receipts of concessionaires who are not agencies or instrumentalities of the federal government or the state of New Mexico or any political subdivision of the state from carrying on activities within a federal area are subject to the gross receipts tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 9/17/91, 3/19/92, 10/28/94, 11/15/96, 1/15/98; 3.2.101.9 NMAC - Rn, 3 NMAC 2.13.9 & A, 5/15/01; A, 12/30/10]

3.2.101.10 - AMERICAN NATIONAL RED CROSS

The American national red cross chartered pursuant to 36 U.S.C. 300101 et seq. is immune from state taxation as an instrumentality of the federal government. As such, its receipts are exempt from gross receipts tax under Section 7-9-13 NMSA 1978.

[5/31/97; 3.2.101.10 NMAC - Rn, 3 NMAC 2.13.10 & A, 5/15/01; A, 12/30/10]

7-9-13.1. EXEMPTION--GROSS RECEIPTS TAX--SERVICES PERFORMED OUTSIDE THE STATE THE PRODUCT OF WHICH IS INITIALLY USED IN NEW MEXICO--EXCEPTIONS.--

A. Except as provided otherwise in Subsection B of this section, exempted from gross receipts tax are the receipts from selling services performed outside New Mexico the product of which is initially used in New Mexico.

B. The exemption provided by this section does not apply to research and development services other than research and development services:

(1) sold between affiliated corporations;

(2) sold to the United States by persons, other than organizations described in Subsection A of Section 7-9-29 NMSA 1978, who are prime contractors operating facilities in New Mexico designated as national laboratories by act of congress; or

(3) sold to persons, other than organizations described in Subsection A of Section 7-9-29 NMSA 1978, who are prime contractors operating facilities in New Mexico designated as national laboratories by act of congress.

C. An "affiliated corporation" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the subject corporation. "Control" means ownership of stock in a corporation which represents at least eighty percent of the total voting power of that corporation and has a stated or par value equal to at least eighty percent of the total stated or par value of the stock of that corporation.

(Laws 1989, Chapter 262, Section 14)

7-9-13.2. EXEMPTION--GOVERNMENTAL GROSS RECEIPTS TAX--RECEIPTS SUBJECT TO CERTAIN OTHER TAXES.--Exempted from the governmental gross receipts tax are receipts from transactions involving tangible personal property or services on which the gross receipts tax, compensating tax, motor vehicle excise tax, gasoline tax, special fuel tax, special fuel excise tax, oil and gas emergency school tax, resources tax, processors tax, service tax or the excised tax imposed under Section 66-12-6.1 NMSA 1978 is imposed.

(Laws 1993, Chapter 31, Section 4)

7-9-13.3. EXEMPTION--GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX -- STADIUM SURCHARGE.--Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts from selling tickets, parking, souvenirs, concessions, programs, advertising, merchandise, corporate suites or boxes, broadcast revenues and all other products, services or activities sold at, related to or occurring at a minor league baseball stadium on which a stadium surcharge is imposed pursuant to the Minor League Baseball Stadium Funding Act.
(Laws 2001, Chapter 231, Section 12)

7-9-13.4. EXEMPTION--GROSS RECEIPTS TAX--SALE OF TEXTBOOKS FROM CERTAIN BOOKSTORES TO ENROLLED STUDENTS.--Exempted from the gross receipts tax are the receipts from the sale of textbooks and other materials that are required for courses at a public post-secondary educational institution if the sale is by a bookstore located on the campus of the institution and operated pursuant to a contractual agreement with that institution and the sale is to a student enrolled at the institution who displays a valid student identification card.
(Laws 2002, Chapter 20, Section 1)

7-9-13.5. EXEMPTION--GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX--EVENT CENTER SURCHARGE.--Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts from selling tickets, parking, souvenirs, concessions, programs, advertising, merchandise, corporate suites or boxes, broadcast revenues and all other products or services sold at or related to a municipal event center or related to activities occurring at the event center on which an event center surcharge is imposed pursuant to the Municipal Event Center Funding Act.
(Laws 2005, Chapter 351, Section 2)

7-9-14. EXEMPTION--COMPENSATING TAX--GOVERNMENTAL AGENCIES--INDIANS.--

A. Except as otherwise provided in this subsection, there is exempted from the compensating tax the use of property by the United States or the state of New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof. The exemption provided by this subsection does not apply to:

(1) the use of property that is or will be incorporated into a metropolitan redevelopment project under the Metropolitan Redevelopment Code; or

(2) the use of construction material.

B. Exempted from the compensating tax is the use of property by any Indian nation, tribe or pueblo or any governmental unit, subdivision, agency, department or instrumentality thereof on Indian reservations or pueblo grants.

(Laws 2001, Chapter 343, Section 2)

3.2.102.8 - USE OF PROPERTY BY GOVERNMENTAL ENTITIES

A. For purposes of Section 7-9-14 NMSA 1978, the phrase "United States" does not include individual states or any agency, department, instrumentality or political subdivision of an individual state. The phrase "the state of New Mexico" includes any agency, institution of higher education, board, commission or department which has been created by statute, executive order or action of the legislature and which has been charged with the administration or enforcement of certain provisions of New Mexico statutes. The phrase "or any political subdivision thereof" includes incorporated municipalities, counties, school districts, conservation districts or other entities authorized by statute and which are governed by representatives elected by the public. The use of property in New Mexico by the United States or any of its agencies, departments or instrumentalities is exempt from compensating tax. Except for tangible personal property incorporated into a metropolitan redevelopment project or into a construction project, the use of property in New Mexico by the state of New Mexico or any of its agencies, departments, instrumentalities or political subdivisions is exempt from compensating tax.

B The following examples illustrate the application of Section 7-9-14 NMSA 1978:

(1) Example 1: The air force purchases a fighter jet for use at an air force base in New Mexico. The use of this plane in New Mexico by the United States is exempt from the compensating tax.

(2) Example 2: Z, a soil and water conservation district created pursuant to the Soil and Water Conservation District Act, buys equipment and trees for its use in controlling erosion. Because Z is a political subdivision of New Mexico, its use of the equipment and trees are not subject to the compensating tax.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 3/16/95, 11/15/96; 3.2.102.8 NMAC - Rn, 3 NMAC 2.14.8 & A, 5/15/01; A, 12/30/10]

3.2.102.9 - TANGIBLE PERSONAL PROPERTY INCORPORATED INTO A METROPOLITAN REDEVELOPMENT PROJECT

Tangible personal property purchased by a New Mexico municipality and incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code is subject to the compensating tax if purchased from an out-of-state supplier who does not pay either the New Mexico gross receipts tax or the New Mexico compensating tax on behalf of the buyer on the sale. Tangible personal property purchased by a New Mexico municipality for an otherwise nontaxable use and subsequently converted to use in a metropolitan redevelopment project created under the Metropolitan Redevelopment Code is subject to the compensating tax. The value of tangible personal property in either fact situation is subject to New Mexico compensating tax.
[10/2/85, 4/2/86, 11/26/90, 11/15/96; 3.2.102.9 NMAC – Rn, 3 NMAC 2.14.9, 5/15/01]

3.2.102.10 - USE OF PROPERTY BY INDIAN GOVERNMENTS

A. Use of property by an Indian nation, tribe or pueblo in Indian country is exempt from compensating tax. The use, to be exempt, is not required to be on the territory of the Indian nation, tribe or pueblo using the property but must be in Indian country.

B. The exemption from compensating tax created by Subsection B of Section 7-9-14 NMSA 1978 does not extend to the use of property owned by individuals who are members of an Indian nation, tribe or pueblo. The use of such property on the territory of the member's nation, tribe or pueblo, however, is not subject to the compensating tax if taxation is prohibited by federal law.

C. The following examples illustrate the provisions of Section 3.2.102.10 NMAC.

(1) Example 1: The Y Tribe purchases a bulldozer outside New Mexico, for use in clearing land in New Mexico on its own land and that of other Indian governments. Compensating tax is not applicable to this transaction.

(2) Example 2: X, an Indian, purchases a tractor outside New Mexico, for use in New Mexico. X contends that, being an Indian, X is exempt from the payment of the compensating tax. The exemption set forth in Section 7-9-14 NMSA 1978 does not apply to individual Indians. It applies only to Indian nations, tribes or pueblos. As long as federal law prohibits taxation of it, however, X's use of the tractor on land within the territory of X's nation, tribe or pueblo is exempt from compensating tax.
[3/16/95, 11/15/96; 3.2.102.10 NMAC – Rn, 3 NMAC 2.14.10 & A, 5/15/01]

3.2.102.11 - AMERICAN NATIONAL RED CROSS

The American national red cross chartered pursuant to 36 U.S.C. 300101 et seq. is immune from state taxation as an instrumentality of the federal government. As such, its use of property in New Mexico is exempt from compensating tax under Section 7-9-14 NMSA 1978.
[5/31/97; 3.2.102.11 NMAC - Rn, 3 NMAC 2.14.11 & A, 5/15/01; A, 12/30/10]

7-9-15. EXEMPTION – COMPENSATING TAX -- CERTAIN ORGANIZATIONS.-- Exempted from the compensating tax is the use of property by organizations that demonstrate to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended or renumbered, in the conduct of functions described in Section 501(c)(3). The use of property as an ingredient or component part of a construction project is not a use in the conduct of functions described in Section 501(c)(3). This section does not apply to the use of property in an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered.

3.2.103.8 SINGLE MEMBER LIMITED LIABILITY COMPANY WHOSE SOLE MEMBER IS A 501(c)(3) ORGANIZATION:

A. A single member limited liability company (llc) whose sole member is a 501(c)(3) organization will be treated like a 501(c)(3) organization and receive the same treatment for purposes of Section 7-9-15 NMSA 1978 so long as the llc is recognized by the internal revenue service as a disregarded entity for federal income tax purposes.

B. An llc described in Subsection A above that uses the property in the conduct of an unrelated trade or business as defined in Section 513 of the Internal Revenue Code of 1986, as amended or renumbered, is not exempt pursuant to Section 7-9-15 NMSA 1978.

[3.2.103.8 NMAC - N, 1/15/15]

7-9-16. EXEMPTION--GROSS RECEIPTS TAX--CERTAIN NONPROFIT FACILITIES.--Exempted from the gross receipts tax are the receipts of nonprofit entities from the operation of facilities designed and used for providing accommodations for retired elderly persons.

3.2.104.8 - NONPROFIT STATUS TO BE DETERMINED BY DEPARTMENT

A. The status of any facility asserted to have been designed and used for providing accommodations for retired elderly persons will be determined by the department.

B. Example: X corporation operates a nursing home which it asserts is designed and used for the care of retired elderly people. X charges $350.00 per month for each person who is housed in its nursing home. Although X was not organized as a nonprofit corporation, it has operated at a loss for the past four years. X maintains that it is a nonprofit corporation operating facilities designed and used for accommodating retired elderly persons and that its receipts are exempt. X is not entitled to the exemption. Only a corporation not organized for profit would be allowed the exemption. The fact that X has made no profit is immaterial.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.104.8 NMAC – Rn, 3 NMAC 2.16.8, 5/15/01]

3.2.104.9 - PAYMENTS MADE BY THE HEALTH AND ENVIRONMENT DEPARTMENT

Gross receipts from payments made by the New Mexico health and environment department to facilities other than (a) nonprofit entities designed and used for providing accommodations for retired elderly persons or (b) organizations which have demonstrated to the department a 501(c)(3) determination from the internal revenue service are subject to the gross receipts tax.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.104.9 NMAC – Rn, 3 NMAC 2.16.9, 5/15/01]

3.2.104.10 - SALES BY AUXILIARIES

The receipts of an auxiliary, not itself a 501(c)(3) organization, of a nonprofit facility designed and used for providing accommodations for retired elderly persons from the sales of tangibles or services are subject to the gross receipts tax. Such receipts are not derived from the operation of the facility designed and used for providing accommodations for retired elderly persons.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.104.10 NMAC – Rn, 3 NMAC 2.16.10, 5/15/01]

7-9-17. EXEMPTION--GROSS RECEIPTS TAX--WAGES.--Exempted from the gross receipts tax are the receipts of employees from wages, salaries, commissions or from any other form of remuneration for personal services.

3.2.105.7 - DEFINITIONS - EMPLOYEE

A. In determining whether a person is an employee, the department will consider the following indicia:

(1) is the person paid a wage or salary;

(2) is the "employer" required to withhold income tax from the person's wage or salary;

(3) is F.I.C.A. tax required to be paid by the "employer";

(4) is the person covered by workmen's compensation insurance;

(5) is the "employer" required to make unemployment insurance contributions on behalf of the person;

(6) does the person's "employer" consider the person to be an employee;

(7) does the person's "employer" have a right to exercise control over the means of accomplishing a result or only over the result (control does not mean "mere suggestion").

B. If all of the indicia mentioned Subsection A of Section 3.2.105.7 NMAC are present, the department will presume that the person is an employee. However, a person may be an employee even if one or more of the indicia are not present.

C. The following examples illustrate the provisions of Section 3.2.105.7 NMAC.

(1) Example 1: B is a carpenter who works for Y and is paid on an hourly basis. Y withholds income tax from the money paid to B. Y treats B as an employee and controls the details of B's work. B is covered by Y's workmen's compensation insurance. B is an employee working for a wage or salary. B does not have to report the wages as gross receipts.

(2) Example 2: A sells bibles door to door for the X Bible Company. X pays A a commission, does not control the details of A's work, is not required by applicable law to withhold income tax from A's commission, and is not required to make unemployment insurance contributions on A. A is not an employee. A is an independent contractor and is subject to the gross receipts tax on A's commissions.

(3) Example 3: Q is a used car salesman for the R Used Car Center. Q receives a 3% commission on each car Q sells. R retains authority to supervise all sales Q makes and approves all sales before they can become final. Every two weeks R issues Q a check based upon the commissions Q has earned. R withholds federal and state income taxes and F.I.C.A. taxes. Q is an employee of R.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.105.7 NMAC – Rn, 3 NMAC 2.17.7 & A, 5/15/01]

3.2.105.8 - BLIND OPERATORS OF VENDING STANDS

A. Except as provided in Subsection B of this section, receipts of blind operators of vending stands established in business pursuant to the Vending Stands for Blind in Federal Buildings Act, 20 U.S.C. Sections 107-107(f), or Sections 22-14-24 to 22-14-29 NMSA 1978 are subject to the gross receipts tax. Such operators are not employees within the indicia outlined in 3.2.105.7 NMAC.

B. The receipts of a blind “disabled street vendor” are exempt under Section 7-9-41.3 NMSA 1978.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.105.8 NMAC - Rn, 3 NMAC 2.17.8 & A, 5/15/01; A, 12/30/10]

3.2.105.9 - SCHOOL BUS OPERATORS

The receipts of a person who furnishes a bus and operates that bus pursuant to a contract with a New Mexico school district are receipts from performing a service and are subject to the gross receipts tax; however, if that person is an employee of the school district, that portion of the receipts which is treated by the school district as wages or salary is not subject to the gross receipts tax.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.105.9 NMAC – Rn, 3 NMAC 2.17.9, 5/15/01]

3.2.105.10 - COMMISSIONED SALESPERSONS

A salesperson who sells for a company on a commission basis is not an employee of the company where the company exercises no direct control over the details of performance of the salesperson's duties beyond general statements about the scope and nature of the salesperson's obligations under the contract between the salesperson and the company. In addition, where commissions paid to a salesperson are not subject to withholding taxes or social security taxes, the salesperson is not considered an employee of the company. Therefore, receipts from commissions paid to such salesperson for selling property in New Mexico are subject to the gross receipts tax.

[6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.105.10 NMAC – Rn, 3 NMAC 2.17.10, 5/15/01]

3.2.105.11 - EMPLOYER REIMBURSEMENT OF EXPENDITURES TO EMPLOYEES

An employee's receipts of reimbursements from the employer for expenses incurred by that employee in the performance of the duties and responsibilities assigned to the employee are exempt from gross receipts tax as remuneration paid to the employee. The provisions of Section 3.2.105.11 NMAC shall not be construed to allow an exemption under the provisions of Section 7-9-17 NMSA 1978 of any receipts of the employer which are represented to be charges to the customer for employee wages, salaries, commissions, reimbursement of employee expenditures or any other form of remuneration paid or to be paid to the employee.

[12/29/89, 11/26/90, 11/15/96; 3.2.105.11 NMAC – Rn, 3 NMAC 2.17.11 & A, 5/15/01]

7-9-18. EXEMPTION--GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX--AGRICULTURAL PRODUCTS.--

A. Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts from selling livestock and receipts of growers, producers, trappers or nonprofit marketing associations from selling livestock, live poultry, unprocessed agricultural products, hides or pelts. Persons engaged in the business of buying and selling wool or mohair or of buying and selling livestock on their own account are producers for the purposes of this section.

B. Receipts from selling dairy products at retail are not exempted from the gross receipts tax.

C. As used in this section, "livestock" means all domestic or domesticated animals that are used or raised on a farm or ranch, including the carcasses thereof, and also includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae upon any land in New Mexico; provided that for the purposes of Chapter 77, Article 9 NMSA 1978, "animals" or "livestock" have the meaning defined in that article. "Animals" or "livestock" does not include canine or feline animals. For the purpose of the rules governing meat inspection, wild animals, poultry and birds used for human consumption shall also be included within the meaning of "animals" or "livestock".
(Laws 2011, Chapter 81, Section 1)

3.2.106.7 - DEFINITIONS

A. **AGRICULTURAL PRODUCTS:** Agricultural products are those products and the intermediate stages thereof which are normally raised or grown primarily for use as fiber or food for human or animal consumption.

B. **POULTRY:** The term “poultry” means domestic fowl raised for sale or use in the ordinary course of business or for the production of meat, eggs, hides or feathers for sale or use in the ordinary course of business.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 12/23/92, 11/15/96; 3.2.106.7 NMAC – Rn, 3 NMAC 2.18.1.7, 5/15/01; A, 8/15/12]

3.2.106.8 - LEASE OF LIVESTOCK

Receipts derived from the lease of livestock employed in New Mexico are subject to the gross receipts tax. The exemption provided in Section 7-9-18 NMSA 1978 does not apply to these receipts.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.106.8 NMAC – Rn, 3 NMAC 2.18.1.8 & A, 5/15/01]

3.2.106.9 - COOPERATIVE ASSOCIATIONS

A. A cooperative agricultural association organized under the Cooperative Marketing Association Act, Sections 76-12-1 to 76-12-23 NMSA 1978 is deemed to be nonprofit, inasmuch

as it is not organized to make a profit for itself as such, nor for its members as such, but only for its members as producers or users of products purchased. The receipts of such an association from the sale of unprocessed agricultural products are receipts of a nonprofit marketing association derived from selling unprocessed agricultural products. Such receipts are exempt from the gross receipts tax pursuant to Section 7-9-18 NMSA 1978.

B. The receipts of a marketing association corporation, which is organized for profit, derived from selling, for its own account, unprocessed agricultural products which are purchased from growers, are not exempt pursuant to Section 7-9-18 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.106.9 NMAC – Rn, 3 NMAC 2.18.1.9 & A, 5/15/01]

3.2.106.10 - NURSERY

The receipts of a nursery from the sale of shrubs, trees and other plants are subject to the gross receipts tax. The receipts from the sale of shrubs, trees and other plants are not receipts from the sale of unprocessed agricultural products.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.106.10 NMAC – Rn, 3 NMAC 2.18.1.10, 5/15/01]

3.2.106.11 - TREE FARMS

Receipts of a “tree farm” or a “tree plantation” from the sale of trees for ornamental purposes, such as for landscaping or religious decorations, and from the sale of by-products of such trees, such as tree components for the production of medicines and seed cones for decorative purposes are subject to the gross receipts tax. Such receipts are not receipts from the sale of unprocessed agricultural products which are grown primarily for use as fiber or food for human or animal consumption.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.106.11 NMAC – Rn, 3 NMAC 2.18.1.11, 5/15/01]

3.2.106.12 - BULL SEMEN

A. Receipts from the sale of bull semen are exempt from the gross receipts tax because bull semen is an intermediate stage of an unprocessed agricultural product which is normally raised as food for human and animal consumption.

B. Nonreturnable containers used in transporting the semen are incidental to the sale of the semen. Therefore, the total receipts from the sale of the semen, including the nonreturnable containers, are exempted from the gross receipts tax.

C. However, receipts from leasing refrigeration equipment to purchasers, for storing the semen in New Mexico, are subject to the gross receipts tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.106.12 NMAC – Rn, 3 NMAC 2.18.1.12, 5/15/01]

3.2.106.13 - GENERAL EXAMPLES: The following examples illustrate the application of Section 7-9-18 NMSA 1978:

A. Example 1: B is engaged in the business of trading horses. B buys a horse from M, keeps the horse for two days and then sells it to W. B contends that the gross receipts which are derived from the transaction are exempt under Section 7-9-18 NMSA 1978. B does not have

to pay gross receipts tax measured by the total receipts which are received from the sale of the horse. B is a producer of livestock for the purposes of Section 7-9-18 NMSA 1978 since B buys and sells livestock on B's own account.

B. Example 2: A owns a herd of dairy cattle. A milks them and sells the milk from door to door. A's dairy products are sold at retail and therefore A's receipts are not exempt.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.106.13 NMAC – Rn, 3 NMAC 2.18.1.13 & A, 5/15/01]

3.2.106.14 - SALE OF WORMS FOR AERATION

The receipts of a person engaged in the business of raising worms for sale to farmers and gardeners for aeration purposes are subject to the gross receipts tax.

[6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.106.14 NMAC – Rn, 3 NMAC 2.18.1.14, 5/15/01]

7-9-18.1. EXEMPTION--GROSS RECEIPTS TAX--FOOD STAMPS.--Exempted from the gross receipts tax are the receipts of a taxpayer who is approved for participation in the food stamp program authorized by U.S.C. Title 7, Chapter 51, as that chapter may be amended or renumbered, from the lawful acceptance and deposit with a financial institution of food stamps issued by the United States department of agriculture pursuant to the food stamp program.

7-9-19. EXEMPTION--GROSS RECEIPTS TAX--LIVESTOCK FEEDING.

A. Exempted from the gross receipts tax are the receipts of any person derived from feeding or pasturing livestock.

B. Receipts derived from penning or handling livestock prior to sale are receipts derived from feeding livestock for the purposes of this section.

C. Receipts derived from training livestock are receipts derived from feeding livestock for the purposes of this section.

(Laws 1992, Chapter 48, Section 2)

3.2.107.8 - RECEIPTS FROM FEEDING ANIMALS

A. Only the receipts from feeding, pasturing, penning or handling livestock are exempt under Section 7-9-19 NMSA 1978. The receipts from feeding, pasturing, penning or handling any animals which are not livestock are subject to the gross receipts tax.

B. The following examples illustrate the application of Section 7-9-19 NMSA 1978.

(1) Example 1: A owns 1,000 sheep. A pastures them with B, who owns a ranch, for fifteen cents ($0.15) per head per month. The receipts which B receives are exempt from the gross receipts tax.

(2) Example 2: V, a veterinarian, maintains facilities for boarding animals. V boards cats and dogs that are under veterinary care. V's receipts from these services are not exempt under Section 7-9-19 NMSA 1978 because the cats and dogs are not livestock.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 4/30/99; 3.2.107.8 NMAC - Rn, 3 NMAC 2.19.8 & A, 5/15/01; A, 12/30/10]

7-9-20. EXEMPTION--GROSS RECEIPTS TAX--CERTAIN RECEIPTS OF HOMEOWNERS ASSOCIATIONS.--Exempted from the gross receipts tax are those receipts of homeowners associations defined in Section 528(c)(1) (A thru D), (2), (3) and (4) (A, B and D) of the Internal Revenue Code, as amended, which are received as membership fees, dues or assessments from members who are owners of residential units, residences or residential lots except for owners of time-share interests, for payment of taxes, insurance, utility expenses, management and improvement, maintenance or rehabilitation of those common areas, elements or facilities appurtenant thereto which are for the sole use of the owners and their guests.

3.2.108.8 - OWNERSHIP OF PROPERTY WITHIN THE DEVELOPMENT OR SUBDIVISION REQUIRED

A. To be exempt from gross receipts tax under the provisions of Section 7-9-20 NMSA 1978, the receipts of the homeowners association must be from members of the association who own residential property within the development or subdivision which the homeowner association serves.

B. The receipts of a homeowner association which are received as membership fees, dues, assessments or other charges from persons who are not owners of residential units, residences or residential lots within the development or subdivision which the association serves are not exempt from gross receipts under Section 7-9-20 NMSA 1978.

[3/8/91, 11/15/96; 3.2.108.8 NMAC – Rn, 3 NMAC 2.20.8 & A, 5/15/01]

3.2.108.9 - RECEIPTS OTHER THAN MEMBERSHIP FEES, DUES OR ASSESSMENTS

A. The receipts of any homeowner association from the sale or lease of property to any individual, whether or not the individual is a member of the association, are not exempt from the gross receipts tax under Section 7-9-20 NMSA 1978. The receipts of any homeowner association from the sale of a service performed solely for the benefit of an individual, whether or not the individual is a member of the association, are not exempt from the gross receipts tax under Section 7-9-20 NMSA 1978 when the service is not performed on common areas served or controlled by the association.

B. The following examples illustrate the application of Section 7-9-20 NMSA 1978.

(1) Example 1: Association A maintains vending and other coin operated machines for the convenience of its members and their guests. The receipts which Association A receives from the operation of the coin operated machines are not exempt from gross receipts tax under the provisions of Section 7-9-20 NMSA 1978. Association A will be liable for gross receipts tax on any sale of tangible personal property through vending machines and on any service provided by coin operated machines.

(2) Example 2: Association B owns and operates a golf course for the sole use by its members and their guests. Association B also rents golf carts on a per use basis. Its receipts from the rental of the golf carts are not received as membership fees, dues or assessments from members for payment of taxes, insurance, utility expenses, management or improvement, maintenance or rehabilitation of common areas, elements or facilities. The receipts from the

rental of the golf carts are subject to the gross receipts tax.

(3) Example 3: Association C has contracted to paint the interior and exterior of an individual member's residence. The maintenance of an individual's residence is not maintenance of common areas, elements or facilities. Therefore, Association C's receipts used for painting the member's individual property are subject to the gross receipts tax and are not exempt under Section 7-9-20 NMSA 1978.

[3/8/91, 11/15/96; 3.2.108.9 NMAC – Rn, 3 NMAC 2.20.9 & A, 5/15/01]

3.2.108.10 - RECEIPTS OF ASSOCIATIONS WHERE COMMON AREAS ARE OPEN TO NON-MEMBERS

If a homeowners association allows the use of the common areas or facilities by persons other than members of the association or their guests, the association's receipts from use of the common areas or facilities by such non-members are not exempt from gross receipts tax under Section 7-9-20 NMSA 1978 since those common areas, elements or facilities are not for the sole use of the owners and their guests.

[3/8/91, 11/15/96; 3.2.108.10 NMAC – Rn, 3 NMAC 2.20.10 & A, 5/15/01]

7-9-22. EXEMPTION--GROSS RECEIPTS TAX--VEHICLES.--Exempted from the gross receipts tax are the receipts from selling vehicles on which a tax is imposed by the Motor Vehicle Excise Tax Act, vehicles subject to registration under Section 66-3-16 NMSA 1978 and vehicles exempt from the motor vehicle excise tax pursuant to Subsection F of Section 7-14-6 NMSA 1978.
(Laws 2004, Chapter 66, Section 1)

3.2.109.8 - MOTOR VEHICLE EXCISE TAX

A. The receipts from the sale of a vehicle of a type excepted from registration under Section 66-3-1 NMSA 1978 are not subject to any taxes imposed upon the issuance of a certificate of title under the Motor Vehicle Excise Tax Act and are therefore subject to gross receipts tax.

B. Example: The receipts from the sale of a logging truck used off the highway except for the purpose of crossing the highway from one property to another, are subject to gross receipts tax because there is no tax imposed upon the issuance of a certificate of title for that vehicle under the Motor Vehicle Excise Tax Act since it is exempted from registration in this state under Section 66-3-l NMSA 1978.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.109.8 NMAC – Rn, 3 NMAC 2.22.1.8 & A, 3/14/01]

3.2.109.9 - ADDITIONAL EQUIPMENT

A. Receipts from the sale of motor vehicle bodies, accessories, equipment and the like, whether sold separately or mounted on the vehicle are not subject to this exemption except where their value is included in computing the tax paid under the Motor Vehicle Excise Tax Act on the sale of a vehicle.

B. Example: M buys a pickup from R Motor Company. Three days after the truck is purchased, M buys a camper attachment for the pickup from R. The value of the camper attachment was not included in computing the tax imposed by the Motor Vehicle Excise Tax Act on the pickup. R's receipts from the sale of the camper are subject to the gross receipts tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.109.9 NMAC – Rn, 3 NMAC 2.22.1.9, 3/14/01]

3.2.109.10 - DISCOUNTING OF VEHICLES SALES CONTRACTS

The receipts of automobile dealers who sell automobiles and other vehicles subject to registration pursuant to Section 66-3-1 NMSA 1978 which are derived from the sale of financing agreements on such automobiles and vehicles to a bank or financial corporation are not subject to the gross receipts tax because the underlying transaction is exempted from that tax pursuant to Section 7-9-22 NMSA 1978 and the sale of commercial paper, an intangible, is not subject to the gross receipts tax.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.109.10 NMAC – Rn & A, 3 NMAC 2.22.1.10, 3/14/01]

3.2.109.11 - MANUFACTURED HOMES

Receipts from selling manufactured homes are subject to the gross receipts tax. Manufactured homes are exempted from the motor vehicle excise tax by Section 7-14-3 NMSA 1978.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.109.11 NMAC - Rn, 3 NMAC 2.22.1.11, 3/14/01; A, 12/30/10]

3.2.109.12 - SERVICE CONTRACT SALE PRICE AND TRANSFER FEES ON VEHICLE SALE NOT DEDUCTIBLE AS TAXABLE UNDER MOTOR VEHICLE EXCISE TAX

Receipts from the sale of automotive service contracts and from charges for transfer services (document fees) are not covered by the exemption provided by Section 7-9-22 NMSA 1978 and shall not be included in computing the tax paid under Section 7-14-4 NMSA 1978 on the sale of the vehicle since the receipts are not "price paid for the vehicle" as required by Section 7-14-4 NMSA 1978.

[6/28/89, 11/26/90, 11/15/96; 3.2.109.12 NMAC – Rn, 3 NMAC 2.22.1.12 & A, 3/14/01]

3.2.109.13 - ATVs

Receipts from selling all-terrain vehicles (ATVs) are receipts from selling vehicles on which a tax is imposed by the Motor Vehicle Excise Tax. Therefore receipts from selling ATVs are exempt from gross receipts.

[3.2.109.13 NMAC - N, 3/14/01]

7-9-22.1. EXEMPTION--GROSS RECEIPTS TAX--BOATS.--Exempted from the gross receipts tax are the receipts from selling boats on which a tax is imposed by Section 66-12-6.1 NMSA 1978.

3.2.110.8 - ADDITIONAL EQUIPMENT

A. Receipts from the sale of boat accessories, optional equipment and the like, whether sold separately or mounted on the boat, are not subject to this exemption except where such equipment is included in and is part of the sale of a boat and the value is included in computing the tax paid under Section 66-12-6.1 NMSA 1978 on the sale of a boat, as that term is defined in Section 66-12-3 NMSA 1978.

B. Example: M buys a boat from A Marina. Three days after M has purchased the boat M buys a canopy attachment for the boat from A. The value of the canopy attachment was not included in computing the tax imposed by Section 66-12-6.1 NMSA 1978 on the boat. A's receipts from the sale of the canopy are subject to the gross receipts tax.

C. Section 3.2.110.8 NMAC applies to transactions on or after July 1, 1987.

[12/17/87, 11/26/90, 11/15/96; 3.2.110.8 NMAC – Rn, 3 NMAC 2.22.2.8 & A, 5/15/01]

3.2.110.9 - DISCOUNTING OF BOATS SALES CONTRACTS

Because the sale of commercial paper in itself is not subject to the gross receipts tax and because receipts from underlying transactions are exempt under Section 7-9-22.1 NMSA 1978, receipts from the sale of financing agreements to a bank or a financial corporation with respect to the sale of a boat subject to taxation under Section 66-12-6.1 NMSA 1978 are also exempt.

[12/17/87, 11/26/90, 11/15/96; 3.2.110.9 NMAC – Rn, 3 NMAC 2.22.2.9 & A, 5/15/01]

7-9-23. EXEMPTION--COMPENSATING TAX - VEHICLES. - Exempted from the compensating tax is the use of vehicles on which the tax imposed by the Motor Vehicle Excise Tax Act has been paid, the use of vehicles subject to registration under Section 66-3-16 NMSA 1978 and the use of vehicles exempt from the motor vehicle excise tax pursuant to Subsection F of Section 7-14-6 NMSA 1978.
(Laws 2004, Chapter 66, Section 2)

3.2.111.8 - CREDIT FOR TAXES PAID IN OTHER STATES

The tax imposed by the Motor Vehicle Excise Tax Act will be considered paid if the credit received for excise taxes paid in another state equals the amount of tax due in New Mexico.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.111.8 NMAC – Rn, 3 NMAC 2.23.1.8, 5/15/01]

7-9-23.1. EXEMPTION--COMPENSATING TAX; BOATS.-- Exempted from the compensating tax is the use of boats on which the tax imposed by Section 66-12-6.1 NMSA 1978 has been paid.

7-9-24. EXEMPTION--GROSS RECEIPTS TAX--INSURANCE COMPANIES.--Exempted from the gross receipts tax are the receipts of insurance companies or any agent thereof from premiums and any consideration received by a property bondsman, as that person is defined in Section 59A-51-2 NMSA 1978, as security or surety for a bail bond in connection with a judicial proceeding.

3.2.112.8 - PREMIUMS FROM BONDS & POLICIES

A. Receipts of insurance companies or any agent thereof from premiums for surety bonds or insurance policies are exempt under Section 7-9-24 NMSA 1978.

B. For purposes of Section 7-9-24 NMSA 1978, the term "insurance companies" includes:

(1) health maintenance organizations having a certificate of authority pursuant to the Health Maintenance Organization Law;

(2) nonprofit health care plans having a certificate of authority pursuant to the Nonprofit Health Care Plan Law;

(3) prepaid dental plans having a certificate of authority pursuant to the Prepaid Dental Plan Law; and

(4) prearranged funeral plans subject to the Prearranged Funeral Plan Regulatory Law.

C. For purposes of Section 7-9-24 NMSA 1978, the term "insurance companies" does not include motor clubs as defined in Section 59A-50-2 NMSA 1978.

D. For purposes of Section 7-9-24 NMSA 1978, receipts of insurance companies from premiums includes:

(1) health maintenance organization receipts which either are subject to the premium tax imposed by Section 59A-6-2 NMSA 1978 or are payments from the federal secretary of health and human services pursuant to a contract issued under the provisions of 42 U.S.C. Section 1395 mm(g);

(2) nonprofit health care plan receipts which are subject to the premium tax imposed by Section 59A-6-2 NMSA 1978;

(3) prepaid dental plan receipts which are subject to the premium tax imposed by Section 59A-6-2 NMSA 1978;

(4) prearranged funeral plan receipts which are subject to the premium tax imposed by Section 59A-6-2 NMSA 1978;

(5) premiums attributable to contracts purchased by the state or any of its political subdivisions whether or not the premiums are subject to premium tax; and

(6) such other receipts as are defined as premiums under the Insurance Code.

E. Section 3.2.112.8 NMAC applies to receipts from transactions occurring on or after January 1, 1992.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 5/1/92, 11/15/96; 3.2.112.8 NMAC – Rn, 3 NMAC 2.24.8 & A, 5/15/01]

3.2.112.9 - INSURANCE ADJUSTERS OR ADJUSTING FIRMS

Receipts of insurance adjusters or adjusting firms are not receipts from premiums and are

not exempt under Section 7-9-24 NMSA 1978.
[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.112.9 NMAC – Rn, 3 NMAC 2.24.9 & A, 5/15/01]

3.2.112.10 - UNRELATED BUSINESSES

A. The receipts of an insurance company or any agent thereof from the operation of a business or trade other than the insurance business in New Mexico are subject to the gross receipts tax.

B. Such receipts are not exempted from the gross receipts tax pursuant to Section 7-9-24 NMSA 1978 because they are not receipts derived from premiums.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.112.10 NMAC – Rn, 3 NMAC 2.24.10 & A, 5/15/01]

7-9-25. EXEMPTION--GROSS RECEIPTS TAX--DIVIDENDS AND INTEREST.--Exempted from the gross receipts tax are the receipts received as interest on money loaned or deposited, receipts received as dividends or interest from stocks, bonds or securities or receipts from the sale of stocks, bonds or securities.

3.2.113.8 - STOCKBROKER'S COMMISSIONS

Commissions received by stockbrokers, located in New Mexico, are not receipts from the sale of stocks, bonds or securities. The commissions are receipts from the performance of a service in New Mexico and are subject to the gross receipts tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.113.8 NMAC – Rn, 3 NMAC 2.25.8, 5/15/01]

3.2.113.9 – PAWNBROKERS

Receipts of a person from engaging in pawn transactions, as that term is defined in Section 56-12-2 NMSA 1978, which are received as interest upon money loaned are exempt from the gross receipts tax pursuant to Section 7-9-25 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.113.9 NMAC - Rn, 3 NMAC 2.25.9 & A, 5/15/01; A, 12/30/10]

7-9-26. EXEMPTION--GROSS RECEIPTS AND COMPENSATING TAX--FUEL.-- Exempted from the gross receipts and compensating tax are the receipts from selling and the use of gasoline, special fuel or alternative fuel on which the tax imposed by Section 7-13-3, 7-16-3 or 7-16A-3 NMSA 1978 or the Alternative Fuel Tax Act has been paid and not refunded.
(Laws 1995, Chapter 16, Section 12)

3.2.114.8 - REFUND OF TAX

When a refund of tax imposed by Sections 7-13-3 and 7-16A-3 NMSA 1978 is given the purchaser under Sections 7-13-17 or 7-16A-13.1 NMSA 1978, the compensating tax will be deducted from such refund and no gross receipts tax will be charged at the time of sale of the product. The reasonable value of gasoline or special fuel for compensating tax purposes will be the price paid for the fuel, including any applicable excise taxes whether separately stated or included in the price. This version of 3.2.114.8 NMAC applies to transactions on or after July 1, 1998.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.114.8 NMAC - Rn, 3 NMAC 2.26.8 & A, 10/31/00; A, 10/15/02; A, 12/30/10]

3.2.114.9 - TURBO PROP AND JET FUEL

A. Receipts from the sale of fuel, specially prepared and sold for use in turbo prop or jet type engines, are subject to the gross receipts tax.

B. These receipts are not exempt under Section 7-9-26 NMSA 1978 because products specially prepared and sold for use in turbo prop or jet type engines are not taxed under Section 7-13-3 NMSA 1978 or Section 7-16A-3 NMSA 1978, because of the definition of gasoline in Section 7-13-2 NMSA 1978 and special fuel in Section 7-16A-2 NMSA 1978.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.114.9 NMAC – Rn, 3 NMAC 2.26.9 & A, 5/15/01]

3.2.114.10 - TRANSFER OF FUEL INCIDENTAL TO A SALE OR LEASE

A. The provisions of Section 7-9-26 NMSA 1978 do not apply when the transfer or sale of the fuel is incidental to the sale or lease of a vehicle.

B. Example: X Company leases a truck to Y Company in New Mexico. X furnishes all parts and labor required to maintain and repair the leased vehicle and provides tires, oil and gasoline needed during the lease term. Y pays X a fixed predetermined rental charge for the truck along with the above items. The lease contract requires X to furnish the truck filled with gasoline at the beginning of the lease term and to continue to furnish gasoline during the lease term. X furnishes gasoline to Y only in conjunction with the rental of the truck. Z Company sells to X all the gasoline X requires for the truck it leased to Y. X's total receipts from leasing the truck to Y are subject to the gross receipts tax. No part of X's receipts are exempt from the gross receipts tax, because X's receipts are not receipts from “selling and the use of gasoline”. Z's receipts from selling gasoline to X are exempt from the gross receipts tax if the tax imposed by Section 7-13-3 NMSA 1978 or Section 7-16A-3 NMSA 1978 has been paid on that gasoline and not refunded.

[3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.114.10 NMAC – Rn, 3 NMAC 2.26.10 & A, 5/15/01]

7-9-26.1. EXEMPTION--GROSS RECEIPTS TAX AND COMPENSATING TAX--FUEL FOR SPACE VEHICLES.--

A. Exempted from the gross receipts tax are the receipts from selling fuel, oxidizer or a substance that combines fuel and oxidizer to propel space vehicles or to operate space vehicle launchers.

B. Exempted from the compensating tax is the use of fuel, oxidizer or a substance that combines fuel and oxidizer to propel space vehicles or to operate space vehicle launchers.

(Laws 2003, Chapter 62, Section 1)

7-9-27. EXEMPTION--COMPENSATING TAX--PERSONAL EFFECTS.--Exempted from the compensating tax is the use by an individual of personal or household effects brought into the state in connection with the establishment by him of an initial residence in this state and the use of property brought into the state by a nonresident for his own nonbusiness use while temporarily within this state.

3.2.115.8 - BUSINESS USE OF PROPERTY

A. The provisions of Section 7-9-27 NMSA 1978 do not apply to property used in connection with the engaging in business in New Mexico. The use of property for business purposes in New Mexico is not exempt from the imposition of the compensating tax.

B. The following examples illustrate the application of Section 7-9-27 NMSA 1978.

(1) Example 1: A, a Colorado corporation, drills oil wells on contract. A moves a rig out of Colorado into New Mexico and sets it up at the well site. A maintains that no compensating tax is due on the value of the rig since A will only be in the state until the one contract is completed. A must report compensating tax measured by the value of the rig. The rig has been brought into New Mexico for business use. If A had leased the rig from a lessor in Colorado, and a substantial portion of the lessor's receipts were derived from leasing, no compensating tax would be imposed on A. However, the receipts of the lessor would be subject to the gross receipts tax.

(2) Example 2: X, a nonresident, obtains a nonresident hunting license for New Mexico. X brings guns and camping gear to New Mexico for the hunt. The use of this equipment is exempt from the compensating tax.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.115.8 NMAC – Rn, 3 NMAC 2.27.8 & A, 5/15/01]

7-9-28. EXEMPTION--GROSS RECEIPTS TAX--OCCASIONAL SALE OF PROPERTY OR SERVICES.--Exempted from the gross receipts tax are the receipts from the isolated or occasional sale of or leasing of property or a service by a person who is neither regularly engaged nor holding himself out as engaged in the business of selling or leasing the same or similar property or service.

3.2.116.8 - CRITERIA USED IN DETERMINING ISOLATED OR OCCASIONAL SALES

The department will use the following criteria, but not exclusively, in determining whether or not a transaction involves only an "isolated or occasional" sale or lease:

A. the nature of the service or property;
B. the nature of the market for the service or property sold or leased;
C. the number of sales or leases made within a given period;
D. the regularity of the sales;
E. the duration of the sales or leasing activity;
F. any promotional activity such as advertising or telephone yellow page listings; and
G. any holding out as being in business by the seller or lessor.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.116.8 NMAC – Rn, 3 NMAC 2.28.8, 5/15/01]

3.2.116.9 - LICENSE TO DO BUSINESS OR HOLDING OUT TO DO BUSINESS

A. Any person who holds a license to sell or lease property or to carry on services or who regularly advertises property or services for lease or sale is holding out as engaged in the business of selling or leasing the same or similar property or services.

B. The following examples illustrate the application of Section 7-9-28 NMSA 1978.

(1) Example 1: D is a doctor who pumps water for private use from a well. D purchases a new pump for the well and sells the old pump to B. D does not have to pay the gross receipts tax on the sale to B. D is not in the business of selling pumps. This is an isolated or occasional transaction by one who is not engaged in the business of selling pumps.

(2) Example 2: The T club is a nonprofit association which is not exempted from the federal income tax pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986. In order to raise money for its other activities, it sponsors a matched roping contest once each year. The T club is not organized for the purpose of conducting roping contests. The very nature of the roping contest requires that it be conducted for only a short time each year, but the roping contest is not isolated or occasional within the meaning of the statute, and the receipts of the T club from the roping contest are subject to the gross receipts tax.

(3) Example 3: G, a homeowner, holds a garage sale every Wednesday for neighbors as consignee of the goods to be sold and claims that the receipts are not subject to gross receipts tax. G is regularly engaged in business and the sales are not isolated or occasional. Therefore G is subject to gross receipt tax.

(4) Example 4: L, an attorney, is a member of the bar of New Mexico. L maintains an office in Albuquerque, but L's main source of income is derived from a salaried position as house counsel for a large industrial firm. L takes one or two criminal cases a year to

maintain abilities as a trial lawyer. While L is not regularly engaged in business as a criminal lawyer, L is holding out as licensed to practice law in New Mexico and, therefore, L's receipts from the cases taken are taxable gross receipts.

(5) Example 5: K purchases vacant land, builds a home, lives in it for a few months, sells it, and then repeats this process three months later. K's activity is not an isolated or occasional transaction. K is regularly engaged in the business of selling homes because of the frequency of the sales. Therefore, K's receipts from the sale of the improvements are subject to gross receipts tax.

(6) Example 6: Z ski club is a nonprofit organization which is sponsoring a ski swap and sale. X, a disenchanted skier, has decided to sell all of X's ski equipment at the club's ski swap and sale. The sale is an isolated or occasional sale, because X is neither regularly engaged nor holding out as engaged in the business of selling or leasing skis, ski equipment, or similar property. Therefore, X's receipts from the sale are exempt from the gross receipts tax. The receipts of the ski club are not subject to the gross receipts tax, because the ski club is merely providing the opportunity for its members to sell or trade their ski equipment. The club retains no receipts from this activity.

(7) Example 7: T is an auctioneer who sells property on a commission or fee basis. X, an individual not engaged in business, takes an old lawn mower to T in order for T to auction it off at the weekly auction. The receipts X derived from such sale are exempted from the gross receipts tax because the sale is isolated and occasional and X is neither regularly engaged nor holding out as engaged in the business of selling or leasing the same or similar property.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.116.9 NMAC – Rn, 3 NMAC 2.28.9 & A, 5/15/01]

3.2.116.10 - PERSONS HAVING THREE OR FEWER RENTAL UNITS

Any person who rents or leases three or fewer rental units of real property is not regularly engaged in the business of leasing real property for the purposes of Sections 7-9-28 and 7-9-53 NMSA 1978. Such a person need not register with the taxation and revenue department for gross receipts tax purposes nor report the receipts if there are no other receipts, but the person may be required to register to report another tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.116.10 NMAC – Rn, 3 NMAC 2.28.10 & A, 5/15/01]

3.2.116.11 - SALE OR LEASING THE SAME OR SIMILAR PROPERTY

A. Receipts from an isolated or occasional sale are exempt pursuant to Section 7-9-28 NMSA 1978 only when the seller of the property is not engaged in the business of selling or leasing the same or similar property.

B. Example: T is regularly engaged in the business of leasing construction and paving equipment to third parties. T contemplates terminating its leasing business and plans on having all equipment sold at public auction by a third party. Since T is regularly engaged in the business of leasing property which is the same as or similar to the property to be sold, the receipts from the sale are not exempt pursuant to Section 7-9-28 NMSA 1978 as isolated or occasional.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.116.11 NMAC – Rn, 3 NMAC 2.28.11 & A, 5/15/01]

3.2.116.12 - EXECUTORS' AND ADMINISTRATORS' FEES

A. The receipts of any person appointed as administrator or executor of an estate are subject to the gross receipts tax and are not exempt from the gross receipts tax pursuant to Section 7-9-28 NMSA 1978. The duration of the person's activity in performing the service, usually a minimum of eight (8) months, indicates that the person is regularly engaged in the business of selling services as an executor or administrator.

B. Where an administrator or executor effectively waives the right to receive statutory fees or commissions within a reasonable time after commencing to serve as the executor and all other actions by that person with respect to the estate are consistent with the intention to render a gratuitous service, the administrator or executor is not subject to the gross receipts tax on the value of the services rendered.

C. Example: E, an individual appointed executor of an estate by a court order, performs the duties of executor for a period of approximately eight (8) months. E is not otherwise engaged in the business of performing services as an executor or fiduciary and is not an attorney or certified public accountant or anyone who customarily receives fees for the performance of professional services. E is not an employee of a bank, trust department, or financial institution. Receipts of E are subject to the gross receipts tax because the duration of E's activity in performing the service indicates that E is regularly in the business of selling services as an executor.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.116.12 NMAC – Rn, 3 NMAC 2.28.12 & A, 5/15/01]

3.2.116.13 - TRUSTEE FEES

A. The receipts of a person appointed as trustee, who is not an employee of the trust, court or other appointing authority, are not exempt from gross receipts tax under the provisions of Section 7-9-28 NMSA 1978 if the appointment exceeds a term of more than 30 days.

B. Example: Q, an individual appointed trustee by a court order, performs the duties of a trustee for a period of approximately eighteen (18) months at a specified monthly rate of compensation. Q is not otherwise engaged in the business of performing as a fiduciary, is not an attorney or a certified public accountant or anyone who customarily receives fees for the performance of personal services. Q is not an employee of a bank, trust department or other financial institution. Receipts of Q are subject to the gross receipts tax because the duration of Q's activity in performing the service indicates that Q is regularly engaged in the business of selling services as trustee.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.116.13 NMAC – Rn, 3 NMAC 2.28.13 & A, 5/15/01]

3.2.116.14 - SAFE HARBOR LEASE - SELLER/LESSEE

A seller/lessee who enters into a qualified “safe harbor lease” transaction as defined in Section 168 of the Internal Revenue Code and who is not in the business of selling or leasing the same type of property being sold under the “safe harbor lease” will not be subject to the gross receipts tax on the sale and subsequent receipts derived from such transaction since those receipts are exempt under Section 7-9-28 NMSA 1978. A seller/lessee may not issue a nontaxable transaction certificate to purchase the property from a vendor.

[2/23/83, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.116.14 NMAC – Rn, 3 NMAC 2.28.14 & A,

5/15/01]

7-9-29. EXEMPTION--GROSS RECEIPTS TAX--CERTAIN ORGANIZATIONS.--

A. Exempted from the gross receipts tax are the receipts of organizations that demonstrate to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended or renumbered.

B. Exempted from the gross receipts tax are the receipts from carrying on chamber of commerce, visitor bureau and convention bureau functions of organizations that demonstrate to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(6) of the United States Internal Revenue Code of 1954, as amended or renumbered.

C. This section does not apply to receipts derived from an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered.

3.2.117.8 - RECEIPTS OF 501(c)(3) ORGANIZATIONS AFTER JULY 1, 1970

Receipts of organizations which demonstrate to the department that they have been granted an exemption from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, Section 501(c)(3) of the U.S. Internal Revenue Code of 1954 or Section 101(6) of the U.S. Internal Revenue Code of 1939 are exempt from the gross receipts tax regardless of their source, unless the receipts are derived from an unrelated trade or business as defined in Section 513 of the Internal Revenue Code of 1986, Section 513 of the United States Internal Revenue Code of 1954 or Section 422(b) of the United States Internal Revenue Code of 1939.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.117.8 NMAC – Rn, 3 NMAC 2.29.8, 5/15/01]

3.2.117.9 - RECEIPTS OF 501(c)(6) ORGANIZATIONS AFTER JULY 1, 1988 - GENERAL RULES

A. For the purposes of the exemption provided by Subsection B of Section 7-9-29 NMSA 1978, a chamber of commerce, visitor bureau or convention bureau function is an activity commonly, usually or typically carried on by such an organization. Receipts of a 501(c)(6) organization from activities which are never, rarely or atypically carried on by chambers of commerce, visitor bureaus or convention bureaus are not exempt from gross receipts tax under Subsection B of Section 7-9-29 NMSA 1978, regardless of whether those receipts are exempt from federal income tax.

B. It is not necessary for the words “chamber of commerce”, “visitor bureau” or “convention bureau” to appear in the name of the 501(c)(6) organization for the exemption to apply.

C. Section 3.2.117.9 NMAC is applicable to transactions occurring on or after July 1, 1988.

[6/28/89, 11/26/90, 11/15/96; 3.2.117.9 NMAC – Rn, 3 NMAC 2.29.9 & A, 5/15/01]

3.2.117.10 - RECEIPTS OF 501(c)(6) ORGANIZATIONS - EXAMPLES

A. Some examples of receipts of 501(c)(6) organizations from "carrying on chamber of commerce, visitor bureau and convention bureau functions" are:

(1) Receipts from sales of audio or video materials promoting the local area.

(2) Receipts from admission fees to business seminars sponsored by the 501(c)(6) organization either by itself or in cooperation with other entities.

(3) Receipts of the 501(c)(6) organization from fund-raising events.

B. Section 3.2.117.10 NMAC is applicable to transactions occurring on or after July 1, 1988.

[6/28/89, 11/26/90, 11/15/96; 3.2.117.10 NMAC – Rn, 3 NMAC 2.29.10, 5/15/01]

3.2.117.11 SINGLE MEMBER LIMITED LIABILITY COMPANY WHOSE SOLE MEMBER IS A 501(c)(3) ORGANIZATION:

A. A single member limited liability company (llc) whose sole member is a 501(c)(3) organization will be treated like a 501(c)(3) organization and receive the same treatment for purposes of Section 7-9-29 NMSA 1978 so long as the llc is recognized by the internal revenue service as a disregarded entity for federal income tax purposes.

B. Any receipts of an llc described in Subsection A above that are derived from an unrelated trade or business as defined in Section 513 of the Internal Revenue Code of 1986, as amended or renumbered, are not exempt from gross receipts tax under Subsection A of Section 7-9-29 NMSA 1978.

[3.2.117.11 NMAC - N, 1/15/15]

7-9-30. EXEMPTION--COMPENSATING TAX--RAILROAD EQUIPMENT AND AIRCRAFT.--

A. Exempted from the compensating tax is the use of railroad locomotives, trailers, containers, tenders or cars procured or bought for use in railroad transportation.

B. Exempted from the compensating tax is the use of commercial aircraft bought or leased primarily for use in the transportation of passengers or property for hire in interstate commerce.

C. Exempted from the compensating tax is the use of space vehicles for transportation of persons or property in, to or from space.

(Laws 2003, Chapter 62, Section 2)

3.2.118.7 - RAILROAD DEFINED

A "railroad" is an enterprise created and operated to carry on a fixed track passengers and freight, or passengers or freight, for rates or tolls, without discrimination as to those who demand transportation.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.118.7 NMAC – Rn, 3 NMAC 2.30.7, 5/15/01]

7-9-31. EXEMPTION--GROSS RECEIPTS AND COMPENSATING TAX--RESALE ACTIVITIES OF AN ARMED FORCES INSTRUMENTALITY.--Exempted from the gross receipts and compensating tax are the receipts from selling tangible personal property and the use of property by any instrumentality of the armed forces of the United States engaged in resale activities.

3.2.119.8 - CONCESSIONAIRES ON FEDERAL AREAS

The receipts of and the use of property by concessionaires and others, who are carrying on activities within a military or other federal area, which is within the boundaries of New Mexico, except agencies or instrumentalities of the federal government (such as instrumentalities of the armed forces of the United States engaged in resale activities), are subject to the gross receipts and compensating tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.119.8 NMAC – Rn, 3 NMAC 2.31.8, 5/15/01]

7-9-32. EXEMPTION--GROSS RECEIPTS TAX--OIL AND GAS OR MINERAL INTERESTS.--Exempted from the gross receipts tax are the receipts from the sale of or leasing of oil, natural gas or mineral interests.

7-9-33. EXEMPTION--GROSS RECEIPTS TAX--PRODUCTS SUBJECT TO OIL AND GAS EMERGENCY SCHOOL TAX ACT.--

A. Exempted from the gross receipts tax are receipts from the sale of products the severance of which is subject to the tax imposed by the Oil and Gas Emergency School Tax Act except that receipts from the sale of products other than for subsequent resale in the ordinary course of business, for consumption outside the state, or for use as an ingredient or component part of a manufactured product are subject to the Gross Receipts and Compensating Tax Act as well as to the Oil and Gas Emergency School Tax Act.

B. No gross receipts tax or compensating tax pursuant to the Gross Receipts and Compensating Tax Act shall apply to storing crude oil, natural gas or liquid hydrocarbons, individually or any combination, or to the use of such products for fuel in the operation of a "production unit" as defined by the Oil and Gas Emergency School Tax Act.

3.2.121.8 - FUEL IN THE OPERATION OF A "PRODUCTION UNIT"

Receipts from the sale of oil, natural gas or liquid hydrocarbon, individually or any combination thereof, including butane and propane, when such products are used as fuel in the operation of a "production unit" as defined in Section 7-31-2 NMSA 1978 of the Oil and Gas Emergency School Tax Act are subject to the gross receipts tax. Only the value of the oil, natural gas or liquid hydrocarbon, individually or any combination thereof, produced on a "production unit" and used as fuel on the same "production unit" is exempt from provisions of the Gross Receipts and Compensating Tax Act.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 10/31/97; 3.2.121.8 NMAC – Rn, 3 NMAC 2.33.8 & A, 5/15/01]

3.2.121.9 - WHICH RECEIPTS ARE EXEMPT AND WHICH ARE TAXABLE

A. To be exempt under Subsection A of Section 7-9-33 NMSA 1978, receipts are required to be from the sale of product for resale in the ordinary course of business, for consumption out of state or for use as an ingredient or component part of a manufactured product. Receipts from the sale of product for any other purpose are not exempt under Subsection A of Section 7-9-33 NMSA 1978.

B. Examples:

(1) A producer sells product to a public utility who uses the product in New Mexico to produce electricity. The product does not become an ingredient or component part of the electricity produced. Therefore the producer's receipts from the sale are not exempt from the gross receipts tax under Subsection A of Section 7-9-33 NMSA 1978. Unless some other exemption or deduction applies, the receipts from the sale are subject to gross receipts tax as well as to the emergency school tax.

(2) A producer sells product to a broker who, in turn, sells the product to a public utility who uses the product in New Mexico to produce electricity. The product does not become an ingredient or component part of the electricity produced. Because the sale by the producer to the broker is a sale for re-sale in the ordinary course of business, the producer's receipts from the transaction are exempt from gross receipts. The broker's sale of the product to the public utility,

however, are not exempt from the gross receipts tax under Subsection A of Section 7-9-33 NMSA 1978. Unless some other exemption or deduction applies, the broker's receipts from the sale to the public utility are subject to gross receipts tax even though the producer was subject to the emergency school tax on the product.

(3) A producer sells natural gas to a chemical company which incorporates the gas into chemical fertilizer that it manufactures. The producer's receipts from this sale are exempt under Subsection A of Section 7-9-33 NMSA 1978.

(4) A producer sells natural gas to an out-of-state public utility that transports the gas out-of-state for sale to its out-of-state customers for consumption or other use outside New Mexico. The producer's receipts from the sale are exempt from gross receipts under Subsection A of Section 7-9-33 NMSA 1978.

(5) A producer sells oil to an in-state refinery that refines the oil into gasoline and other products. The oil is used as an ingredient of manufactured products and, therefore, the producer's receipts from the sale are exempt from gross receipts under Subsection A of Section 7-9-33 NMSA 1978.

[10/31/97; 3.2.121.9 NMAC – Rn, 3 NMAC 2.33.9 & A, 5/15/01]

7-9-34. EXEMPTION--GROSS RECEIPTS TAX--REFINERS AND PERSONS SUBJECT TO NATURAL GAS PROCESSORS TAX ACT.--

A. Exempted from the gross receipts tax are receipts from the sale or processing of products the processing of which is subject to the privilege tax imposed by the Natural Gas Processors Tax Act except that receipts from the sale of products other than for subsequent resale in the ordinary course of business, for consumption outside the state, or for use as an ingredient or component part of a manufactured product are subject to the Gross Receipts and Compensating Tax Act as well as to the Natural Gas Processors Tax Act.

B. No gross receipts or compensating tax pursuant to the Gross Receipts and Compensating Tax Act shall apply to receipts from storing or using crude oil, natural gas or liquid hydrocarbons, individually or any combination, when stored or used in New Mexico by a "processor," as defined by the Natural Gas Processors Tax Act, or by a person engaged in the business of refining oil, natural gas or liquid hydrocarbons, who stores or uses the crude oil, natural gas or liquid hydrocarbons in the regular course of his refining business.

7-9-35. EXEMPTION--GROSS RECEIPTS TAX--NATURAL RESOURCES SUBJECT TO RESOURCES EXCISE TAX ACT.--Exempted from the gross receipts tax are receipts from the sale or processing of natural resources the severance or processing of which are subject to the taxes imposed by the Resources Excise Tax Act except as otherwise provided in Section 7-25-8 NMSA 1978.

3.2.123.8 - RECEIPTS NOT EXEMPT

A. The receipts from any sale of natural resources made to the final consumer are not exempt under the provisions of Section 7-9-35 NMSA 1978. The receipts from certain types of transactions may qualify for specific deductions allowed under the provisions of the Gross Receipts and Compensating Tax Act in which instance the seller must report and deduct such receipts on a CRS-1 Combined Report Form. Only those receipts from sales for subsequent resale in the ordinary course of business and from sales for use as an ingredient or component part of a manufactured product are exempt under Section 7-9-35 NMSA 1978 and not required to be reported on a CRS-1 Combined Report Form.

B. Example: T Co. mines turquoise; it sells some of its turquoise in its turquoise shop at the mine site and sells the remainder to a jewelry manufacturer, who delivers a nontaxable transaction certificate pursuant to Section 7-9-46 NMSA 1978, or who delivers a written statement pursuant to Section 7-9-74 NMSA 1978, that the turquoise purchased will be used in manufacturing jewelry. Even though the T Co. is required to pay the resources excise tax under Section 7-25-8 NMSA 1978, the receipts from the turquoise sold in the shop are subject to gross receipts tax, because the sale is not a sale for subsequent sale in the ordinary course of business or for use as an ingredient or component part of a manufactured product. However the receipts from the sale to the jewelry manufacturer are not subject to the gross receipts tax unless pursuant to Section 7-9-74 NMSA 1978, supra, sales to the jewelry manufacturer exceed $1,000 during a twelve-month period.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 4/30/99; 3.2.123.8 NMAC – Rn, 3 NMAC 2.35.8 & A, 5/15/01]

3.2.123.9 - CLEARING LAND FOR MINING OPERATIONS

Leveling or clearing land, including the removal of trees, brush and the overburden in order to prepare the land for mining operations, is “construction” under Section 7-9-3 NMSA 1978, and subject to the gross receipts tax. Such activity is not severing or processing pursuant to Section 7-9-35 NMSA 1978 and, therefore, is not exempt from the gross receipts tax.

[6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.123.9 NMAC – Rn, 3 NMAC 2.35.9 & A, 5/15/01]

3.2.123.10 - [Repealed.]

[11/8/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 9/15/98; R 1/29/99; 3.2.123.10 NMAC – Rn, 3 NMAC 2.35.10; 5/15/01]

7-9-36. EXEMPTION--GROSS RECEIPTS TAX--OIL AND GAS CONSUMED IN THE PIPELINE TRANSPORTATION OF OIL AND GAS PRODUCTS.--Exempted from the gross receipts tax are receipts from the sale of oil, natural gas, liquid hydrocarbon or any combination thereof consumed as fuel in the pipeline transportation of such products.

3.2.124.8 - FUEL CONSUMED IN THE OPERATION OF A "PRODUCTION UNIT"

Receipts from the sale of oil, natural gas, liquid hydrocarbon or any combination of these products, including butane and propane, when these products are consumed as fuel in the operation of a "production unit" to lift oil, natural gas, liquid hydrocarbon or any combination thereof from its underground location to the surface, is not the sale of these products to be consumed as fuel in the pipeline transportation of these products. Therefore, receipts from the sale of these products are not exempt from the gross receipts tax pursuant to Section 7-9-36 NMSA 1978. In addition, the use of these products is not exempt from the compensating tax under Section 7-9-37 NMSA 1978. However, the use of these products on the "production unit" on which they were produced is exempt from the provisions of the Gross Receipts and Compensating Tax Act pursuant to Section 7-9-33 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.124.8 NMAC – Rn, 3 NMAC 2.36.8 & A, 5/15/01]

7-9-37. EXEMPTION--COMPENSATING TAX--USE OF OIL AND GAS IN THE PIPELINE TRANSPORTATION OF OIL AND GAS PRODUCTS.--Exempted from the compensating tax is the use of oil, natural gas, liquid hydrocarbon or any combination thereof as fuel in the pipeline transportation of such products.

7-9-38. EXEMPTION--COMPENSATING TAX-- USE OF ELECTRICITY IN THE PRODUCTION, CONVERSION AND TRANSMISSION OF ELECTRICITY.--Exempted from the compensating tax is electricity used in the production and transmission of electricity, including transmission using voltage source conversion technology.
(Laws 2012, Chapter 12, Section 1)

3.2.126.8 - USE OF ELECTRICITY IN PRODUCTION AND TRANSMISSION OF ELECTRICITY

A. Electricity used directly in the operation of a generating plant of an electric utility in New Mexico and electricity used directly in the operation of transmission facilities of an electric utility in New Mexico is used in the production and transmission of electricity pursuant to Section 7-9-38 NMSA 1978 and is, therefore, exempted from the compensating tax.

B. Electricity used in the operation of offices, warehouses, or any facility of an electric utility in New Mexico other than directly in a generating plant or transmission facility is not used in the production or transmission of electricity within the meaning of Section 7-9-38 NMSA 1978 and the value of such electricity is, therefore, subject to the compensating tax.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.126.8 NMAC – Rn, 3 NMAC 2.38.8 & A, 5/15/01]

7-9-38.1. EXEMPTION--GROSS RECEIPTS TAX--INTERSTATE TELECOMMUNICATION SERVICES.--Exempted from gross receipts are receipts from the sale or provision of interstate telecommunications services subject to the Interstate Telecommunications Gross Receipts Tax Act.
(Laws 1993, Chapter 31, Section 8)

7-9-38.2. EXEMPTION--GROSS RECEIPTS TAX--SALE OF CERTAIN TELECOMMUNICATIONS SERVICES.--Exempted from the gross receipts tax are receipts of a home service provider from providing mobile telecommunications services to persons whose place of primary use is outside New Mexico, regardless of where the mobile telecommunications services originate, terminate or pass through. For the purposes of this section, "home service provider", "mobile telecommunications services" and "place of primary use" have the meanings given in the federal Mobile Telecommunications Sourcing Act.
(Laws 2002, Chapter 18, Section 2)

7-9-39. EXEMPTION--GROSS RECEIPTS TAX--FEES FROM SOCIAL ORGANIZATIONS.--

A. Exempted from the gross receipts tax are the receipts from dues and registration fees of nonprofit social, fraternal, political, trade, labor or professional organizations and business leagues.

B. For the purposes of this section:

(1) "dues" means amounts that a member of an organization pays at recurring intervals to retain membership in an organization where such amounts are used for the general maintenance and upkeep of the organization; and

(2) "registration fees" means amounts paid by persons to attend a specific event sponsored by an organization to defray the cost of the event.

3.2.127.8 - RECEIPTS DERIVED FROM ASSESSMENTS

The receipts of a nonprofit social or fraternal organization from assessments made to its members when members who are assessed receive blazers, emblems, or services of more than nominal value upon payment of the assessments are subject to the gross receipts tax. These receipts are not exempted from the gross receipts tax pursuant to Section 7-9-39 NMSA 1978 because they are not receipts derived from either “dues” or “registration fees”.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.127.8 NMAC – Rn, 3 NMAC 2.39.8 & A, 5/15/01]

3.2.127.9 - OTHER ORGANIZATIONS

The receipts of organizations other than the type of organizations specifically referred to in Section 7-9-39 NMSA 1978 from “dues” and “registration fees” are not exempt from the gross receipts tax pursuant to Section 7-9-39 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.127.9 NMAC – Rn, 3 NMAC 2.39.9 & A, 5/15/01]

3.2.127.10 - GENERAL EXAMPLES - REGISTRATION FEES

A. Example 1: The XYZ Association holds a convention once each year. The registration fee is $10.00 per person. This registration fee is exempt.

B. Example 2: The D Club, a corporation not organized for profit, has an annual deer hunt on property which it owns. For a fee of $300 a member is allowed to hunt on the ranch for one week. The club refuses to pay gross receipts tax on these receipts on the theory that the receipts are in fact dues. These receipts are not dues. The term “dues” refers to amounts which a member of an organization pays at recurring intervals for the general maintenance and upkeep of an organization. The fee is not a registration fee because a deer hunt is not similar to a convention. Furthermore, the D Club is not a nonprofit social, fraternal, political, trade, labor or professional organization, nor a business league, therefore, the receipts from the annual hunt are subject to the gross receipts tax.

C. Example 3: The W Association, an association not organized for profit, is formed to supply water for non-irrigational purposes to the members of the association. A $200 initial

fee is levied upon each new member. The fee is used to pay for the installation of service to the member's property and to apply to the debt owed on the existing equipment. Each month thereafter, the association levies a $5.00 charge on each member. The association maintains that the initial fee is a registration fee, the monthly charges membership dues, and therefore neither are subject to the gross receipts tax under Section 7-9-39 NMSA 1978. All receipts of the association are used for the purpose of providing services to the members. They are not dues or registration fees. Moreover, the association is not a nonprofit social, fraternal, political, trade, labor or professional organization, nor a business league. The receipts of the association are subject to gross receipts tax.

D. Example 4: Z is a food club organized to provide lower prices for its members through high volume and direct purchasing. It is not organized for profit. Each member pays $20.00 a year to cover the cost of administration. These receipts, though being members' dues, are subject to tax because Z is not a nonprofit social, fraternal, political, trade, labor or professional organization, nor a business league. Receipts from the food purchases of the members are also subject to the gross receipts tax.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.127.10 NMAC – Rn, 3 NMAC 2.39.10 & A, 5/15/01]

3.2.127.11 - RENTAL OF ROOMS IN A ROOMING HOUSE

Receipts from rental of rooms in a rooming house, even though denominated as “dues and registration fees” by nonprofit, social, fraternal, political, trade, business, labor or professional organizations are subject to the gross receipts tax. Such receipts, no matter how denominated, are not dues and registration fees as used in Section 7-9-39 NMSA 1978.

[6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.127.11 NMAC – Rn, 3 NMAC 2.39.11 & A, 5/15/01]

3.2.127.12 - CIVIC ORGANIZATIONS ARE “SOCIAL” ORGANIZATIONS

Civic leagues, civic organizations and social welfare organizations that have been determined by the commissioner of internal revenue to be organizations described by Section 501(c)(4) of the Internal Revenue Code are “social” organizations for the purposes of Section 7-9-39 NMSA 1978.

[3.2.127.12 NMAC - N, 10/31/2000]

7-9-40. EXEMPTION--GROSS RECEIPTS TAX--PURSES AND JOCKEY REMUNERATION AT NEW MEXICO RACETRACKS--RECEIPTS FROM GROSS AMOUNTS WAGERED.--

A. Exempted from the gross receipts tax are the receipts of horsemen, jockeys and trainers from race purses at New Mexico horse racetracks subject to the jurisdiction of the state racing commission.

B. Exempted from the gross receipts tax are the receipts of a racetrack from the commissions and other amounts authorized by Section 60-1-10 NMSA 1978 to be retained by a racetrack conducting horse races under the authority of a license from the state racing commission.

3.2.128.7 - HORSEMEN DEFINED

The term "horsemen" as used in Section 7-9-40 NMSA 1978 means the owners of race horses that win purse money in races held at New Mexico horse racetracks.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.128.7 NMAC – Rn, 3 NMAC 2.40.7 & A, 5/15/01]

7-9-41. EXEMPTION--GROSS RECEIPTS TAX--RELIGIOUS ACTIVITIES.--Exempted from the gross receipts tax are the receipts of a minister of a religious organization, which organization has been granted an exemption from federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended or renumbered, from religious services provided by the minister to an individual recipient of the service.

3.2.129.7 - MINISTER DEFINED

"Minister" within the meaning of Section 7-9-41 NMSA 1978 shall be construed to include priests, rabbis, christian science practitioners, bishops in the church of Jesus Christ of the latter day saints and other persons who perform services of a similar nature for, and as an integral part of the activities of, a religious organization granted exemption under Section 501(c)(3) of the United States Internal Revenue Code of 1954 or Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered.

[11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.129.7 NMAC – Rn, 3 NMAC 2.41.7 & A, 5/15/01]

7-9-41.1. EXEMPTION--GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX--ATHLETIC FACILITY SURCHARGE.--Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts of a university from an athletic facility surcharge imposed pursuant to the University Athletic Facility Funding Act.
(Laws 2007, Chapter 117, Section 1)

7-9-41.2. EXEMPTION--COMPENSATING TAX--LOCOMOTIVE ENGINE FUEL.--Exempted from the compensating tax is the use of fuel to be loaded or used by a common carrier in a locomotive engine. For the purposes of this section, "locomotive engine" means a wheeled vehicle consisting of a self-propelled engine that is used to draw trains along railway tracks.
(Laws 2008, Chapter 11, Section 1 – Contingent Effective Date of July 1, 2009, if certification is received prior to January 1, 2009; Contingent Effective Date of July 1, 2010, if certification is received between January 1, 2009, and January 1, 2010 – never became effective.)

7-9-41.3. EXEMPTION--RECEIPTS FROM SALES BY DISABLED STREET VENDORS.--

A. Exempt from payment of the gross receipts tax are receipts from the sale of goods by a disabled street vendor.

B. As used in this section:

(1) "disabled" means to be blind or permanently disabled with medical improvement not expected pursuant to 42 USCA 421 for purposes of the federal Social Security Act or to have a permanent total disability pursuant to the Workers' Compensation Act; and

(2) "street vendor" means a person licensed by a local government to sell items of tangible personal property by newly setting up a sales site daily or selling the items from a moveable cart, tray, blanket or other device.

(Laws 2007, Chapter 45, Section 13; Laws 2007, Chapter 237, Section 1)

7-9-41.4. EXEMPTION--OFFICIATING AT NEW MEXICO ACTIVITIES ASSOCIATION-SANCTIONED SCHOOL EVENTS.--Exempted from the gross receipts tax are the receipts from refereeing, umpiring, scoring or other officiating at school events sanctioned by the New Mexico activities association.
(Laws 2009, Chapter 62 Section 1)

7-9-43. NONTAXABLE TRANSACTION CERTIFICATES AND OTHER EVIDENCE REQUIRED TO ENTITLE PERSONS TO DEDUCTIONS.--

A. Except as provided in Subsection B of this section, a person may establish entitlement to a deduction from gross receipts allowed pursuant to the Gross Receipts and Compensating Tax Act by obtaining a properly executed nontaxable transaction certificate from the purchaser. Nontaxable transaction certificates shall contain the information and be in a form prescribed by the department. The department by regulation may deem to be nontaxable transaction certificates documents issued by other states or the multistate tax commission to taxpayers not required to be registered in New Mexico. Only buyers or lessees who have a registration number or have applied for a registration number and have not been refused one under Subsection C of Section 7-1-12 NMSA 1978 shall execute nontaxable transaction certificates issued by the department. If the seller or lessor has been given an identification number for tax purposes by the department, the seller or lessor shall disclose that identification number to the buyer or lessee prior to or upon acceptance of a nontaxable transaction certificate.

B. Except as provided in Subsection C of this section, a person who does not comply with Subsection A of this section may establish entitlement to a deduction from gross receipts by presenting alternative evidence that demonstrates the facts necessary to support entitlement to the deduction, but the burden of proof is on that person.

Alternative evidence includes:

(1) invoices or contracts that identify the nature of the transaction;

(2) documentation as to the purchaser's use or disposition of the property or service;

(3) a statement from the purchaser indicating that the purchaser sold or intends to resell the property or service purchased from the seller, either by itself or in combination with other property or services, in the ordinary course of business. The statement from the purchaser shall include:

(a) the seller's name;

(b) the date of the invoice or date of the transaction;

(c) the invoice number or a copy of the invoice;

(d) a copy of the purchase order, if available;

(e) the amount of purchase; and

(f) a description of the property or service purchased or leased; or

(4) any other evidence that demonstrates the facts necessary to establish entitlement to the deduction.

C. Subsection B of this section does not apply to sellers of electricity or fuels that are parties to an agreement with the department pursuant to Section 7-1-21.1 NMSA 1978 regarding the deduction pursuant to Subsection B of Section 7-9-46 NMSA 1978.

D. When a person accepts in good faith a properly executed nontaxable transaction certificate from the purchaser, the properly executed nontaxable transaction certificate shall be conclusive evidence that the proceeds from the transaction are deductible from the person's gross receipts.

E. To exercise the privilege of executing appropriate nontaxable transaction certificates, a buyer or lessee shall apply to the department for permission to execute nontaxable transaction certificates, except with respect to documents issued by other states or the multistate tax commission that the department has deemed to be nontaxable transaction certificates.

F. If a person has accepted in good faith a properly executed nontaxable transaction certificate, but the purchaser has not employed the property or service purchased in the nontaxable manner or has provided materially false or inaccurate information on the nontaxable transaction certificate, the purchaser shall be liable for an amount equal to any tax, penalty and interest that the seller would have been required to pay if the seller had not complied with Subsection A of this section.

G. Any person who knowingly or willfully provides false or inaccurate information on a nontaxable transaction certificate or as alternative evidence provided in support of a claim for a deduction may be subject to prosecution under Sections 7-1-72 and 7-1-73 NMSA 1978.

(Laws 2018, Chapter 56, Section 1)

3.2.201.8 - POSSESSION AND DELIVERY OF NONTAXABLE TRANSACTION CERTIFICATES - TYPES OF CERTIFICATES

A. With respect to receipts and transactions deductible under the Gross Receipts and Compensating Tax Act:

(1) The taxpayer should be in possession of all nontaxable transaction certificates (nttcs) at the time the deductible transaction occurs.

(2) The taxpayer must be in possession of and have available for inspection all nttcs for the period of an audit within 60 days of notice by the department requiring such possession. This notice may be sent out or delivered no earlier than the commencement of an audit of the taxpayer claiming the deduction.

(3) An nttc acquired by the taxpayer after the 60 days following notice have expired will not be honored by the department for the period covered by the audit.

(4) An nttc executed using the department’s online system, and that is recorded on the online system, will be considered to be in the possession of the taxpayer to whom the nttc has been executed.

B. An audit of such a taxpayer commences when one of the following occurs:

(1) a department auditor physically gives a dated letter of introduction which states the auditor is commencing an authorized audit of the taxpayer or states the auditor requires the production of the taxpayer's books and records for examination; or

(2) a department employee begins an authorized office examination of files, books or records pertaining to the taxpayer, provided that the taxpayer or the taxpayer's representative is

informed reasonably promptly by letter or in person that an audit has commenced.

C. The department issues different types of nttcs. Each type is of limited usage and relates only to one or more particular deductions. An nttc is not valid if it does not contain the information or is not in a form prescribed by the department. For a deduction that requires possession of the appropriate nttc, other types of proof of deductibility may not and will not be accepted by the department, unless other proof is permitted explicitly by the deduction or another provision of the Gross Receipts and Compensating Tax Act with respect to that deduction.

D. The taxpayer need be in possession of only one nttc of the type required by the department from each buyer or lessee in order to claim the particular deduction allowed by that type of nttc. A taxpayer need be in possession of only one nttc of the type required by the department in order to claim a particular deduction from a buyer which has several places of business, provided the buyer is operating under only one department identification number.

E. Nothing shall prevent the department from changing the substance, form or type of nttcs to be used. Nothing shall prevent the department from changing the form of notification requiring the possession of nttcs.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 9/20/93, 11/15/96, 4/30/99; 3.2.201.8 NMAC - Rn, 3 NMAC 2.43.1.8, 5/31/01; A, 12/14/12]

3.2.201.9 - APPLICATION FOR AND USE OF NONTAXABLE TRANSACTION CERTIFICATES

Except as provided in Section 3.2.201.17 NMAC, registration and identification of buyers or lessees who, by reason of their status or the nature of use of the property or service purchased or leased by them, would entitle the vendor or lessor to a deduction from gross receipts with respect to receipts from the purchases or leases of some kind of property or service, and application for department-issued nontaxable transaction certificates (nttcs) is accomplished in the following manner:

A. The buyer or lessee registers with the department for gross receipts tax purposes.

B. The buyer or lessee submits to the department a completed application form indicating the type and quantity of nttc forms required.

C. The department, upon receipt and approval of this application form, will issue the buyer or lessee serially numbered nttc forms.

D. After completion of the information required on the nttc and after proper signature, the buyer or lessee executes the original certificate to the seller or lessor and retains one copy for the buyer's or lessee's records. For all subsequent transactions with that seller or lessor, the buyer or lessee is responsible for informing the seller whenever a particular transaction is not covered by the nttc.

E. When a seller or lessor accepts a nttc form, other than the type the seller or lessor is required to possess to sustain the deduction which the seller or lessor is claiming, the deduction shall not be allowed.

F. Except as provided in Section 3.2.201.17 NMAC, only buyers or lessees who have applied for and have been issued nttcs by the department may execute nttcs. An nttc must be executed on the serially numbered form specifically issued to the buyer or lessee by the department. The department may require a person to whom the department has issued nttcs to account for all nttc forms issued to that person. nttcs may not be executed by anyone other than the person to whom the department has issued these certificates.

G. The buyer or lessee who has an excess of unexecuted nttc forms is required to return them to the department. Upon termination of business, the firm must return all unexecuted nttcs to the department. The department may seize excess unexecuted nttcs which are in the possession of a taxpayer.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 9/20/93, 10/28/94, 11/15/96, 9/30/98, 4/30/99; 3.2.201.9 NMAC – Rn, 3 NMAC 2.43.1.9 & A, 5/31/01]

3.2.201.10 - DOCUMENTATION REQUIRED

A. Receipts which are deductible under the Gross Receipts and Compensating Tax Act can be deducted only if documentation justifying the deduction is maintained so it can be verified upon audit.

B. The following examples illustrate the documentation requirements.

(1) Example 1: X sells tangible personal property to Y, a governmental agency. X may deduct the sale if the government purchase order is retained or a copy of the check, the check stub or voucher identifying the source of payment is retained for audit purposes.

(2) Example 2: A, a grocer, makes a cash sale to C, a cafe. C has issued the appropriate type nontaxable transaction certificate (nttc) to A. A may deduct the receipts from the sale if a sales ticket is prepared identifying the property purchased, the name of the customer and the date and amount of the transaction.

(3) Example 3: M, a motor parts store, deducts receipts for sales made over the counter to cash customers who have delivered proper nttcs. A sales ticket is prepared by M indicating the date, the amount and the items purchased. “CASH” is written in the space provided for the customer's name. If M is audited, the deduction would be disallowed; the transaction could not be related to a specific nttc.

C. A taxpayer claiming the deduction under Section 7-9-47 NMSA 1978 has the burden of proving that the sale was in fact a nontaxable sale for resale. If the sale was made to a person who was an active registered retailer or wholesaler at the time of the sale and the property purchased was of the type or types ordinarily purchased for resale by that purchaser, the presumption that the deduction of the receipts from the sale should be disallowed can be overcome during an audit or upon reconsideration. A taxpayer claiming a deduction pursuant to Section 7-9-47 NMSA 1978 who is unable to provide a nttc within the sixty-day period specified in Subsection A of Section 7-9-43 NMSA 1978 will be allowed to submit other evidence, as specified in Subsection F of this section. Such other evidence is meant to provide the department with sufficient information to verify that the deduction under Section 7-9-47 NMSA 1978 is appropriate and will only be accepted if the conditions of Subsection E of Section 7-9-43 NMSA 1978 are met.

D. For purposes of Subsection C of this section, “unable to provide a nttc” means the inability to obtain a nttc within the sixty-day period specified in Subsection A of Section 7-9-43 NMSA 1978 because:

(1) the buyer of the property is no longer engaged in business in New Mexico;

(2) the buyer was authorized by the department to execute nttcs at the time of the transaction but since then the authority to obtain or issue nttcs has been suspended by the department because the buyer is not in compliance with the department for the payment of their taxes;

(3) an act of God caused physical damage to the taxpayer's records or place of business; or

(4) there are other circumstances that reasonably justify a determination that the taxpayer is unable to provide a nttc.

E. The following are examples of when a taxpayer would be "unable to provide a nttc" as that phrase is used in Subsection C of this section:

(1) Example 1: X, a New Mexico retailer, sells tangible personal property to Y, another small retailer located in a rural part of New Mexico. Y purchases the tangible personal property with the intent of reselling it in the ordinary course of business but fails to provide X with the proper nttc to support the resale deduction. Two years later X is selected for an audit by the taxation and revenue department. At the beginning of the audit, X is given a sixty-day letter that requires X to obtain all necessary nttcs to support any deductions taken during the periods being audited. X attempts to obtain a nttc from Y, but is unable to do so because Y is no longer in business in New Mexico. If X can show that Y is no longer in business, X will be considered unable to provide a nttc within the sixty-day period.

(2) Example 2: L, a small lighting company, receives a notice that an audit is to be conducted by the department. L has been instructed to have in its possession all nttcs that support any deductions for the period in questions within sixty days. While compiling the documentation requested by the department, L realizes it does not have the proper nttc for a number of transactions with D, a retail customer. L calls D to obtain the proper nttc but is told by D that the department will not issue nttcs to D because D has an outstanding tax liability and that it is not in compliance. Because D's ability to execute a nttc has been suspended, the department will consider L as being unable to provide a nttc within the sixty-day period specified in Subsection A of Section 7-9-43 NMSA 1978.

F. A taxpayer who is unable to provide a nttc, as provided in Subsection D and E of this section, can provide the department with other evidence, pursuant to the requirements of this section, that will provide the department with sufficient information to verify that the deduction under Section 7-9-47 NMSA 1978 is appropriate. Such other evidence must include one of the following:

(1) information identifying the buyer (i.e., name, address, identification number, etc.) that can be used to verify against department records that the buyer is no longer engaged in business and that the deduction under Section 7-9-47 is appropriate;

(2) a letter sent to the buyer inquiring as to the buyer's disposition of the property purchased from the seller; the letter shall include the following information:

(a) seller's name and combined reporting system (CRS) identification number;

(b) date of invoice(s) or date of transaction(s);

(c) invoice number(s) (copies of actual invoices may be attached);

(d) copies of purchase order(s), if available;

(e) amount of purchase(s);

(f) a description of the property purchased or other identifying information; and

(g) a section completed and signed by the buyer that includes:

(i) the buyer's name, combined reporting system (CRS) identification number, and printed name;

(ii) title of the signor;

(iii) a statement as to the nature of the purchase; and

(iv) a statement of the buyer or signor indicating that the buyer sold or intends to resell the tangible personal property purchased from the seller, either by itself or in combination with other tangible personal property in the ordinary course of business; or

(3) any other documentary evidence that has been approved by the department in writing prior to any assessment of tax or a protest that has been acknowledged by the department prior to December 31, 2011.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 9/30/98; 3.2.201.10 NMAC - Rn, 3 NMAC 2.43.1.10, 5/31/01; A, 8/15/11]

3.2.201.11 CONSTRUCTION CONTRACTORS

A. Any person applying to execute nontaxable transaction certificates (nttcs) related to deductions found under Sections 7-9-51, 7-9-52 or 7-9-52.1 NMSA 1978 must indicate the applicant's New Mexico contractor's license number or furnish proof that no contractor's license is required by the construction industries division of the regulations and licensing department in order to engage in one of the construction activities listed in 7-9-3.4 NMSA 1978. Failure to comply with 3.2.201.11 NMAC will result in denial of the requested certificates.

B. A person engaged in the construction business who makes any false or misleading representations in any material respect in an application for nttcs may become subject to the penalties imposed by Section 7-1-73 NMSA 1978 as well as other penalties, civil or criminal, prescribed in the Tax Administration Act. False or misleading representations include, but are not confined to:

(1) indicating a contractor's license number on the application which is not issued to the applicant or which cannot lawfully be used by the applicant;

(2) applying for nttcs which someone other than the applicant will execute; or

(3) furnishing false or misleading documentation that a contractor's license is not required of the applicant by the construction industries division.

C. Any person who has previously applied for and been issued nttcs related to construction as defined in Section 7-9-3.4 NMSA 1978, under circumstances wherein the person would not have been entitled to obtain such certificates pursuant to 3.2.201.11 NMAC, will be assessed gross receipts or compensating tax, as appropriate, based on the representations actually made in the application for nttcs.

D. Any person engaged in the construction business is presumed not to be engaged in reselling services other than construction services, or, on or after January 1, 2013, construction-related services, in the ordinary course of business. Except as provided in Subsection E of this section, this person will not be issued nttcs other than those appropriate for the deductions under Sections 7-9-51, 7-9-52 and 7-9-52.1 NMSA 1978.

E. A person who can demonstrate to the department’s satisfaction that the person is engaged in the construction business and also in the business of selling property other than construction materials or performing or selling one or more services, that are not construction services or, on or after January 1, 2013, construction-related services, may qualify for and be issued nttcs in addition to those appropriate for the deductions under Sections 7-9-51, 7-9-52 and 7-9-52.1 NMSA 1978. The additional types of nttc may be executed by the person only when the person is acquiring tangible personal property other than construction material, a service other

than a construction service or, on or after January 1, 2013, a construction-related service, in a manner meeting the conditions for execution of the additional type of nttc. In determining whether the person engaged in the construction business is engaged in a business in addition to the construction business, the department will consider these factors:

(1) whether the person possesses, when possession is required, a current license to sell or lease the nonconstruction property or to perform or sell the nonconstruction service;

(2) whether the person has entered into a contract requiring the sale or lease of the nonconstruction property or the performance or sale of the nonconstruction service;

(3) whether the person holds himself out to be in the business; and

(4) other factors deemed appropriate by the secretary.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 9/20/93, 11/15/96, 4/30/99; 3.2.201.11 NMAC - Rn, 3 NMAC 2.43.1.11 & A, 5/31/01; A, 11/30/05; A, 12/14/12]

3.2.201.12 - DELIVERY OF NTTC AFTER DATE REPORT DUE

A. Except as provided otherwise in Subsection D of Section 3.2.201.12 NMAC, a taxpayer who receives a properly executed nontaxable transaction certificate (nttc) or other documentation required by Section 7-9-43 NMSA 1978 for a transaction included in a previously filed return and on which the taxpayer paid the gross receipts tax is entitled to a refund of that previously paid tax. To obtain the refund the taxpayer is required to file a claim for refund and submit either an amended return for each period to which the refund relates or a schedule acceptable to the department containing equivalent information.

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

C. A taxpayer who has been audited by the department and has failed to present the nttcs or other documentation required within the time required to support deductions claimed after having been requested to do so pursuant to Section 3.2.201.8 NMAC is not entitled to the deductions.

D. The provisions of the preceding paragraphs do not apply to deductions claimed with respect to transactions occurring during the period July 1, 1992 through May 31, 1997 if the seller or lessor had received a notice from the department pursuant to Section 3.2.201.8 NMAC to present the nttcs or other documentation and the time for complying with the request expired prior to July 1, 1997. In such cases for receipts from transactions during the period July 1, 1992 through May 31, 1997, the nttc or other acceptable proof must be in the possession of the seller or lessor no later than the date gross receipts from the transaction are required to be reported. Receipt of the nttc or other acceptable proof after that date does not support the deduction or a claim for refund with respect to gross receipts required to be reported prior to that date; such nttc or other acceptable proof will support only deductions for gross receipts required to be reported on or after the date the nttc or other acceptable proof was received. With respect to gross receipts in the period July 1, 1992 through May 31, 1997 for which an appropriate nttc or other acceptable proof is not in the possession of the seller or lessor at the date the gross receipts are required to be reported, any deduction claimed will be disallowed and any claim for refund submitted prior to July 1, 1997 will be denied.

[9/8/86, 11/26/90, 1/20/93, 11/15/96, 9/30/98; 3.2.201.12 NMAC – Rn, 3 NMAC 2.43.1.12 & A, 5/31/01]

3.2.201.13 - MULTIJURISDICTIONAL UNIFORM SALES AND USE TAX CERTIFICATES

A. The department deems the uniform sales and use tax certificate issued by the multistate tax commission or by any member state other than New Mexico to a taxpayer not required to be registered in New Mexico to be a nontaxable transaction certificate (nttc) equivalent to those nttc types issued by the department to support the deductions under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978. As evidence of the deductibility of a specific transaction authorized under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978 the department will accept the multistate tax commission uniform sales and use tax certificate:

(1) only in those situations in which possession of a properly executed nttc is acceptable evidence of the deductibility of the transaction; and

(2) if the uniform sales and use tax certificate is issued by the multistate tax commission or a member state other than New Mexico to a taxpayer not required to be registered in New Mexico.

B. No certificate or other document from any other state or taxing jurisdiction is acceptable evidence under 3.2.201.13 NMAC.

[3/10/87, 11/26/90, 3/15/96, 9/30/98, 4/30/99; 3.2.201.13 NMAC – Rn, 3 NMAC 2.43.1.13 & A, 5/31/01; A, 3/15/10]

3.2.201.14 - GOOD FAITH ACCEPTANCE OF NONTAXABLE TRANSACTION CERTIFICATES

A. Acceptance of nontaxable transaction certificates (nttcs) in good faith that the property or service sold thereunder will be employed by the purchaser in a nontaxable manner is determined at the time of each transaction. The taxpayer claiming the protection of a certificate continues to be responsible that the goods delivered or services performed thereafter are of the type covered by the certificate.

B. Example 1: A type 6 nttc, which may be executed and accepted for the purchase of construction materials, will not protect the deduction taken by an automobile dealer for receipts from the sale of automobile parts or a lumber yard for receipts from the sale of a power saw.

C. Example 2: An automobile dealer who accepts a type 2 nttc from an airline for the purchase of parts cannot rely on the type 2 (resale of tangibles) nttc to protect the deduction of receipts from such sale unless the dealer can demonstrate good faith acceptance by showing that the airline is in the business of reselling parts. A statement on the back of or attached to the certificate separately signed by a responsible employee of the airline showing that the airline runs a retail parts store would protect the dealer who did not know the statement was false.

[6/28/89, 11/26/90, 11/15/96, 9/30/98; 3.2.201.14 NMAC – Rn, 3 NMAC 2.43.1.14, 5/31/01]

3.2.201.15 - PHOTOCOPIES OR OTHER REPRODUCTIONS OF NONTAXABLE TRANSACTION CERTIFICATES

A. Except as provided otherwise in Section 3.2.201.15 NMAC, no person may make photocopies of, or otherwise reproduce, nontaxable transaction certificates (nttcs) issued or executed by the department. Photocopies or other reproductions may be made:

(1) by the department or, upon request of the department, by the person to whom

the nttcs have been issued or the seller or lessor who has accepted an nttc for audit, tax compliance or tax administration purposes;

(2) by the person to whom the nttcs have been issued by the 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 a nttc executed by a buyer or lessee for internal record keeping purposes only.

B. In no event may any buyer, lessee, seller or lessor execute or attempt to execute a photocopy or other reproduction of a previously executed nttc. Doing so is grounds for suspension, pursuant to Section 7-9-44 NMSA 1978, of the right to use nttcs.

[1/20/93, 11/15/96; 3.2.201.15 NMAC – Rn, 3 NMAC 2.43.1.15 & A, 5/31/01]

3.2.201.16 - DIFFERENCE BETWEEN "ISSUE" AND "EXECUTE"

As used in Section 7-9-43 NMSA 1978 and in regulations concerning nontaxable transaction certificates (nttcs), the verb "issue" indicates the process by which the department supplies a requesting taxpayer with one or more nttc forms, which in turn are to be completed by that taxpayer and delivered to the taxpayer's vendors to support a claim of deduction by the vendor. Only the department issues nttcs. The verb "execute" refers to the process by which a taxpayer, having already obtained the requisite forms from the department, completes an nttc form by entering the required information about the vendor to whom the nttc is to be delivered. When timely delivered, the executed nttc serves as the required or permitted proof to support a claim of deduction by the vendor with respect to certain transactions between the taxpayer and the vendor. The department, as a purchaser of goods or services, may also execute nttc forms for delivery to its vendors.

[1/20/93, 11/15/96; 3.2.201.16 NMAC – Rn, 3 NMAC 2.43.1.16 & A, 5/31/01]

3.2.201.17 - SPECIAL NONTAXABLE TRANSACTION CERTIFICATE TYPE OSB AUTHORIZED FOR CERTAIN OUT-OF-STATE BUYERS

A. Any person engaging in business in New Mexico who, within the time required by the provisions of Section 7-9-43 NMSA 1978, accepts a nontaxable transaction certificate denominated as an nttc-osb in good faith that the purchaser will, in the ordinary course of business, either resell the property purchased or incorporate the property purchased as an ingredient or component part of a manufactured product, may deduct the receipts from the sale under Section 7-9-46 or 7-9-47 NMSA 1978. A person who performs a manufacturing service in New Mexico and who, within the time required by the provisions of Section 7-9-43 NMSA 1978, accepts a nttc-osb in good faith that the purchaser is in the business of manufacturing and will have the manufacturing service performed directly upon tangible personal property the purchaser is in the business of manufacturing, or ingredient or component parts thereof, may deduct the receipts from performing the manufacturing service under Section 7-9-75 NMSA 1978.

B. A purchaser qualifies to execute an nttc-osb if the purchaser:

(1) maintains its principle place of business and commercial domicile outside New Mexico;

(2) is registered with or licensed by the state or foreign jurisdiction in which the purchaser maintains a place of business for sales or similar taxes;

(3) does not maintain a business location in New Mexico;

(4) is not subject to New Mexico gross receipts tax pursuant to Section 7-9-4 NMSA 1978 on its receipts; and

(5) is not registered as an agent to collect and pay over New Mexico compensating tax pursuant to Section 7-9-10 NMSA 1978.

C. Any person who sells tangible personal property or performs a manufacturing service, who is engaged in business in New Mexico and who is registered with the department for gross receipts tax purposes, shall be referred to in Section 3.2.201.17 NMAC as a "seller" and may apply to receive blank nttc-osb forms. The seller may then provide a qualifying purchaser with a blank nttc-osb form which the purchaser shall complete and return to the seller. The seller shall not cause or allow the reproduction of any un-issued certificate and shall rely on the department as the sole source of the nttc-osb forms. The department may or may not, at the discretion of the secretary or the secretary's delegate, provide any seller with a supply of nttc-osb forms. A seller, who has received a supply of blank nttc-osb forms, shall retain a copy of each executed form and account for each nttc-osb which has been issued by the department to that seller whether or not each form has been executed by an out-of-state purchaser. If it becomes necessary to void a nttc-osb form, the word "void" shall be written boldly across the face of the form; the seller shall retain and account for the voided certificate.

D. Prior to providing the purchaser with a nttc-osb, the seller shall obtain adequate proof that the purchaser is either registered with or licensed by the appropriate taxing agency of another state or foreign jurisdiction for a sales or similar tax program. To meet this requirement the seller must obtain the purchaser's license or other identification number issued by the appropriate agency of the state or foreign jurisdiction in which the purchaser engages in business and other documentation which clearly identifies that the purchaser is engaged in business in that state. Such other documentation includes, but is not limited to, a business card, purchase order or letterhead which identifies the purchaser, the location of the business, the type of business and the business name under which the purchaser engages in business. The seller shall attach the other documentation to the seller's copy of the executed nttc-osb and retain both in the same manner used by the seller to retain other nontaxable transaction certificates provided by other customers. Proper execution of the nttc-osb shall constitute registration with the department by the purchaser as required by Section 7-9-43 NMSA 1978 and Section 3.2.201.9 NMAC. Failure of the seller to obtain from the purchaser the documentation required by the provisions of Section 3.2.201.17 NMAC shall cause a presumption of acceptance of the nttc-osb without the required good faith that the purchaser will employ the property transferred in a nontaxable manner or had the manufacturing service performed directly on tangible personal property, or ingredient or component parts thereof, that the purchaser is in the business of manufacturing. In this instance, the transaction shall be presumed to be subject to the gross receipts tax and no deduction shall be allowed. If the purchaser fails to provide all information required to be provided by the purchaser on the face of the nttc-osb or if the purchaser either fails or refuses to sign the statement contained within the nttc-osb, such nttc-osb shall not be valid and no deduction shall be allowed for the receipts from selling to that purchaser.

E. The provisions of Section 3.2.201.17 NMAC are applicable to transactions occurring on or after April 1, 1994.

[10/28/94, 11/15/96, 12/15/99; 3.2.201.17 NMAC – Rn, 3 NMAC 2.43.1.17 & A, 5/31/01]

3.2.201.19 - BORDER STATES UNIFORM SALE FOR RESALE CERTIFICATE

A. For transactions specified below, the department deems a border states uniform sale for resale certificate issued by a border state other than New Mexico to a taxpayer not required to be registered in New Mexico to be a nontaxable transaction certificate (nttc) equivalent to those nttc types issued by the department that support the deductions under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978. The department will accept the border states uniform sale for resale certificate as evidence of the deductibility of a specific transaction authorized under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978, only when the following conditions exist:

(1) the buyer is purchasing tangible personal property for resale or incorporation as an ingredient or component part into a manufactured product in the ordinary course of the buyer's business or the buyer is purchasing a manufacturing service on a manufactured product or ingredient or component part thereof;

(2) the tangible personal property purchased or the product, or ingredient or component part thereof, upon which the manufacturing service is performed is to be transported across state or national boundaries; and

(3) the buyer is located in the northern border region or in a border state other than New Mexico.

B. No other certificate or document from any other state or taxing jurisdiction is acceptable evidence under 3.2.201.19 NMAC.

C. For the purposes of 3.2.201.19 NMAC:

(1) "border state" means Arizona, California, New Mexico and Texas and any other state joining the border states caucus subsequent to January 1, 1996; and

(2) "northern border region" means:

(a) the border strip of 20 kilometers parallel, north and south, to the international dividing line between the United Mexican States and the United States of America;

(b) all territory of the lower California states, south lower California and Quintana Roo, the municipality of Cananea, Sonora and part of the state of Sonora as delimited by the border states caucus; and

(c) any additional territory of the United Mexican States incorporated into the definition by the border states caucus subsequent to January 1, 1996.

[3/15/96, 9/30/98, 12/15/99; 3.2.201.19 NMAC – Rn, 3 NMAC 2.43.1.19 & A, 5/31/01; A, 3/15/10]

7-9-43.1. NONTAXABLE TRANSACTION CERTIFICATES NOT REQUIRED BY LIQUOR WHOLESALERS.--Notwithstanding the provisions of Section 7-9-43 NMSA 1978, a liquor wholesaler licensed as a wholesaler by the superintendent of regulation and licensing pursuant to the Liquor Control Act is not required to obtain a nontaxable transaction certificate from a person issued a retailer's, dispenser's, restaurant, public service or governmental license by the superintendent of regulation and licensing pursuant to the Liquor Control Act for the purpose of taking deductions under the Gross Receipts and Compensating Tax Act.
(Laws 1992, Chapter 39, Section 4)

****** REPEALED EFFECTIVE MARCH 2, 2018,***
BY LAWS OF 2018, CHAPTER 56, SECTION 2. ***

7-9-44. SUSPENSION OF THE RIGHT TO USE A NONTAXABLE TRANSACTION CERTIFICATE.--

A. The secretary may suspend for not more than one year the privilege of a person to execute nontaxable transaction certificates if that person:

(1) fails to pay, within one year of the date the tax is due, the compensating tax on the subsequent use of property or services purchased through the execution of a nontaxable transaction certificate; or

(2) executes with the seller or lessor a nontaxable transaction certificate inapplicable to the transaction when no compensating tax is due on that buyer's or lessee's use of the property or service.

B. The secretary may suspend for not more than six months the privilege of a person to execute nontaxable transaction certificates, to claim deductions on the basis of nontaxable transaction certificates accepted by that person or both if that person fails to account in the manner and time required by the department, in accordance with Subsection E of Section 7-9-43 NMSA 1978, for the certificates executed or accepted by that person.

C. A suspension under this section voids the department's approval of the person's application for the privilege of executing nontaxable transaction certificates and, prior to resumption of the privilege, the person whose privilege to execute nontaxable transaction certificates has been suspended shall reapply for the privilege of executing such certificates in accordance with Section 7-9-43 NMSA 1978.

D. Notwithstanding the provisions of Section 7-1-8 NMSA 1978, the department may notify the public or provide for notice to the public of the suspension of a person's privilege to execute nontaxable transaction certificates.

(Laws 2001, Chapter 343, Section 3)

3.2.202.8 - SUSPENSION OF RIGHT TO ISSUE NONTAXABLE TRANSACTION CERTIFICATES

A. In addition to assessing compensating tax, penalty and interest on the value of property or service which was obtained through the issuance of a nontaxable transaction certificate (nttc) but which was subsequently converted to use by the purchaser or lessor, the department may also suspend the purchaser's or lessor's right to issue nttcs. If the department suspends the right to issue nttcs, any certificate issued prior to the date of suspension shall be voided as of the date of the suspension and the department shall send or deliver notice to the recipient of the certificate that the nttc has been voided as of the date that the notice is received and is not valid evidence to support a deduction of the receipts from any subsequent transaction with the person who originally issued that certificate.

B. Example: A lumber yard owner purchases 10,000 board feet of lumber from a lumber mill for resale. In making the purchase, the yard owner gives the mill operator a nontaxable transaction certificate (nttc), the use of which is conditional upon the lumber yard

reselling the lumber in the ordinary course of business. However, instead of reselling all of the lumber, the yard owner uses 4,000 board feet of the lumber to build a storage shed to house lumber supplies. Because the yard owner did not resell the 4,000 board feet in the ordinary course of business, the yard owner must pay the compensating tax imposed by Section 7-9-7 NMSA 1978, for converting that lumber to use. If the yard owner fails to report and pay the compensating tax due within one year of the due date, the secretary or the secretary's delegate may suspend the yard owner's right to use nttcs for a one-year period.
[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.202.8 NMAC – Rn, 3 NMAC 2.44.8 & A, 5/31/01]

7-9-45. DEDUCTIONS.--

A. Receipts may only be deducted once from gross receipts or governmental gross receipts when computing the gross receipts tax or governmental gross receipts tax due.

B. The same receipts shall not be both exempt from the gross receipts tax and deducted from gross receipts.

C. The same receipts shall not be both exempt from the governmental gross receipts tax and deducted from governmental gross receipts.

(Laws 2017 SS, Chapter 3, Section 16)

3.2.203.8 - LIMITATION ON NUMBER OF DEDUCTIONS ALLOWED

A. The receipts from a single transaction may be deducted only once, even when two or more sections of the Gross Receipts and Compensating Tax Act allow a deduction for the receipts from that transaction.

B. Example: X appliance company sells electric ranges, refrigerators and dishwashers to Y, a home builder, who installs them in the kitchens of houses that Y is building for sale. X reports the receipts from the transaction to the department but deducts them first under Section 7-9-47 NMSA 1978, which allows a deduction for sales for resale, and then again under Section 7-9-51 NMSA 1978, which permits a deduction for sales of tangible personal property to persons engaged in the construction business. X will not be allowed to deduct the same receipts twice. Receipts, whether deductible under one or several sections (Sections 7-9-46 through 7-9-78.1 NMSA 1978 or Sections 7-9-83 through 7-9-90 NMSA 1978) may be deducted only once from gross receipts.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.203.8 NMAC – Rn, 3 NMAC 2.45.8 & A, 5/31/01]

3.2.203.9 - PERSONS WHOSE RECEIPTS ARE DEDUCTIBLE

Persons engaging in business, except those persons all of whose receipts are exempted by the provisions of Sections 7-9-13 through 7-9-42 NMSA 1978 or other law, must register and report their gross receipts to the department even if such receipts are deductible under one or more provisions of Sections 7-9-46 through 7-9-78.1 or 7-9-83 through 7-9-90 NMSA 1978.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.203.9 NMAC – Rn, 3 NMAC 2.45.9 & A, 5/31/01]

3.2.203.10 - DEDUCTIONS FROM GROSS RECEIPTS

The deductions provided by Sections 7-9-46 through 7-9-78.1 and 7-9-83 through 7-9-90 NMSA 1978 apply only to those receipts which are included in and defined as gross receipts pursuant to Section 7-9-3 NMSA 1978.

[10/21/86, 11/26/90, 11/15/96; 3.2.203.10 NMAC – Rn, 3 NMAC 2.45.10 & A, 5/31/01]

7-9-46. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS--SALES TO MANUFACTURERS.--

A. Receipts from selling tangible personal property may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person engaged in the business of manufacturing who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must incorporate the tangible personal property as an ingredient or component part of the product that the buyer is in the business of manufacturing.

B. Receipts from selling tangible personal property that is a consumable and used in such a way that it is consumed in the manufacturing process of a product, provided that the tangible personal property is not a tool or equipment used to create the manufactured product, to a person engaged in the business of manufacturing that product and who delivers a nontaxable transaction certificate to the seller may be deducted in the following percentages from gross receipts or from governmental gross receipts:

(1) twenty percent of receipts received prior to January 1, 2014;

(2) forty percent of receipts received in calendar year 2014;

(3) sixty percent of receipts received in calendar year 2015;

(4) eighty percent of receipts received in calendar year 2016; and

(5) one hundred percent of receipts received on or after January 1, 2017.

C. The purpose of the deductions provided in this section is to encourage manufacturing businesses to locate in New Mexico and to reduce the tax burden, including reducing pyramiding, on the tangible personal property that is consumed in the manufacturing process and that is purchased by manufacturing businesses in New Mexico.

D. The department shall annually report to the revenue stabilization and tax policy committee the aggregate amount of deductions taken pursuant to this section, the number of taxpayers claiming each of the deductions and any other information that is necessary to determine that the deductions are performing the purposes for which they are enacted.

E. A taxpayer deducting gross receipts pursuant to this section shall report the amount deducted separately for each deduction provided in this section and attribute the amount of the deduction to the appropriate authorization provided in this section in a manner required by the department that facilitates the evaluation by the legislature of the benefit to the state of these deductions.

F. As used in Subsection B of this section, "consumable" means tangible personal property that is incorporated into, destroyed, depleted or transformed in the process of manufacturing a product:

(1) including electricity, fuels, water, manufacturing aids and supplies, chemicals, gases, repair parts, spares and other tangibles used to manufacture a product; but

(2) excluding tangible personal property used in:

(a) the generation of power;

(b) the processing of natural resources, including hydrocarbons; and

(c) the preparation of meals for immediate consumption on- or off-premises.

(Laws 2013, Chapter 160, Section 9)

3.2.204.8 - MOTOR VEHICLE PARTS

Receipts from the sale of parts, to be used in the repair of used motor vehicles or other items of equipment which are held by the purchaser of the parts for sale in the ordinary course of a used car or used equipment business, or to be used to fulfill the dealer's warranty obligation on used motor vehicles or other items of equipment, are deductible from the seller's gross receipts provided the purchaser gives the seller a nontaxable transaction certificate. The purchaser must use the parts in the nontaxable manner indicated on the certificate or be liable for the compensating tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.204.8 NMAC – Rn, 3 NMAC 2.46.8, 5/31/01]

3.2.204.9 - PRINTING AND SILK-SCREENING

A. Paper, ink, staples, glue, binding, chemicals, dyes and other tangible property used by a printer or a silk-screener in the production of a newspaper or other printed or silk-screened material for sale in the ordinary course of business are ingredients or component parts of a manufactured product. If all paper, ink, staples, glue, binding, chemicals, dyes and other tangible items are furnished to the printer or silk-screener by the customer as ingredients or component parts of the end product, then the printer or silk-screener is providing a service and not selling tangible personal property.

B. Example: N, a newspaper supply company, sells newsprint (paper), ink, offset plates, lithographic plates, linotype plates, lead plates, pre-cast type plates and photographic plates to newspapers. The newsprint and ink are ingredients or component parts because, when combined, they can be found in the product which is being manufactured. However, the various plates are not ingredients or component parts because they cannot be found in the manufactured product, the newspaper.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.204.9 NMAC – Rn, 3 NMAC 2.46.9 & A, 5/31/01]

3.2.204.10 - [RESERVED]

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.204.10 NMAC - Rn, 3 NMAC 2.46.10, 5/31/01; Repealed, 6/28/13]

3.2.204.11 - TRANSPORTATION EXPENSES

Transportation expenses incurred in marketing a manufactured product are not deductible pursuant to Section 7-9-46 NMSA 1978.
[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.204.11 NMAC – Rn, 3 NMAC 2.46.11 & A, 5/31/01]

3.2.204.12 - DENTAL SUPPLIES

Gold, teeth and similar items used in making dentures for sale in the ordinary course of business are ingredients or component parts of a manufactured product.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.204.12 NMAC – Rn, 3 NMAC 2.46.12, 5/31/01]

3.2.204.13 - PHOTOGRAPHIC SUPPLIES

A. Sensitized paper, backing paper, frames, mounts, glass and other items used by a photographer, photographic processor or developer in the production of a photograph for sale in the ordinary course of business are ingredients or component parts of a manufactured product.

B. Film used by a photographer is not an ingredient or component part of a finished photograph but it is consumed in the manufacturing of the photographs. Therefore, the sale of film to a photographer may be deducted pursuant to Subsection B of Section 7-9-46 NMSA 1978 as tangible personal property consumed in the manufacturing process.

C. This version of 3.2.204.13 NMAC applies to transactions occurring on or after January 1, 2013.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.204.13 NMAC - Rn, 3 NMAC 2.46.13 & A, 5/31/01; A, 6/28/13]

3.2.204.14 - UPHOLSTERY MATERIALS

Upholsterers are engaged in the business of performing a service and are not manufacturers. If an upholsterer separately states on the billings to customers the value of the material used in conjunction with the services, the upholsterer may issue a Type 2 nontaxable transaction certificate (NTTC) to the supplier of the material. If the value of the material is not separately stated on the billings to customers and either an NTTC is executed or the materials are purchased without a sales or gross receipts tax appearing on the invoice from an out-of-state vendor, the upholsterer will be liable for compensating tax on the value of the material.
[1/6/84, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.204.14 NMAC - Rn, 3 NMAC 2.46.14, 5/31/01; A, 6/28/13]

3.2.204.15 - SOFTWARE MATERIALS

Materials such as blank diskettes, blank video disks, packaging, paper and labels which are used by a person who manufactures and sells in the ordinary course of business copies of computer software, together with explanatory materials and instructions, are ingredient and component parts of a manufactured product.
[4/30/97; 3.2.204.15 NMAC – Rn, 3 NMAC 2.46.15, 5/31/01]

3.2.204.16 - RECEIPTS FROM CUSTOM SOFTWARE DEVELOPED FOR MANUFACTURER OF PACKAGED SOFTWARE NOT DEDUCTIBLE

A. Receipts from developing custom software for a manufacturer of packaged

software are not deductible under Section 7-9-46 NMSA 1978 because the deduction under Section 7-9-46 NMSA 1978 is available only for receipts from selling tangible personal property which is incorporated as an ingredient or component part of the manufactured product. Developing custom software is a service.

B. Example: M, a manufacturer of packaged software, contracts with S, a software development company, for the development of a new personal finances program which M plans to manufacture and sell. S is performing a service under this contract. M may not execute and S may not accept a nontaxable transaction certificate.

[4/30/97; 3.2.204.16 NMAC - Rn, 3 NMAC 2.46.16 & A, 5/31/01; A, 6/28/13]

3.2.204.17 - UNPROCESSED METAL ORES

The receipts of a person who is not subject to the Resources Excise Tax Act and who sells unprocessed metal ores to a processor in this state are deductible under Section 7-9-46 NMSA 1978 provided the person is in possession of a properly executed nontaxable transaction certificate of the appropriate type.

[10/31/97; 3.2.204.17 NMAC – Rn, 3 NMAC 2.46.17 & A, 5/31/01]

3.2.204.18 - CAR WASHING AND DETAILING

Persons who engage in the business of car washing, car waxing or car detailing are not thereby in the business of manufacturing. The deduction provided by Section 7-9-46 NMSA 1978 does not apply to receipts from car washing, car waxing or car detailing.

[3.2.204.18 - N, 10/31/2000]

3.2.204.19 - TOOLS AND EQUIPMENT

A. Tools and equipment used by a person engaged in the manufacturing business to manufacture a product are not considered to be consumed in the manufacturing process and therefore are not deductible under Subsection B of Section 7-9-46 NMSA 1978. As used in Section 7-9-46 NMSA 1978 the terms “tool” and “equipment” are defined as follows:

(1) “tool” means an implement, instrument, utensil, usually hand held, that is used to form, shape, fasten, add to, take away from, or otherwise change the manufactured product or equipment; and

(2) "equipment" means an essential machine, mechanism or tool, or a component or fitting thereof, used directly and exclusively in a manufacturing operation and subject to depreciation for purposes of the Internal Revenue Code by the taxpayer carrying on the manufacturing operation.

B. If any piece of a tool or equipment that breaks during the manufacturing process that is required to be replaced, is not considered to be consumed in the manufacturing process and the related receipts are not deductible under Subsection B of Section 7-9-46 NMSA 1978.

C. This version of 3.2.204.20 NMAC applies to transactions occurring on or after January 1, 2013.

[3.2.204.19 NMAC - N, 6/28/13]

7-9-47. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS--SALE OF TANGIBLE PERSONAL PROPERTY OR LICENSES FOR RESALE.--Receipts from selling tangible personal property or licenses may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must resell the tangible personal property or license either by itself or in combination with other tangible personal property or licenses in the ordinary course of business.
(Laws 1994, Chapters 45, Section 4)

3.2.205.8 - DELIVERY OF THE NONTAXABLE TRANSACTION CERTIFICATE

A. In order for a taxpayer to qualify for the deduction provided in Section 7-9-47 NMSA 1978 the taxpayer must meet the requirements of Section 7-9-47 NMSA 1978, which include being the recipient of a nontaxable transaction certificate (nttc) of the type specified and furnished by the department to be delivered by a buyer who resells tangible personal property in the ordinary course of business. Other evidence in lieu of an appropriate nttc may be acceptable as provided in Section 7-9-43 NMSA 1978 and 3.2.201.10 NMAC.

B. Example: X, a retail grocer, buys $150 worth of brooms from Y. X, however, will not give Y a nttc. The sale from Y to X is a taxable transaction since X did not give Y a nttc. If X had presented the certificate, Y could have deducted the proceeds of the sale from Y's gross receipts.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.205.8 NMAC – Rn, 3 NMAC 2.47.8 & A, 5/31/01; A, 8/15/11]

3.2.205.9 - SALE ON INSTALLED BASIS

A. Receipts from selling tangible personal property to a person who resells that property on an installed basis are receipts derived from the sale of tangible personal property for resale even though material and services are not separately stated when the property is resold on an installed basis.

B. Example: C is in the carpeting and drapery business. When M came to see C about carpeting a bedroom, C quoted a price of $9.95 per square yard installed. The sale was completed and the carpet installed. Even though C did not separately state materials and services in the billing to M, C was correct in delivering a nontaxable transaction certificate to C's supplier because the sale from the supplier to C was in fact a sale of tangible personal property for resale.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.205.9 NMAC – Rn, 3 NMAC 2.47.9, 5/31/01]

3.2.205.10 - TANGIBLES SOLD FOR USE IN PERFORMANCE OF A SERVICE VERSUS SIMULTANEOUS TRANSACTIONS - BILLING PRACTICES

A. **Use of tangible personal property in performing a service:**

(1) When a taxpayer uses tangible personal property in the performance of a service, the tangible personal property is acquired for use and not for sale in the ordinary course

of business. Therefore, a nontaxable transaction certificate may not be executed under Section 7-9-47 NMSA 1978 to acquire the tangible personal property.

(2) [Reserved.]

(3) [Reserved.]

(4) Example 1: X, a dry cleaner, mends clothing that is brought to X for cleaning. X uses thread, material and buttons to mend the clothing. X maintains that X is selling these products. X does not sell thread, buttons or material; rather X is engaged in performing a service and uses the materials in the performance of the service. Therefore, the sale of these products to X is not a sale for resale. If, in this situation, X delivered an nttc to its supplier for the purchase of thread and buttons and if the supplier did not pay the gross receipts tax on those receipts, X will be subject to the compensating tax.

(5) Example 2: A person giving tangible personal property as prizes for performing certain skills at carnivals, amusement parks, fairs or similar recreation facilities is using the tangible personal property in the performance of its entertainment service. If this tangible personal property is acquired within New Mexico, the person may not execute Type 2 nttcs to buy these items because the tangible personal property is not to be re-sold but used in the performance of an amusement or recreation service. If the tangible personal property were acquired from sources outside New Mexico, the person is subject to the compensating tax on the value of the tangible personal property.

(6) Example 3: An accountant purchases journal and ledger sheets, forms and supplies necessary to maintain books of account for clients. The accountant analyzes transactions and prepares journal entries and posts information to the ledgers. The accountant also prepares periodic financial statements and completes tax returns and other reports on behalf of the client. In billing for the services performed, the accountant separately states the value of the journal and ledger sheets, forms and other property used in the performance of the service. The accountant is using the tangible personal property in the performance of the service and may not execute a nontaxable transaction certificate under Section 7-9-47 NMSA 1978 to acquire these items. The fact that the accountant separately states the value of these tangibles is immaterial in this case.

(7) Example 4: O & G Service Company uses swabbing cups and other rubber goods in the course of its servicing an oil well. In fact, this tangible personal property loses its separate identity in the course of the service. As is customary in the industry, O & G Service Company separately states the value of the swabbing cups and other rubber goods in its billing to the person who contracted for the servicing of the well. O & G may not execute nontaxable transaction certificates under Section 7-9-47 NMSA 1978 to acquire the swabbing cups and other rubber goods because O & G is using those goods in the performance of its service. In this case, it is immaterial whether O & G Service Company separately states the value of such tangibles or whether it is the industry practice to do so.

(8) If a business regularly sells tangible personal property by itself as well as in connection with the performance of a service and if the property is not used by the business in the course of the performance of the service, a transaction in which tangible personal property is transferred to the buyer as the result of, or in connection with, the performance of a service contains as separate components both the performance of a service and the sale of tangible personal property. When it is the custom of both the industry and the business to separately state the value of the service and the value of the tangible personal property transferred to the buyer in the billing to the buyer, the tangible personal property is acquired for sale in the ordinary course

of business. In this case, a nontaxable transaction certificate may be executed under Section 7-9-47 NMSA 1978 to acquire the tangible personal property.

B. **Purchase of blueprints by architects**: Architects are engaged in the business of performing services which include furnishing drawings and blueprints to their clients. Thus, they may not issue nontaxable transaction certificates for the purchase of extra copies of blueprints since they are not sellers of tangible personal property in the ordinary course of business as required under Section 7-9-47 NMSA 1978.

C. **Lawn service**: Receipts from selling fertilizer, insecticides, herbicides and similar items of tangible personal property to a person engaged in the business of providing lawn maintenance services may not be deducted from gross receipts pursuant to Section 7-9-47 NMSA 1978. Such receipts are not receipts from selling tangible personal property for resale since the property is being used by the person in the course of providing lawn maintenance services.

D. **Sale of landscape items**: Receipts from selling landscape items such as plants, shrubs, trees, rocks, seed, sod and ornaments to a person engaged in the business of designing landscapes and selling and installing landscape items are receipts from selling tangible personal property for resale since it is the trade practice of persons engaged in the landscape business to bill landscape items separately from the design and installation services involved.

E. **Morticians**: Receipts from selling boxes and vaults, shipping pouches, burial clothing, monuments, grave markers, tombstones, flowers, memorial books, acknowledgement cards and caskets to morticians for use in their business are receipts from selling tangible personal property for resale since it is the custom of the undertaking industry to bill these items separately from the services rendered.

F. **Watch repair**: The receipts from selling watch repair parts and materials to watchmakers for use in the repair of watches are not receipts from selling tangible personal property for resale because it is not the custom of watchmakers to bill these parts and materials separately from watch repair services.

G. **Photographic processors**: If a person engaged in the business of processing photographic materials bills the charge for a finished photographic print separately from the charge for the services and the cost of the finished photographic print bears a reasonable relation to the cost of production of the finished photographic print, the receipts from the sale of the finished photographic print may be deducted from gross receipts if the sale of the print is made to a buyer who delivers a nontaxable transaction certificate under Section 7-9-47 NMSA 1978, because it is the custom of the photographic processing industry to bill labor separately from tangibles.

H. **Sale of paint to body shops**: Receipts from selling paint, primer, filler and other tangible personal property that is applied to and becomes part of a repaired vehicle, when such sales are made to a body shop, may be deducted from the gross receipts of the seller if the body shop issues a Type 2 nontaxable transaction certificate (nttc), it being the custom of this industry to state separately those items in billings. If the seller delivering the nttc does not separately state the tangible personal property in its billings, compensating tax is due. A body shop may not issue a Type 2 nttc for items such as emery cloth, grinding wheels, buffers and sand for blasting which are consumed by the body shop in the performance of its services.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 9/7/78, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 10/31/97, 4/30/99; 3.2.205.10 NMAC – Rn, 3 NMAC 2.47.10 & A, 5/31/01]

3.2.205.11 - SALE OF TANGIBLE PERSONAL PROPERTY TO A FEDERAL CONTRACTOR OR SUBCONTRACTOR

A. Receipts from selling tangible personal property to a federal contractor or subcontractor may be deducted from the seller's gross receipts if the federal contractor or subcontractor issues a Type 15 nontaxable transaction certificate (nttc) to the seller. The federal contractor or subcontractor is authorized to issue a Type 15 nttc only if the federal contract number is entered on the appropriate line of the Type 15 nttc and all of the criteria contained in the agreement between New Mexico and the U.S. Government are met and if the contracting agency is one of the United States agencies signatory to the agreement.

B. If the federal contractor or subcontractor issuing the Type 15 nttc does not meet the criteria outlined in the agreement, it shall be liable for compensating tax on the value of the tangible personal property. A federal contractor or subcontractor may not issue a Type 15 nttc for the purchase of services.

[1/14/86, 4/2/86, 11/26/90, 11/15/96; 3.2.205.11 NMAC – Rn, 3 NMAC 2.47.11 & A, 5/31/01]

3.2.205.12 - CONSIGNMENT SALES

Receipts of a consignor from the sale of tangible personal property handled on consignment, when the sale is made by the consignee, may be deducted from gross receipts if the consignee delivers either a nontaxable transaction certificate to the consignor pursuant to Section 7-9-47 NMSA 1978 or other proof acceptable to the department that the consignor's tangible personal property was sold by consignment.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.205.12 NMAC - Rn & A, 3 NMAC 2.47.12, 10/31/2000]

3.2.205.13 - PACKAGING AND RELATED MATERIALS

A. **Containers, wrapping paper and other packaging products.**

(1) **Nonreturnable containers.** Sales of nonreturnable containers to persons who use them to package tangible personal property so that the containers become part of the products ultimately sold are sales for resale. The buyer of this type of container may give a nontaxable transaction certificate (NTTC) for the containers purchased. Thus a person who sells nonreturnable containers to one who has delivered an NTTC and uses the containers in packaging food which is then sold may deduct the receipts from the sales to the person who delivered the NTTC under Section 7-9-47 NMSA 1978.

(2) **Returnable containers.** Sales of returnable containers to persons who use the containers for the delivery of their goods are not sales for resale. The purchase of the returnable containers by the person who packages the goods for sale is a purchase for use. Therefore, the seller of the containers must pay the gross receipts tax on the receipts from the sale. Normally included in the category of returnable containers are glass milk bottles, some gasoline and oil cans, water bottles and milk and soft drink cases.

(3) **Wrapping materials.** The sale of bags, wrapping paper, twine and similar articles to persons who use the materials to package merchandise which has been sold is a sale for resale. The receipts from these sales may be deducted by a seller who has received an NTTC from the buyer. The buyer of the bags, wrapping paper and twine may give an NTTC for their purchase.

(4) **Paper towels, sales slips.** Sales of paper towels, toilet tissue, and like items,

when sold to a person engaged in the business of performing a service are not sales for resale. The seller must pay the gross receipts tax on these sales. The sale of sales slips is subject to tax unless the buyer resells the sales slips in the ordinary course of business.

(5) **Crowns, bottles, crates, cartons.**

(a) Crowns. The sale of caps or crowns to persons who use them in bottling soft drinks are treated as sales for resale. The sale of caps or crowns as a part of the bottled beverage to a person selling the beverage for ultimate consumption also is a sale for resale.

(b) Bottles. The sale of nonreturnable bottles, cans or other types of containers to a bottler or canner for use in packaging soft drinks is a sale for resale. The sale of the bottle or can as a part of the drink to a person selling the beverage for ultimate consumption also is a sale for resale.

(c) Crates. The sale of crates, made of any material, to a soft drink bottler is not a sale for resale. The seller of the crate must pay the gross receipts tax if the sale is made in New Mexico. If the sale is not made in this state then the compensating tax must be paid by the buyer.

(d) Cartons or cases. The sale of paper, cardboard or plastic cartons and can and bottle holders to a soft drink bottler or canner is a sale for resale. The sale of the carton to a person engaged in selling soft drinks to consumers also is a sale for resale.

(6) **Labels, product name tags, price tags.** Receipts from selling labels, product name tags or price tags to a person who delivers a Type 2 NTTC to the seller may be deducted from gross receipts. The buyer delivering the NTTC must resell the labels, product name plates or price tags either by themselves or in combination with other tangible personal property in the ordinary course of business, or the buyer is subject to the compensating tax on their value. These items are resold in combination with tangible personal property if they are affixed to and sold along with the other property.

(7) *Example:* Z, a book and stationery store, is engaged in the business of selling office supplies. Among the items Z carries for sale to other merchants are sales slips which Z purchases from X. The sales slips which Z sells to its customers who use the sales slips in the regular course of their businesses are not sales for resale. Z must pay the gross receipts tax on its receipts from selling sales slips to other stores. X Company will be allowed to treat the sale of sales slips to Z as sales for resale if it has received an NTTC from Z.

Z also uses some of the sales slips which it purchases to record transactions between itself and its customers and to bill the customers. As to these purchases, Z may abide by the following procedure: Z may give X an NTTC for the total purchases and then pay compensating tax on those sales slips which it uses because Z is in the business of purchasing sales slips for resale and its own use of the slips is minor in comparison to the total number of slips purchased.

B. **Sales to a burlap bag processor.**

(1) Receipts derived from the sale of used burlap bags to a person engaged in the business of processing burlap bags for sale in the ordinary course of business may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate (NTTC) to the seller pursuant to Section 7-9-47 NMSA 1978.

(2) If the buyer delivering the NTTC does not resell the used burlap bags in the ordinary course of business, the compensating tax is due.

C. **Sale of bagging and ties.** Receipts from the sale of bagging and ties to a person who operates a cotton gin for use in baling cotton are not receipts from selling tangible personal

property for resale since the bagging and ties are used by the person in the course of his service of baling cotton.

D. **Steel strapping.**

(1) Receipts from selling strapping used to contain individual ingots of copper in packages may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate (NTTC) to the seller. The buyer delivering an NTTC must resell the steel strapping either by itself or in combination with other tangible personal property in the ordinary course of business.

(2) If the buyer delivering the NTTC does not resell the steel strapping in the ordinary course of business, the compensating tax is due.

E. **Sale of baling wire to a farmer.**

(1) Receipts from selling baling wire to a farmer who bales hay for sale to others may be deducted from the seller's gross receipts if the farmer issues a Type 2 nontaxable transaction certificate. The baling wire is resold by the farmer in combination with other tangible personal property. The deduction would not apply to sales made to farmers of baling wire for their own use.

(2) A seller may not deduct the receipts from selling baling wire to a "custom worker" who bales hay for farmers for a consideration, since the wire is used by the worker in the course of performing his services.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 4/30/99, 3.2.205.13 NMAC - Rn & A, 3 NMAC 2.47.13, 10/31/2000]

3.2.205.14 - MEDICINES AND MEDICAL SUPPLIES

A. **Dental supplies**:

(1) The receipts from selling supplies, gold, silver and similar items of tangible personal property used in making dentures, cement used in fillings, amalgam, anesthetics, orthodontia platinum wire, facing, backing, x-ray film and the like to dentists for use in their practices are not receipts from selling tangible personal property for resale since it is not the custom of the dental profession to bill material separately from the services involved.

(2) The receipts derived from selling the items mentioned in Paragraph (1) of Subsection A of Section 3.2.205.14 NMAC may not be deducted from gross receipts pursuant to Section 7-9-73 NMSA 1978 because the items sold are not prosthetic devices within the meaning of Section 7-9-73 NMSA 1978.

B. **Medical supplies**: Receipts from selling supplies, drugs, bandages, splints, syringes, tongue depressors, medicine used as injections and other similar items to practitioners of the healing arts for use in their practices are not receipts derived from selling tangible personal property for resale since it is not the custom of such practitioners to bill material separately from the services involved.

C. **Sale of radioisotopes**:

(1) Receipts from selling radioisotopes to a professional association of medical radiologists which furnishes a nontaxable transaction certificate (nttc) are receipts derived from selling tangible personal property for resale since it is the custom of radiologists to bill these materials separately from the services involved.

(2) If the radiologists delivering the nttc do not resell the radioisotopes in the ordinary course of business, the compensating tax is due.

D. **Issuance of nontaxable transaction certificates by oncologists**: Receipts from selling drugs used in the treatment of cancer by an oncologist who separately states these items in billings may be deducted by the seller if the oncologist delivers to the seller a Type 2 nontaxable transaction certificate (nttc). If the oncologist delivering the nttc does not sell the items in the ordinary course of business or does not separately state the charges for the sale price of the items on the billings, the compensating tax is due. Receipts from the sale of other tangibles, such as supplies, bandages, syringes, etc., are not deductible.

E. **Sale of medicine to veterinarians**:

(1) Receipts from selling drugs, medicine, braces, dressings and other substances and preparations used in treating animals to a veterinarian who is engaged in the business of selling such items and who does not administer the items are receipts derived from selling tangible personal property for resale and may be deducted by the seller if the veterinarian delivers a Type 2 nontaxable transaction certificate (nttc). If the veterinarian delivering the nttc does not resell the above items in the ordinary course of business, the compensating tax is due.

(2) Receipts from selling drugs, medicine, braces, dressings and other substances and preparations used in treating animals to a veterinarian who administers the items and who separately states these items in the billings may be deducted by the seller if the veterinarian delivers to the seller a Type 2 nttc because it is the custom of the trade to separately state these items in billings. If the veterinarian delivering the nttc does not resell the items in the ordinary course of business or does not separately state the charges for the sale price of the items on the billings, the compensating tax is due.

F. **Vitamins and drugs sold to sale barn**: Receipts from selling vitamins and drugs to a person engaged in the business of conducting a sale barn who administers vitamins and drugs to livestock consigned to the barn and who bills the consignor of the livestock for this property without charge for the service of administering the property are receipts from selling tangible personal property for resale.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/17/83, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.205.14 NMAC – Rn, 3 NMAC 2.47.14 & A, 5/31/01]

3.2.205.15 - FOOD AND RELATED SUPPLIES

A. **Sale of food**: Receipts from the sale of food to a person engaged in the business of operating a nursing home, day care facility, kindergarten or a facility for retired elderly persons may be deducted from gross receipts if the person delivers a nontaxable transaction certificate to the seller. The person engaged in the business of operating a nursing home, day care facility, kindergarten or a facility for retired elderly persons must resell the food either by itself or in combination with other tangible personal property in the ordinary course of business or be subject to the compensating tax for the value of the food.

B. **Sale of food to certain nonprofit organizations**: Receipts from selling food and beverages to a nonprofit organization which furnishes meals to persons who pay a boarding fee may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate to the seller pursuant to Section 7-9-47 NMSA 1978.

C. **Sale of animal food**:

(1) Receipts from selling animal food, animal accessories and similar items of tangible personal property to a veterinarian who is engaged in the business of selling such items may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate

(nttc) to the seller pursuant to Section 7-9-47 NMSA 1978.

(2) If the veterinarian delivering the nttc does not resell the items mentioned in Paragraph (1) of Subsection C of Section 3.2.205.15 NMAC in the ordinary course of business, the compensating tax is due.

D. **Restaurants - nonreuseable items - supplies**: Receipts from the sale of straws, toothpicks, coffee stirrers, coffee coasters, steak markers, paper doilies, paper mats, paper napkins, menus which normally are retained by the customer, nonreturnable food containers, including disposable plastic or paper cups, plates, spoons, forks and knives as well as receipts from the sale of materials used to wrap food, such as aluminum foil, plastic wrap and wax paper may be deducted from gross receipts if the sale is made to a person, e.g., a restaurant, who delivers a nontaxable transaction certificate (nttc) to the seller. The buyer delivering the nttc must resell the item purchased either by itself or in combination with other tangible personal property in the ordinary course of business or become liable for compensating tax on the value of the item purchased. Receipts from selling garbage can liners, paper hats, aprons and uniforms used by restaurant personnel, guest checks, candles, fuel for candle burners, sterno, janitorial supplies, toilet tissue and paper towels may not be deducted from gross receipts. Such items are not resold by the buyer.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.205.15 NMAC – Rn, 3 NMAC 2.47.15 & A, 5/31/01]

3.2.205.16 - VENDING MACHINES

A. Receipts from selling tangible personal property to the owner or lessee of vending machines, which property will be sold through the vending machines, may be deducted from gross receipts if the owner or lessee delivers a nontaxable transaction certificate (nttc) to the seller pursuant to Section 7-9-47 NMSA 1978.

B. If the owner or lessee delivering the nttc does not resell the tangible personal property in the ordinary course of business, the compensating tax is due.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.205.16 NMAC – Rn & A, 3 NMAC 2.47.16, 5/31/01]

3.2.205.17 - SALE TO AN ELECTRIC COOPERATIVE ASSOCIATION

A. Receipts from selling tangible personal property to an electric cooperative association which later sells the property to a person engaged in the construction business for incorporation into the construction project are receipts from selling tangible personal property for resale and may be deducted from gross receipts if the electric cooperative association delivers a nontaxable transaction certificate (nttc) to the seller pursuant to Section 7-9-47 NMSA 1978.

B. If the electric co-operative association delivering the nttc does not resell the tangible personal property in the ordinary course of business, the compensating tax is due.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.205.17 NMAC – Rn, 3 NMAC 2.47.17 & A, 5/31/01]

3.2.205.18 - PARTS AND SUPPLIES SOLD UNDER SERVICE CONTRACTS

A. **Receipts from sale of parts to fulfill promisor's obligation under automotive service contract not deductible**: The receipts of a repair facility from the promisor under an automotive service contract, as that term is defined in Subsection C of Section 3.2.1.16 NMAC,

for furnishing parts to fulfill the promisor's obligation under the contract are taxable gross receipts of the repair facility. The receipts are not deductible by the repair facility even though the promisor may have furnished the repair facility with a Type 2 (property for resale) nontaxable transaction certificate since the parts were sold by the repair facility to the purchaser of the automotive service contract for a consideration to be received from the promisor who makes the payment to the repair facility to discharge the promisor's obligation to the purchaser to pay for the parts

B. **Supplies billed by automotive dealer on repair orders subject to compensating tax**: New Mexico automotive dealers who issue Type 2 (resale of tangibles) nontaxable transaction certificates to suppliers of shop supplies purchased for use in the dealers' service departments and body shops are liable for compensating tax on those supplies. Dealers are using and are not reselling (i.e., transferring) the shop supplies as required by Section 7-9-47 NMSA 1978 and are, therefore, liable for the compensating tax imposed by Paragraph (3) of Subsection A of Section 7-9-7 NMSA 1978. Separately stating a charge on the customer's billing for shop supplies used by a dealer does not constitute the resale of such supplies.

[6/28/89, 11/26/90, 11/15/96; 3.2.205.18 NMAC – Rn, 3 NMAC 2.47.18 & A, 5/31/01]

3.2.205.19 - COMPUTER SOFTWARE

A. **Packaged software - sale of tangible personal property versus sale of a license:**

(1) When a person sells packaged software with restrictions such that the buyer may not transfer the software to another or may not permit another to use the software, the seller has receipts from the sale of a license.

(2) When a person sells packaged software without restrictions on the buyer's ability to transfer the property to another or to permit another to use the software, the seller has receipts from the sale of tangible personal property even if there may be restrictions on the number of simultaneous users or on the number of computers on which the software may be simultaneously installed.

B. **Packaged software - sale for resale**:

(1) Receipts from the sale of packaged software for resale may be deducted from gross receipts if the seller receives in good faith a Type 2 nontaxable transaction certificate (nttc) from the buyer.

(a) Example 1: X, a software manufacturer, sells its packaged software directly and through distributors. If X receives in good faith a Type 2 nttc from a distributor, X may deduct receipts from the sale of its software for resale to the distributor.

(b) Example 2: Y, a software manufacturer, has developed an application. Y reached an agreement with M, a manufacturer of a desktop computer, in which M would sell its desktop computer with a copy of Y's software already installed. Copies of diskettes and instruction manuals for Y's software would also be delivered to the buyer. The manufacturer buys the packaged software from Y at a discount. If Y receives in good faith a Type 2 nttc from M, Y may deduct receipts from the sale for resale of its packaged software to the manufacturer. In this case, it does not matter whether the ultimate buyer of the computer with the installed software is restricted from selling the software or authorizing others to use it.

(2) Receipts from the sale of packaged software in combination with a computer for a single price are receipts from the sale of tangible personal property whether or not the

packaged software is installed on the computer. Example: Z is in the business of selling computers and software at the distributor level. Z prepares special packages for sale at a single price in which selected models of computer are sold with certain software already installed. Z may accept properly executed Type 2 nontaxable transaction certificates (nttcs) from retailers who intend to resell the package either by itself or in combination with other devices or software. Z may execute Type 2 nttcs to acquire the computers, related hardware and packaged software.

C. **Packaged software - sale for use**:

(1) Except as provided in Paragraph (2) of Subsection C of Section 3.2.205.19 NMAC, receipts from the sale of packaged software which is intended to be used by the purchaser for a purpose other than resale are not deductible under Section 7-9-47 NMSA 1978, even if the purchaser is regularly engaged in the business of developing, manufacturing or selling software.

(a) Example 1: V, a vendor of software, sells to Z, a software development company, a package of CASE tools (programming designed to assist the development of other programs) which Z intends to use in creating new products. Although a sale of tangible personal property has occurred, the software is not intended to be resold. The receipts from this sale are not deductible. Z may not execute a Type 2 nontaxable transaction certificate (nttc) with respect to this transaction. If Z does execute a Type 2 nttc and V can and does accept it in good faith, Z will owe compensating tax on the value of the CASE tools acquired.

(b) Example 2: S, a seller of computer hardware and software, buys packaged software to do S's own bookkeeping. After using the packaged software for a period of time, S sells it. If S executed a Type 2 nttc to acquire the packaged software, S owes compensating tax for using the software in New Mexico. S also owes gross receipts tax on S's receipts from the sale of the packaged software.

(2) If the buyer is a qualified contractor of the federal government and uses packaged software to fulfill an appropriate research and development contract with a signatory federal agency, the buyer may execute, and the seller may accept in good faith, a Type 15 nttc with respect to the packaged software. Example: X, a research and development company, enters into a qualifying research and development contract with a signatory agency of the United States. The contract is to develop a program to test certain devices which the United States is considering purchasing. To create the testing program X buys several pieces of packaged software and develops new programming to interconnect the packaged software into a coherent testing program. X may execute, and the vendors may accept in good faith, Type 15 nttcs for the purchase of the packaged software.

(3) Receipts from the sale of packaged software which is designed to enable the purchaser to provide a service to its own customers are not deductible under Section 7-9-47 NMSA 1978. Example: An accountant opens a tax preparation service. The accountant purchases packaged software applications to assist in the preparation of various federal and state tax forms. Receipts from the sale of the software to the accountant are not deductible. The accountant may not execute nttcs to acquire the software in a nontaxable transaction. If the accountant does execute an nttc with respect to this transaction and the vendor can and does accept it in good faith, the accountant owes compensating tax on the value of the packaged software acquired.

[4/30/97; 3.2.205.19 NMAC – Rn, 3 NMAC 2.47.19 & A, 5/31/01]

3.2.205.20 - USE OF TANGIBLE PERSONAL PROPERTY BY HOTELS, MOTELS AND SIMILAR FACILITIES

A. Hotels, motels, inns, rooming houses and similar facilities are engaged in the business of granting a license to use real and tangible personal property. Tangible personal property provided to a guest in conjunction with the license and intended to be consumed by the guest, such as soap, paper products and single serving packets of coffee, is resold in the ordinary course of business.

B. *Example 1*: M, a motel, buys from Z bathroom tissue and single-serving coffee packets to use in M's motel business. M maintains that it is entitled to execute a Type 2 nontaxable transaction certificate (NTTC) in purchasing the tangible personal property. M contends that, because the cost of the tangibles is included in the charge M sets for rooms, M is reselling the products in combination with the license to use the room. M is correct and may execute a Type 2 NTTC to purchase these goods.

C. *Example 2*: H, a hotel, offers its guests at no additional charge a continental breakfast with the rental of rooms. H may execute a Type 2 NTTC to purchase the food provided at these breakfasts and related non-food tangible personal property, such as paper napkins, provided in conjunction with the food.

D. Tangible personal property, such as sales slips, computer paper or forms, cleaning materials, vacuum cleaners and computers, to be used or consumed by the hotel, motel, inn or similar facility or its staff is not resold in the ordinary course of business. Tangible personal property provided by a hotel, motel, inn or similar facility for the use of guests, such as furniture, tableware, bedding and towels, but intended to be retained by the facility are not resold in the ordinary course of business. Tangible personal property not resold by itself or in conjunction with other tangible personal property or licenses is not deductible under Section 7-9-47 NMSA 1978. A Type 2 NTTC may not be executed with respect to such tangible personal property.

E. This version of Section 3.2.205.20 NMAC is retroactively applicable to receipts from transactions on or after 11/1/97.

[10/31/97, 3.2.205.20 NMAC - Rn & A, 3 NMAC 2.46.20, 10/31/2000]

3.2.205.21 - UTILITY SALES BY LANDLORD

When the lessor of real property conveys water, natural gas or electricity to a lessee as a condition of the lease of the real property, the lessor is using the water, natural gas or electricity to fulfill the conditions of the lease whether or not a separate charge is made to the lessee. The lessor is not reselling the water, natural gas or electricity in the ordinary course of business and may not execute a nontaxable transaction certificate under Section 7-9-47 NMSA 1978 for the purchase of the water, natural gas or electricity. See Subsection E of Section 3.2.211.8 NMAC.

[7/30/99; 3.2.205.21 NMAC - Rn, 3 NMAC 2.47.21 & A, 5/31/01]

7-9-48. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS--SALE OF A SERVICE FOR RESALE.--Receipts from selling a service for resale may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must resell the service in the ordinary course of business and the resale must be subject to the gross receipts tax or governmental gross receipts tax.
(Laws 2000, Chapter 84, Section 2)

3.2.206.8 - RECEIPTS FROM THE NEXT SALE MUST BE TAXABLE

A. Receipts from selling a service for resale may be deducted by the seller under Section 7-9-48 NMSA 1978 if the buyer has delivered an appropriate nontaxable transaction certificate (nttc) to the seller. If the buyer giving the nttc does not resell the service in a transaction that is taxable, then that person is subject to the compensating tax on the value of the services at the time they were rendered.

B. Example 1: X brings a truck into Y for repair. The trailer hitch has broken off the truck. Since Y does not have a welder, Y takes the truck to Z, who welds the trailer hitch back on to the truck. Y has executed an nttc which it has previously given to Z. Y bills as follows:

Bumper welding (performed by Z)	$ 10.00
Service Charge	2.00
	$ 12.00
Tax (at .05)	.60
TOTAL	$ 12.60

Under these circumstances Z may deduct the $10.00 gross receipts that it derived from selling a welding service for resale because it received an nttc.

C. Example 2: Y takes its service truck to Z to have Z weld a crane strut. Since Y has issued an nttc to Z, Z deducts its receipts from the performance of this service from its gross receipts. Y must pay compensating tax on the welding service performed by Z.

D. Example 3: M, a seller of concrete beams, hires a carrier to transport the beams to a buyer, C, who is engaged in the construction business. C delivers an nttc to M pursuant to the deduction allowable for the sale of tangible personal property to persons engaged in the construction business. As the sale by M to C is not subject to the gross receipts tax, if M delivers an nttc to the carrier, M will be subject to the compensating tax on the value of the transportation service. It is immaterial that the seller separately states the value of the transportation service in the billing to C, the purchaser of the beam.

E. Example 4: E, a seller of paper, hired a common carrier to transport several reams of paper to the buyer, the United States Government. As E is not subject to the gross receipts tax on this transaction, if E delivers an nttc to the carrier E will be subject to the compensating tax on the value of the transportation services. It is immaterial that the seller separately states the value of the transportation services in the billing to the United States Government.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.206.8 NMAC – Rn, 3 NMAC 2.48.8 & A, 5/31/01]

3.2.206.9 - SEPARATELY STATING BY ATTACHMENT TO PRINCIPAL BILLING

For transactions occurring before July 1, 2000, the requirement of separately stating the value of the service resold is satisfied if an attachment to the principal billing is made showing the amount charged for the service resold.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.9 NMAC - Rn & A, 3 NMAC 2.48.9, 10/31/2000]

3.2.206.10 - INSTALLATION SERVICE

A. Receipts from selling an installation service for resale may be deducted from gross receipts if the buyer of the service delivers a nontaxable transaction certificate (NTTC) to the seller. The sale of the installation service by the buyer must be in the ordinary course of business and be subject to the gross receipts tax or the buyer will be subject to the compensating tax.

B. *Example*: W manufactures computers; however, because of the small size of the company W does not employ the proper personnel for installing the computers. Upon making a sale to S, W hired G to install the computers. The receipts G derived from installing the computers for W may be deducted from gross receipts pursuant to Section 7-9-48 NMAC 1978 if W delivers an NTTC to G. The sale of the installation service by W must be in the ordinary course of business and subject to the gross receipts tax or W will be subject to the compensating tax.

Note: If the installation service performed in a particular situation is determined by the department to be incidental to the sale of a tangible, then, even if the value of the installation service is separately stated from the value of the tangible sold on the final billing to the buyer of the tangible, all the receipts of the seller will be treated as receipts from the sale of tangible personal property.

C. This version of 3.2.206.10 NMAC applies to transactions occurring on or after July 1, 2000.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.10 NMAC - Rn & A, 3 NMAC 2.48.10, 10/31/2000]

3.2.206.11 - CERTAIN SERVICES WHICH ARE USED AND NOT RESOLD

Services performed in New Mexico which are deductible by the buyer under the provisions of the Internal Revenue Code as ordinary and necessary business expenses and services which are to be capitalized under the provisions of the Internal Revenue Code are “used” for purposes of Subsection B of Section 7-9-7 NMSA 1978 and are not purchased for resale pursuant to the provisions of Section 7-9-48 NMSA 1978. If the buyer has issued a nontaxable transaction certificate for the purchase of services which were in fact resold and subsequently obtains other services which are used by the buyer, the buyer is liable pursuant to Subsection B of Section 7-9-7 NMSA 1978 for compensating tax on the value of the services.

[3/11/88, 11/26/90, 11/15/96; 3.2.206.11 NMAC – Rn, 3 NMAC 2.48.11 & A, 5/31/01]

3.2.206.12 - NONCONSTRUCTION SERVICES SOLD TO CONSTRUCTION CONTRACTORS

A. Prior to January 1, 2013, any person engaged solely in the business of construction is not engaged in reselling services other than construction services in the ordinary course of business and may not execute a nontaxable transaction certificate (nttc) to purchase services for resale in connection with the construction business under the provisions of Section 7-9-48

NMSA 1978.

B. On or after January 1, 2013, any person engaged in the construction business who purchases construction-related services as defined in Section 7-9-52 NMSA 1978 and is engaged in reselling those construction-related services may execute an nttc to support the deduction under Section 7-9-52 NMSA 1978.

[3/11/88, 11/26/90, 11/15/96; 3.2.206.12 NMAC - Rn, 3 NMAC 2.48.12 & A; 5/31/01; A, 11/30/05; A, 12/14/12]

3.2.206.13 - ADVERTISING AND BROADCAST SERVICES

A. **Advertising service: radio and television stations.** The receipts of a radio or television broadcasting station from the sale of advertising services to an advertising agency for resale may be deducted from gross receipts if the advertising agency delivers a nontaxable transaction certificate (NTTC) to the broadcasting station. The subsequent sale must be in the ordinary course of business and subject to the gross receipts tax or the advertising agency will be subject to the compensating tax on the value of the advertising service at the time it was rendered. If a radio or television broadcasting station sells advertising services to an advertising agency for resale but refuses to accept delivery of an NTTC offered it by the advertising agency, the gross receipts tax consequences are:

(1) the net receipts of the broadcasting station from the transaction are subject to the gross receipts tax; and

(2) the receipts of the advertising agency, which are the full amount paid to the advertising agency by its customer (the advertiser), are subject to the gross receipts tax.

This version of Subsection A of Section 3.2.206.13 NMAC applies to transactions occurring on or after July 1, 2000.

B. **Advertising service: trading stamps.** The sale of trading stamps constitutes the sale of an advertising or promotional service. Receipts from selling an advertising or promotional service for resale may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate (NTTC) to the seller. The subsequent sale must be in the ordinary course of business and be subject to the gross receipts tax. This version of Subsection B of Section 3.2.206.13 NMAC applies to transactions occurring on or after July 1, 2000.

C. **Sales of broadcast time for resale.**

(1) A New Mexico radio or television broadcaster may deduct from its gross receipts the receipts derived from the sale of broadcast time to an advertising agency for resale so long as the broadcaster possesses a valid nontaxable transaction certificate (NTTC) issued by the advertising agency and the contract under which the sale is made specifically states that the agency is not buying as an agent for its customer and that the agency, and not its customer, is liable for payment to the broadcaster for the purchase of broadcast time. The advertising agency must comply with the requirements of Section 7-9-48 NMSA 1978 by reselling the broadcast time in the normal course of business and by paying gross receipts tax upon the subsequent sale. If the agency fails to comply with these requirements, the agency will be liable for compensating tax on the broadcast time. This version of Paragraph (1) of Subsection C of Section 3.2.206.13 NMAC applies to transactions occurring on or after July 1, 2000.

(2) This deduction is in addition to the deduction available under Section 7-9-55 NMSA 1978. Thus, if the subsequent sale of broadcast time by the agency is made to a national

or regional seller or advertiser, receipts from the sale are deductible by both the agency and broadcaster under Section 7-9-55 NMSA 1978, no NTTC shall be required and no compensating tax will be owed by the agency.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 3/3/86, 4/2/86, 11/26/90, 11/15/96, 3.2.206.13 NMAC - Rn & A, 3 NMAC 2.48.13, 10/31/2000]

3.2.206.14 - TRANSPORTATION SERVICES

A. **Transporting property.** Receipts of a carrier from transporting property for the seller of the property who prepays the transportation charges may be deducted from the carrier's gross receipts if the seller executes with the carrier a nontaxable transaction certificate. The sale of the transportation service and property must be in the ordinary course of the seller's business and subject to the gross receipts tax on its subsequent sale. Otherwise, the seller will be liable for compensating tax on such transaction. This version of Subsection A of Section 3.2.206.14 NMAC applies to transactions occurring on or after July 1, 2000.

B. **Transporting property.**

(1) If a seller of tangible personal property employs a contract or common carrier to transport that property and delivers a nontaxable transaction certificate (nttc) to the carrier, and if the receipts from the sale of the property are not subject to the gross receipts tax, the seller will be subject to the compensating tax on the value of the transportation service purchased.

(2) *Example:* X sells tangible personal property to Y, a governmental entity, and hires a carrier to transport the tangible personal property to Y. X will be subject to compensating tax on the value of the transportation service if X delivers an nttc to the carrier. It is immaterial that X separately states the value of the transportation service in the billing to Y.

C. **Hauling prefabricated buildings.**

(1) The hauler of prefabricated buildings may take a deduction from gross receipts pursuant to Section 7-9-48 NMSA 1978 if:

(a) the prefabricated builder resells the hauling service to customers who contract to purchase the building which has been moved to a permanent site; and

(b) the prefabricated builder executes with the hauler a nontaxable transaction certificate (nttc); and

(c) the subsequent sale is in the ordinary course of the prefabricated builder's business and subject to the gross receipts tax.

(2) This version of Subsection C of Section 3.2.206.14 NMAC applies to transactions occurring on or after July 1, 2000.

D. **Transportation services.**

(1) A person who subcontracts to haul property for a person who holds a certificate of public convenience and necessity issued by the public regulation commission of the state of New Mexico may accept a nontaxable transaction certificate (nttc) for the services. Receipts from hauling such property may be deducted from gross receipts provided the person provides both the transporting equipment and the operator.

(2) If the issuer of the nttc fails to meet the criteria of Section 7-9-48 NMSA 1978, the issuer will become liable for compensating tax on the value of the services at the time they were rendered.

(3) If the subcontractor provides only the transporting equipment, the subcontractor is engaged in the business of leasing property and the receipts are subject to the

gross receipts tax. The issuance or receipt of an nttc in this situation would be improper.
[6/18/79, 11/5/81, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.14 NMAC - Rn, 3 NMAC 2.48.14 & A, 10/31/2000; A, 5/31/01]

3.2.206.15 - MEDICAL SERVICES

A. **Medical laboratory services.** Receipts from the sale of medical laboratory services, such as blood test analysis, urine analysis and similar test analysis, to a practitioner of the healing arts may be deducted from gross receipts if:

(1) the practitioner delivers to the seller a nontaxable transaction certificate; and

(2) the subsequent sale is in the ordinary course of the practitioner's business and is subject to the gross receipts tax.

This version of Subsection A of Section 3.2.206.15 NMAC applies to transactions occurring on or after July 1, 2000.

B. **Anesthetists' services.** The receipts of an anesthetist from performance of service for a surgeon may be deducted from gross receipts if the surgeon resells the service to a patient and delivers a nontaxable transaction certificate (NTTC) to the anesthetist. The surgeon delivering the NTTC must separately state the value of the service purchased in the charge for the service on its subsequent sale, and the subsequent sale must be in the ordinary course of business and subject to the gross receipts tax. If these conditions are not satisfied, the surgeon will be subject to the compensating tax on the value of the service purchased.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.15 NMAC - Rn & A, 3 NMAC 2.48.15, 10/31/2000]

3.2.206.16 - LINEN SERVICE FOR RESTAURANTS

The receipts from charges to a restaurant for laundering tablecloths, napkins, uniforms, towels and similar items may not be deducted from gross receipts because these are not services performed for resale.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.16 NMAC - Rn, 3 NMAC 2.48.16, 5/31/01]

3.2.206.17 - EQUIPMENT REPAIR SERVICES

Receipts from the sale of a repair service to a person engaged in the business of repairing equipment may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate (NTTC) to the seller. The subsequent sale must be in the ordinary course of business and subject to the gross receipts tax or the buyer will be subject to the compensating tax on the value of the service. This version of 3.2.206.17 NMAC applies to transactions occurring on or after July 1, 2000.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.17 NMAC - Rn & A, 3 NMAC 2.48.17, 10/31/2000]

3.2.206.18 - PHOTO PROCESSING SERVICE

The receipts of a person engaged in the business of processing photographic material, such as exposed film, are receipts from performing a service and may be deducted from gross receipts if the sale of the service is made to a buyer who delivers a nontaxable transaction certificate (NTTC). The subsequent sale must be in the ordinary course of business and be

subject to the gross receipts tax or the buyer will be liable for the compensating tax on the value of the service. This version of 3.2.206.18 NMAC applies to transactions occurring on or after July 1, 2000.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.18 NMAC - Rn & A, 3 NMAC 2.48.18, 10/31/2000]

3.2.206.19 - MORTICIANS

Receipts from selling services such as grave digging and organ playing to morticians for use in their business are receipts from selling a service for resale and may be deducted from gross receipts if the mortician buying the service delivers a nontaxable transaction certificate (NTTC) to the seller. The subsequent sale must be in the ordinary course of the mortician's business and subject to the gross receipts tax or the mortician will be liable for the compensating tax on the value of the service. This version of 3.2.206.19 NMAC applies to transactions occurring on or after July 1, 2000.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.19 NMAC - Rn & A, 3 NMAC 2.48.19, 10/31/2000]

3.2.206.20 - TELECOMMUNICATIONS SERVICES

A. **Cable television hook-up.** Receipts from selling the service of hook-ups to cable television for resale may be deducted from gross receipts if the sale is made to a buyer who delivers a nontaxable transaction certificate (NTTC) to the seller. The subsequent sale must be in the ordinary course of business and the receipts subject to the gross receipts tax. This version of Subsection A of Section 3.2.206.20 NMAC applies to transactions occurring on or after July 1, 2000.

B. **Telephone services.**

(1) Receipts of a telephone company from the performance of telephone services for a hotel or motel, to the extent that they are attributable to calls made from the rooms of the hotel's or motel's guests, may be deducted from gross receipts if the hotel or motel delivers a nontaxable transaction certificate (NTTC) to the telephone company. The charge must be subject to the gross receipts tax or the hotel or motel will be subject to the compensating tax on the value of the telephone services.

(2) In order to apportion the use of telephone service at a hotel or motel between local calls made from the rooms of the hotel's or motel's guests and other local calls made from the hotel or motel, the department will, on audit of the telephone company claiming the deduction described in the preceding paragraph, allow as a deduction that portion of the receipts of the telephone company which are calculated in the following manner with respect to the month's billing to the hotel or motel:

(a) the telephone company's receipts from charges, indicated on its billing to the hotel or motel, as local service and additional local call and message units, which represent local telephone service are calculated; and

(b) the total calculated in Subparagraph (a) of Paragraph (2) of Subsection B of Section 3.2.206.20 NMAC is multiplied by a fraction, the numerator of which is the number of message units, as the term is used by the telephone company, indicated on its billing to the hotel or motel which represent local telephone calls which were made from the hotel or motel and the denominator of which is the total of message units, as the term is used by the telephone

company, indicated on the telephone company's billing to the hotel or motel.

(3) The method set forth in Paragraph (2) of Subsection B of Section 3.2.206.20 NMAC is acceptable to the department as an "apportionment of use". However, other methods which more accurately reflect the apportionment of use may be acceptable to the department.

(4) *Example*: X is engaged in the business of selling alarm systems in New Mexico. As a part of these systems, a telephone line is leased by X from Y, a telephone company. Y bills X for each line on a monthly basis. X bills each customer on a monthly basis for service plus a telephone line charge. Receipts of Y from the performance of the telephone service for X may be deducted from Y's gross receipts if X delivers a Type 5 NTTC to Y. Receipts of X from its customers must be subject to the gross receipts tax, or X will be liable for the compensating tax on the value of the telephone services at the time they were rendered.

This version of Subsection B of Section 3.2.206.20 NMAC applies to transactions occurring on or after July 1, 2000.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.20 NMAC - Rn & A, 3 NMAC 2.48.20, 10/31/2000]

3.2.206.21 - GARBAGE COLLECTION

Receipts from selling the service of garbage collection for resale may be deducted from gross receipts if the sale is made to a buyer who delivers a Type 5 nontaxable transaction certificate (NTTC) to the seller. The subsequent sale must be in the ordinary course of business and subject to the gross receipts tax or governmental gross receipts tax, or the buyer will be liable for the compensating tax on the value of the service at the time it was rendered. If the seller of the service of garbage collection is a political subdivision of the state of New Mexico, its receipts from the sale are exempted from the gross receipts tax but will be subject to the governmental gross receipts tax. This version of Section 3.2.206.21 NMAC applies to transactions occurring on or after July 1, 2000.

[3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.21 NMAC - Rn & A, 3 NMAC 2.48.21, 10/31/2000]

3.2.206.22 - RECEIPTS FROM SALE OF SERVICES TO FULFILL PROMISOR'S OBLIGATION UNDER AUTOMOTIVE SERVICE CONTRACT NOT DEDUCTIBLE

The receipts of a repair facility from the promisor under an automotive service contract, as that term is defined in Subsection C of Section 3.2.1.16 NMAC, for furnishing services to fulfill the promisor's obligation under the contract are taxable gross receipts of the repair facility and are not deductible by the repair facility. Even though the promisor may have furnished the repair facility with a type 5 (service for resale) nontaxable transaction certificate, the receipts are not deductible because the services were sold by the repair facility to the purchaser of the automotive service contract for a consideration to be received from the promisor who makes the payment to the repair facility to discharge the promisor's obligation to the purchaser to pay for the services.

[6/28/89, 11/26/90, 11/15/96; 3.2.206.22 NMAC – Rn, 3 NMAC 2.48.22 & A, 5/31/01]

7-9-49. DEDUCTION--GROSS RECEIPTS TAX--SALE OF TANGIBLE PERSONAL PROPERTY FOR LEASING AND LICENSES FOR LEASING.-

A. Except as otherwise provided by Subsection B of this section, receipts from selling tangible personal property and licenses may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate shall be engaged in a business that derives a substantial portion of its receipts from leasing or selling tangible personal property or licenses of the type sold. The buyer may not utilize the tangible personal property or license in any manner other than holding it for lease or sale or leasing or selling it either by itself or in combination with other tangible personal property or licenses in the ordinary course of business.

B. The deduction provided by this section shall not apply to receipts from selling;

(1) furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53 NMSA 1978;

(2) coin-operated machines; or

(3) manufactured homes.

(Laws 1992, Chapter 39, Section 7)

3.2.207.8 - GENERAL QUALIFICATIONS – EXAMPLES

A. To qualify to issue a nontaxable transaction certificate (nttc) under the provisions of Section 7-9-49 NMSA 1978, the business issuing the nttc must derive a substantial portion of its income from the sale or lease of the same type of property which is being purchased under the nttc. The property purchased under the nttc must subsequently be sold or leased in the ordinary course of business. If the seller accepts an nttc in good faith and if either of these requirements is not met the value of the tangible property purchased under such nttc will be subject to the compensating tax.

B. Example 1: X derives a substantial portion of its receipts from leasing or selling air compressors. When X buys air compressors from M, the manufacturer, X gives M an nttc. M's receipts from the sales are deductible.

C. Example 2: X, an office machine company, buys a typewriter from the manufacturer, M. X has given M an nttc. X leases the typewriter for six months after which X uses it in its office. M may deduct the receipts from the sale of the typewriter from its gross receipts. X must pay gross receipts tax on its receipts from leasing the typewriter. As a result of converting the typewriter to its own use, X must pay compensating tax on the market value of the typewriter at the time of its conversion to use under Section 7-9-7 NMSA 1978.

D. Example 3: A substantial portion of L's business is from leasing or selling lawnmowers. L has given an nttc to D, the dealer from whom L buys its lawnmowers. L buys five lawnmowers from D to lease to its customers. L sells one of the lawnmowers to Y and leases the others to X. D may deduct receipts from the sale of all five of the lawnmowers to L. L must pay the gross receipts tax on the receipts from leasing to X and the sale to Y.

E. Example 4: C, a flying service, sells new and used airplanes, rents airplanes, provides in-state charter service, and provides flying instruction. C purchases five airplanes from X, a New Mexico airplane manufacturer, for use in its charter service. “Chartering” is here defined as hiring a plane and a pilot to fly the customer, not freight. Receipts from in-state charter flights are not subject to gross receipts tax. A charter is not a lease. The receipts from leasing airplanes and flight instructions are subject to the gross receipts tax. X's receipts from the sale of planes to C are subject to the gross receipts tax. If C bought the planes under nttc it issued X, C would be liable for compensating tax on the value of the charter planes. Later, when C sells these planes, the receipts from the sales of the used planes also are taxable. Sale of used planes is in the normal course of C's business. If C converts a plane it purchased for leasing to charter flights, even if the conversion is for a single flight, compensating tax becomes due on the market value of the plane at the time of conversion.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.207.8 NMAC - Rn, 3 NMAC 2.49.8 & A, 5/31/01; A, 11/30/05]

3.2.207.9 - AUTOMOBILE LEASING

The receipts from selling tires, engine repair parts, and similar items to a lessor who uses these items in the maintenance of vehicles held for lease or leased may be deducted from gross receipts if the lessor delivers a nontaxable transaction certificate to the seller. Unless the lessor meets the following conditions the lessor will be subject to compensating tax on the value of these items:

A. the parts are used by the lessor on vehicles held for lease, leased or held for sale and the receipts from leasing or selling vehicles are a substantial portion of the lessor's receipts; and

B. the maintenance of the vehicles is performed at no additional cost to the lessee of these vehicles under the lease agreement; and

C. the lessor does not use the vehicles or parts in any manner other than holding them for lease or sale or leasing or selling them either by themselves or in combination with other tangible personal property in the ordinary course of business.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.207.9 NMAC – Rn, 3 NMAC 2.49.9, 5/31/01]

3.2.207.10 - SAFE HARBOR LEASE - PURCHASE OF AND/OR SALE OF PROPERTY BY SELLER/LESSEE

A seller/lessee who enters into a qualified “safe harbor lease” transaction as defined in Section 168 of the Internal Revenue Code and who is in the business of selling or leasing the same type of property sold under the “safe harbor lease” may issue and receive the nontaxable transaction certificate authorized by Section 7-9-49 NMSA 1978.

[2/23/83, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.207.10 NMAC – Rn, 3 NMAC 2.49.10 & A, 5/31/01]

7-9-50. DEDUCTION--GROSS RECEIPTS TAX--LEASE FOR SUBSEQUENT LEASE.--

A. Except as provided otherwise in Subsection B of this section, receipts from leasing tangible personal property or licenses may be deducted from gross receipts if the lease is made to a lessee who delivers a nontaxable transaction certificate to the lessor. The lessee delivering the nontaxable transaction certificate may not use the tangible personal property or license in any manner other than for subsequent lease in the ordinary course of business.

B. The deduction provided by this section does not apply to receipts from leasing:

(1) furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53 NMSA 1978;

(2) coin-operated machines; or

(3) manufactured homes.

(Laws 1992, Chapter 39, Section 8)

3.2.208.8 - GENERAL QUALIFICATIONS

A. To qualify to issue a nontaxable transaction certificate (nttc) under the provisions of Section 7-9-50 NMSA 1978, the business issuing the nttc must subsequently lease the tangible property in the ordinary course of business. If the seller accepts an nttc in good faith and if the tangible property is not subsequently leased in the ordinary course of business, the lessee will owe compensating tax on the total amount paid to the lessor under the terms of the lease.

B. Example: H manufactures fishing tools for use in the oil field. H leases these tools to J, a rental company, which in turn rents the tools to P, a drilling company. If J delivers a nontaxable transaction certificate to H, H may deduct the amount of its rental receipts from its gross receipts.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.208.8 NMAC – Rn, 3 NMAC 2.50.8 & A, 5/31/01]

3.2.208.9 - LEASE VS. LICENSE TO USE

A. Receipts of a person who is a lessor of tangible personal property from leasing tangible personal property to a lessee who grants a license to use the leased items of tangible personal property to a third party may not be deducted from gross receipts pursuant to Section 7-9-50 NMSA 1978. However, the deduction will be allowed if the lessor has accepted a nontaxable transaction certificate (nttc) from the buyer in good faith that the property would be used in a nontaxable manner.

B. If the lessee delivering the nttc does not use the property in a nontaxable manner, compensating tax is due.

C. Example 1: T leases television sets to X, a motel, to place in the rooms of its guests. X delivers an nttc to T pursuant to Section 7-9-50 NMSA 1978. X may not properly deliver an nttc pursuant to Section 7-9-50 NMSA 1978 because it is not subsequently leasing the television sets to its guests in the ordinary course of business; rather, it is granting its guests a license to use the television sets.

D. Example 2: X leases bowling equipment to a local bowling alley which in turn grants its customers a license to use that equipment. The local bowling alley may not deliver an nttc to X pursuant to Section 7-9-50 NMSA 1978 because the lease of the equipment is not for subsequent lease.

E. Example 3: X is in the business of selling and leasing golf carts. Y, a country club, leases a golf cart from X and permits golfers to use it for a consideration. X's receipts from leasing the golf cart may not be deducted from gross receipts pursuant to Section 7-9-50 NMSA 1978 because Y is not subsequently leasing the golf cart to golfers but is merely granting a license to use the golf cart.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.208.9 NMAC – Rn, 3 NMAC 2.50.9 & A, 5/31/01]

3.2.208.10 - EMPLOYER/EMPLOYEE VEHICLE LEASE AGREEMENT

A. When an employee is the owner of a vehicle and enters into a lease agreement with an employer who pays the employee wages which are exempt from gross receipts tax under Section 7-9-17 NMSA 1978, the receipts derived from the lease of the vehicle to perform the transportation services are not deductible pursuant to Section 7-9-50 NMSA 1978.

B. Example: X, a bona fide employee of Y, a highway escort service, uses X's own vehicle and equipment to perform highway escort services for Y. X owes gross receipts tax on receipts from leasing the vehicles and equipment. Since X is a true employee of Y, X does not owe gross receipts tax on wages received from Y. If X were not a true employee of Y, X would owe gross receipts tax on the total amount received.

[6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.208.10 NMAC – Rn, 3 NMAC 2.50.10 & A, 5/31/01]

7-9-51. DEDUCTION--GROSS RECEIPTS TAX--SALE OF CONSTRUCTION MATERIAL TO PERSONS ENGAGED IN THE CONSTRUCTION BUSINESS.--

A. Receipts from selling construction material may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate to the seller.

B. The buyer delivering the nontaxable transaction certificate must incorporate the construction material as:

(1) an ingredient or component part of a construction project that is subject to the gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part;

(2) an ingredient or component part of a construction project that is subject to the gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed; or

(3) an ingredient or component part of a construction project that is located on the tribal territory of an Indian nation, tribe or pueblo.

(Laws 2001, Chapter 343, Section 4)

3.2.209.7 - INGREDIENT OR COMPONENT PART DEFINED

To be an "ingredient or component part" as used in Section 7-9-51 NMSA 1978 the tangible property must be an intended part of the finished project. The finished project is the end product of construction.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.209.7 NMAC – Rn, 3 NMAC 2.51.7 & A, 5/31/01]

3.2.209.8 - ITEMS THAT ARE NOT INGREDIENT OR COMPONENT PARTS - OIL FIELD

Receipts from the sale of the following items may not be deducted from gross receipts since these items do not become ingredient or component parts of a construction project within the meaning of Section 7-9-51 NMSA 1978:

A. drilling equipment, including derricks, blocks, substructures, draw-works, flooring, rotary tables, engines, mud pumps, pipe racks, tanks, doghouses, hoses, water and fuel lines, water well equipment, blowout preventers and other drilling equipment and tools;

B. drill stems, drill collars, subs and kelly;

C. drilling bits, core bits and barrels;

D. fishing tools;

E. fuels, including natural gas, LPG, diesel and electricity; and

F. drilling fluids, including mud, additives, air and lost circulation materials.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.209.8 NMAC – Rn, 3 NMAC 2.51.8 & A, 5/31/01]

3.2.209.9 ITEMS THAT ARE INGREDIENT OR COMPONENT PARTS - OIL FIELDS:

Receipts from the sale of casing, cement, shoes and float equipment, casing heads and well heads may be deducted from gross receipts if the other requirements of Section 7-9-51 NMSA 1978 are met and a nontaxable transaction certificate or alternative evidence is provided by a well drilling company performing a turnkey project, as these items become ingredient or component parts of the construction project.
[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.9 NMAC - Rn, 3 NMAC 2.51.9 & A, 5/31/2001; A, 12/27/2018]

3.2.209.10 - MATERIALS IN CONCRETE WORK

A. Receipts from selling materials and special coating used in concrete work may be deducted from gross receipts if the materials sold become an ingredient or component part of a construction project and if the other requirements of Section 7-9-51 NMSA 1978 are met.

B. Concrete curing compounds, hardening agents and liquid curing compounds which remain on or in concrete become ingredient or component parts of construction projects within the meaning of Section 7-9-51 NMSA 1978.

C. Form coatings and form oils used to ease the separation of forms from concrete and snap ties, even though they remain imbedded in concrete, do not become ingredient or component parts of construction projects within the meaning of Section 7-9-51 NMSA 1978.
[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.209.10 NMAC – Rn, 3 NMAC 2.51.10 & A, 5/31/01]

3.2.209.11 SALE OF WATER:

Receipts from selling water to a construction company may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate or alternative evidence and if the water becomes an ingredient or component part of the finished product such as in concrete or in moistening fill. However, if the water is used as merely a lubricating agent, such as in well drilling, it is not a component part of the finished product and the receipts are not deductible.
[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.11 NMAC - Rn, 3 NMAC 2.51.11, 5/31/2001; A, 12/27/2018]

3.2.209.12 FORMS AND FUEL:

A. Receipts from selling lumber for forms and fuel for trucks to a person engaged in the construction business may not be deducted from gross receipts because neither the lumber nor the fuel actually becomes an ingredient or component part of the finished product. However, if the form lumber is later used for sheeting in the construction project, the form lumber may be purchased with a nontaxable transaction certificate (nttc) or alternative evidence pursuant to Section 7-9-51 NMSA 1978.

B. The receipts from selling screed pins used in plastering and forms which must, by reason of design, be left in place after concrete has been poured over them may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate (nttc) or alternative evidence.
[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984,

4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.12 NMAC - Rn, 3 NMAC 2.51.12 & A, 5/31/2001; A, 12/27/2018]

3.2.209.13 WELDING RODS:
Receipts from selling welding electrodes (welding rods), which melt to provide filler or fused metal, to a person engaged in the construction business may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate (nttc) or alternative evidence to the seller and the buyer delivering the nttc uses the welding electrodes in such a way that they become an ingredient or component part of the construction project [3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.13 NMAC - Rn, 3 NMAC 2.51.13 & A, 5/31/2001; A, 12/27/2018]

3.2.209.14 PAINT AND PAINTING SUPPLIES:
A. The receipts from the sale of paint, filler, thinner, varnish or similar items to a person engaged in the painting business who delivers a nontaxable transaction certificate (nttc) or alternative evidence to the seller may be deducted from the seller's gross receipts.
B. Receipts from the sale of brushes, sandpaper, scrapers, sand for sandblasting, machinery and similar items used in the painting business to persons engaged in the painting business may not be deducted from gross receipts because such items do not become an ingredient or component part of the construction project.
[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.14 NMAC - Rn, 3 NMAC 2.51.14 & A, 5/31/2001; A, 12/27/2018]

3.2.209.15 SPRINKLER SYSTEMS:
Receipts from selling pipes, joints, nozzles and similar items of tangible personal property which become ingredient or component parts of a sprinkler system to a person engaged in the business of selling and installing sprinkler systems may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate or alternative evidence.
[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.15 NMAC - Rn, 3 NMAC 2.51.15, 5/31/2001; A, 12/27/2018]

3.2.209.16 - BURNER FUEL
Receipts from selling burner fuel used to heat aggregates and asphalt to a person engaged in the construction business may not be deducted from gross receipts since burner fuel does not become an ingredient or component part of a construction project within the meaning of Section 7-9-51 NMSA 1978.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.209.16 NMAC – Rn, 3 NMAC 2.51.16 & A, 5/31/01]

3.2.209.17 - SURVEY SUPPLIES
Receipts from selling survey supplies used to survey a construction project to a person engaged in the construction business may not be deducted from gross receipts because such survey supplies do not become an ingredient or component part of the construction project within

the meaning of Section 7-9-51 NMSA 1978.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.209.17 NMAC – Rn, 3 NMAC 2.51.17 & A, 5/31/01]

3.2.209.18 WINDOWS AND DOORS:

A. Receipts from the sale of screens, screen doors and windows to a person engaged in the construction business may be deducted from the seller's gross receipts if the buyer delivers a nontaxable transaction certificate (nttc) or alternative.

B. Receipts from the sale of aluminum panel, aluminum T bar, aluminum angle, bulk or roll screen stock and jalousie glass to a person who produces screens, screen doors or windows and sells them installed in a construction project may be deducted from the seller's gross receipts pursuant to Section 7-9-51 NMSA 1978 if the buyer delivers an nttc or alternative evidence.
[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.18 NMAC - Rn, 3 NMAC 2.51.18 & A, 5/31/2001; A, 12/27/2018]

3.2.209.19 - ELECTRICITY

The receipts of an electric utility company from the sale of electricity to a person engaged in the construction business may not be deducted from the utility's gross receipts pursuant to Section 7-9-51 NMSA 1978 because electricity does not become an ingredient or component part of the end product of the construction project.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.209.19 NMAC – Rn, 3 NMAC 2.51.19 & A, 5/31/01]

3.2.209.20 - BLUEPRINTS - PHOTOSTATS

Receipts from the sale of blueprints or photostats to a person engaged in the construction business are subject to the gross receipts tax. These receipts may not be deducted pursuant to Section 7-9-51 NMSA 1978, because they do not become an ingredient or component part of a construction project.
[3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.209.20 NMAC – Rn, 3 NMAC 2.51.20 & A, 5/31/01]

3.2.209.21 - COMPENSATING TAX ON MATERIALS

When a person engaged in the construction business leases or otherwise uses a construction project which was built with construction materials purchased with a nontaxable transaction certificate, the compensating tax is due on the value of the construction materials incorporated into the project. The value to be reported is the actual cost.
[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.209.21 NMAC – Rn, 3 NMAC 2.51.21, 5/31/01]

3.2.209.22 INGREDIENT AND COMPONENT PARTS OF A CONSTRUCTION PROJECT:

In determining whether tangible personal property will become an ingredient or component part of a construction project, the department will use the following criteria, but not exclusively:

A. Was the person performing the work using the tangible personal property required

to be licensed under the Construction Industries Licensing Act, Sections 60-13-1 to 60-13-59 NMSA 1978.

B. Did the work for which the tangible personal property was used require a permit from one or more of the trade boards established by the Construction Industries Licensing Act or from a municipal building or mechanical department.

[6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.22 NMAC - Rn, 3 NMAC 2.51.22 & A, 5/31/2001; A, 12/27/2018]

3.2.209.23 CONSTRUCTION MATERIALS USED IN NONTAXABLE CONSTRUCTION PROJECTS:

A. A seller of construction material may not claim the deduction from gross receipts provided by Section 7-9-51 NMSA 1978, or accept a nontaxable transaction certificate (NTTC) in good faith as required by Section 7-9-43 NMSA 1978, when the seller can reasonably determine that the construction material sold will be incorporated into a construction project which will not be subject to gross receipts tax upon completion because it is located outside New Mexico.

B. A seller can reasonably determine that a project is located outside New Mexico when the seller has documents identifying the location of the project.

C. No construction project located outside New Mexico will be subject to gross receipts tax upon completion.

[1/24/1986, 4/2/1986, 11/26/1990, 11/15/1996, 3.2.209.23 NMAC - Rn & A, 3 NMAC 2.51.23, 10/31/2000; A, 12/27/2018]

3.2.209.24 - MATERIALS USED IN NONTAXABLE PROJECTS

A person who purchases construction materials using a nontaxable transaction certificate and who subsequently uses the construction materials on a project located either outside the state of New Mexico or on a project, other than a project sold to an Indian nation, tribe or pueblo or its member that is located on the tribal territory of that Indian nation, tribe or pueblo, not subject to the gross receipts tax upon completion shall be liable for the compensating tax on the value of the materials used. This version of 3.2.209.24 NMAC applies retroactively to transactions occurring on or after March 7, 2000.

[1/24/86, 4/2/86, 11/26/90, 11/15/96, 3.2.209.24 NMAC - Rn & A, 3 NMAC 2.51.24, 10/31/2000]

3.2.209.25 - CARPETS AND DRAPERIES INSTALLED IN A CONSTRUCTION PROJECT

When carpets or draperies are to be installed as an ingredient or component part of a construction project a person engaged in the construction business may deliver a nontaxable transaction certificate for the purchase of carpet or draperies, or the installation of carpets or draperies, to the seller and the seller may deduct receipts from the sale pursuant to Section 7-9-51 NMSA 1978.

[3.2.209.25 NMAC - N, 12/14/12]

3.2.209.26 MATERIALS USED IN GOVERNMENT OR NON-PROFIT PROJECTS:

Receipts from the sale to a person engaged in the construction business who delivers a

nontaxable transactions certificate or alternative evidence to the seller of construction materials that are tangible personal property, whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property by Section 168 of the Internal Revenue Code of 1986 as that section may be amended or renumbered, may be deducted if the construction material will ultimately be deductible pursuant to Section 7-9-54 or 7-9-60 NMSA 1978 provided that the remaining construction services portion of the project is subject to gross receipts tax.
[3.2.209.26 NMAC - N, 12/27/2018]

7-9-52. DEDUCTION--GROSS RECEIPTS TAX--SALE OF CONSTRUCTION SERVICES AND CONSTRUCTION-RELATED SERVICES TO PERSONS ENGAGED IN THE CONSTRUCTION BUSINESS.--

A. Receipts from selling a construction service or a construction-related service may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate to the person performing the construction service or a construction-related service.

B. The buyer delivering the nontaxable transaction certificate shall have the construction services or construction-related services directly contracted for or billed to:

(1) a construction project that is subject to the gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part;

(2) a construction project that is subject to the gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed; or

(3) a construction project that is located on the tribal territory of an Indian nation, tribe or pueblo.

C. As used in this section, "construction-related service" means a service directly contracted for or billed to a specific construction project, including design, architecture, drafting, surveying, engineering, environmental and structural testing, security, sanitation and services required to comply with governmental construction-related regulations; but "construction-related service" excludes general business services such as legal or accounting services, equipment maintenance and real estate sales commissions.

(Laws 2012, Chapter 5, Section 5)

3.2.210.7 - DEFINITIONS: [RESERVED]

[11/15/96; 3.2.210.7 NMAC - Rn, 3 NMAC 2.52.7, 5/31/01; A, 11/30/05; Repealed, 12/14/12]

3.2.210.8 - GENERAL BUSINESS SERVICES ARE NOT CONSTRUCTION SERVICES OR CONSTRUCTION-RELATED SERVICES:

A. General business services, such as accounting, legal services, real estate brokering, telecommunications and plan room services are not construction services within the definition of construction under Section 7-9-3.4 NMSA 1978 nor are they construction-related services as defined in Section 7-9-52 NMSA 1978. Receipts from performing these types of services to a construction contractor are subject to gross receipts tax.

B. Example 1: K is a law firm that contracts with C, a contractor, to provide legal services. K maintains that it is selling a legal service to C that is necessary for the completion of the construction project and that its receipts should not be subject to gross receipts tax. Legal

services are not included under the definition of construction under Section 7-9-3.4 NMSA 1978 or under the definition of construction-related services under Section 7-9-52 NMSA 1978. There is no deduction available for K's receipts from providing legal services to C.

C. Example 2: C provides B with telecommunications services through which B can maintain contact with B's construction crew working at a remote site. C's receipts from this service are not deductible under Section 7-9-52 NMSA 1978.

D. Example 3: C is engaged in the construction business and undertakes a project where the builder has no pre-paid client, and the project is speculative. C acquires the land and obtains a construction loan to fund the improvements on the land. The construction loan documents include charges for banking fees that are not pre-paid interest or interest on the loan balance. The banking fees are for a general business service and not considered a construction-related service and therefore not deductible under Section 7-9-52 NMSA 1978.

E. This version of 3.2.210.8 NMAC applies to transactions occurring on or after January 1, 2013.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 10/31/97; 3.2.210.8 NMAC - Rn, 3 NMAC 2.52.8 & A, 5/31/01; A, 12/14/12]

3.2.210.9 - WELL CONSTRUCTION SERVICES

A. Receipts from the sale of the following services in connection with well drilling are receipts from the sale of construction services as defined in Section 7-9-3.4 NMSA 1978, and may be deducted from gross receipts if all other requirements of Section 7-9-52 NMSA 1978, are met:

(1) dirt work and surfacing;
(2) digging cellars and pits;
(3) drilling ratholes;
(4) drilling water wells;
(5) laying water and fuel lines;
(6) directional drilling services;
(7) casing crew services;
(8) cementing services;
(9) drill stem testing; and
(10) fishing jobs.

B. Receipts from the sale of the following services in connection with well drilling are not receipts from the sale of construction services within the meaning of Section 7-9-3.4 NMSA 1978 and may not be deducted from gross receipts:

(1) repairing drilling equipment;
(2) hauling water and mud;
(3) hauling drilling equipment, rigging-up and rigging-down;
(4) field inspecting drill collars and drill stems; and
(5) furnishing compressed air.

C. On or after January 1, 2013, receipts from the sale of the following services in connection with well drilling are receipts from the sale of construction-related services as defined in Section 7-9-52 NMSA 1978 and are deductible under Section 7-9-52 NMSA 1978 if all the requirements of that section are met:

(1) hauling water and drilling mud;

(2) hauling drilling equipment, rigging-up and rigging-down;
(3) field inspecting drill collars and drill stems; and
(4) furnishing compressed air.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.9 NMAC - Rn, 3 NMAC 2.52.9 & A, 5/31/01; A, 12/14/12]

3.2.210.10 - HAULING SERVICES

Receipts from hauling materials, prefabricated buildings and supplies to and from a building site on or after January 1, 2013, for a person engaged in the construction business are construction-related services and are deductible from the hauler's gross receipts pursuant to Section 7-9-52 NMSA 1978 if all requirements of Section 7-9-52 NMSA 1978 are met.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 3/16/79, 6/18/79, 11/8/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.10 NMAC - Rn, 3 NMAC 2.52.10 & A, 5/31/01; A, 11/30/05; A, 12/14/12]

3.2.210.11 - [RESERVED]

[3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.11 NMAC - Rn, 3 NMAC 2.52.11, 5/31/01; Repealed, 11/30/05]

3.2.210.12 - [RESERVED]

[3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.12 NMAC - Rn, 3 NMAC 2.52.12 & A, 5/31/01; Repealed, 12/14/12]

3.2.210.13 - WATER TAPS

Receipts of a utility from providing a “tap” to a water main and installing a pipe from the water main to a meter which it provides to a person engaged in the construction business are deductible from gross receipts if the person engaged in the construction business delivers a nontaxable transaction certificate pursuant to Section 7-9-52 NMSA 1978.

[3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.13 NMAC – Rn, 3 NMAC 2.52.13 & A, 5/31/01]

3.2.210.14 - SALVAGING OF A “PRODUCTION UNIT”

Receipts of a person engaged in the business of servicing “production units” as defined in the Oil and Gas Emergency School Tax Act, Section 7-31-2 NMSA 1978, from performing services in connection with salvaging of materials from a “production unit” are not receipts from the sale of construction services or from construction-related services within the meaning of Section 7-9-52 NMSA 1978 and may not be deducted from gross receipts.

[3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.14 NMAC - Rn, 3 NMAC 2.52.14 & A, 5/31/01; A, 12/14/12]

3.2.210.15 - CLEANING THE CONSTRUCTION SITE

A. Receipts from cleaning a building upon completion of a construction project; from cleaning masonry upon the completion of a construction project; from making an earth fill for drainage purposes; from providing an earth fill of a granular type required by specifications; and from replacing construction rejected by the architects, the engineers or the owners are receipts

from performing construction services. Such receipts may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate to the seller.

B. Receipts from cleaning the building at any time other than during or immediately after completion of the construction project or cleaning masonry in a standing building in order to restore its appearance are not deductible under Section 7-9-52 NMSA 1978.

[3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.15 NMAC - Rn, 3 NMAC 2.52.15 & A, 5/31/01; A, 12/14/12]

3.2.210.16 - DAMAGE TO A CONSTRUCTION PROJECT BY SUBCONTRACTOR

A. Charges by a contractor to a subcontractor for damages to a construction site caused by the subcontractor are not gross receipts to the contractor, but constitute a reduction in the amount of consideration paid to the subcontractor for the service performed by the subcontractor.

B. Example: A, a prime contractor, contracts with C, an independent contractor, to repair a part of a construction project damaged by B, a subcontractor on the project. B is responsible to A for the cost of such repair. A also contracts with D, a person engaged in the business of hauling trash, to remove trash and debris left by B after completion of B's portion of the project. B is obligated by the terms of the contract to remove the trash and debris. A charges B for the cost of repair paid to C and for the cost of hauling paid to D, either by deducting such cost from the amount A will pay B upon completion of B's work or by billing B directly for them.

(1) A's charges to B for the cost of repair is a reduction in the cost of A's subcontract with B. A, therefore, derives no receipts from the charge to B, regardless of whether A subtracts the cost of work done by C from the amount A pays B or whether B pays A the cost of the work performed by C.

(2) A may deliver a nontaxable transaction certificate (nttc) to C, the independent contractor, if the service performed by C is a construction service within the meaning of Section 7-9-52 NMSA 1978.

(3) On or after January 1, 2013, A may deliver an nttc to D for hauling trash, since hauling is a construction-related service within the meaning of Section 7-9-52 NMSA 1978 if all the requirements of that section are met.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.16 NMAC - Rn, 3 NMAC 2.52.16 & A, 5/31/01; A, 12/14/12]

3.2.210.17 - MANUFACTURER'S EQUIPMENT INSTALLATION

If a manufacturer of equipment agrees to install equipment on a construction project in such a manner that the equipment becomes an ingredient or component part of the construction project, then the manufacturer of the equipment is selling a construction service, (installation of the equipment) and is a “person engaged in the construction business”. Receipts of the manufacturer for installing the equipment may be deducted from gross receipts if the prime contractor delivers a nontaxable transaction certificate (nttc) to the manufacturer. If the manufacturer hires a person to install the equipment, that person is installing such equipment for “a person engaged in the construction business” and may deduct the receipts from gross receipts if the manufacturer delivers an nttc pursuant to Section 7-9-52 NMSA 1978 to the person installing equipment.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96;

3.2.210.17 NMAC – Rn, 3 NMAC 2.52.17 & A, 5/31/01]

3.2.210.18 - CONSTRUCTION-RELATED SERVICES - LABORATORY WORK AND ENVIRONMENTAL TESTING

A. Prior to January 1, 2013, receipts of a person engaged in the business of performing laboratory work, such as the design or testing of dirt or concrete work, from the sale of these services to a person engaged in the construction business are not construction services within the meaning of Section 7-9-52 NMSA 1978 and may not be deducted from the seller's gross receipts pursuant to Section 7-9-52 NMSA 1978.

B. Receipts for laboratory work or environmental testing performed on or after January 1, 2013, are receipts from performing construction-related services as defined in Section 7-9-52 NMSA 1978 and are deductible if the requirements of Section 7-9-52 NMSA 1978 are met.

C. Example: X is engaged in the construction business. In order to comply with the requirements of the federal environmental protection agency, X must obtain the services of Y, a certified lead paint consultant. Y will test for the existence of lead paint in any building being demolished or remodeled by X, prepare a federally required report, suggesting additional best management practices, and send samples to a testing lab. Services provided by Y on or after January 1, 2013, are construction-related services and are deductible under Section 7-9-52 NMSA 1978 as long as all the requirements in the statute are met.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.18 NMAC - Rn, 3 NMAC 2.52.18 & A, 5/31/01; A, 12/14/12]

3.2.210.19 - CONSTRUCTION-RELATED SERVICES AND ASSOCIATED PRODUCTS

A. Receipts from the sale of design services and special inspections that are required to verify specifications in design criteria to a person engaged in the construction business, are construction-related services and deductible under Section 7-9-52 NMSA 1978.

B. Receipts from the sale of building plans, professional stamps, or similar products to a person engaged in the construction business are construction-related services as defined in Section 7-9-52. Receipts from such sales that are contracted for or billed to a construction project may be deducted from the seller’s gross receipts pursuant to Section 7-9-52 NMSA 1978 if the buyer is engaged in the construction business and delivers a nontaxable transaction certificate to the seller.

C. Example 1: C is engaged in the construction business. In order to begin the construction project C obtains the services of A, a design/architectural firm, to draw the plans necessary to obtain the building permit. Under Section 7-9-52 NMSA 1978, the plan preparations are a construction-related service. As long as the construction project is subject to gross receipts tax upon its completion, or located on tribal land, C may execute an nttc to A and A’s receipts will be deductible under Section 7-9-52 NMSA 1978 as construction-related services.

D. Example 2: X is engaged in the construction business and contracts with Y, who is also engaged in the construction business, for the design and construction of the mechanical ducting system on X’s construction project. Building code requires certain portions of the mechanical system to be designed by a mechanical engineer. Y, enters into a contract for the services of E, an engineering firm, to perform the calculations, design a portion of the system, and place an engineer’s “seal” on E’s part of the mechanical ducting design. E is able to accept

an nttc from Y as E's service is a construction-related service as defined in Section 7-9-52 NMSA 1978. X may also execute an nttc under Section 7-9-52 NMSA 1978 to Y so long as the X's completed project is subject to gross receipts tax.

E. This version of 3.2.210.19 NMAC applies to transactions occurring on or after January 1, 2013.

[3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.19 NMAC - Rn, 3 NMAC 2.52.19 & A, 5/31/01; A, 11/30/05; A, 12/14/12]

3.2.210.20 - COMPENSATING TAX ON CONSTRUCTION SERVICES

When a person engaged in the construction business leases out or otherwise uses a construction project for which construction services or construction-related services were purchased using a nontaxable transaction certificate (nttc), the compensating tax is due if the project is occupied or leased prior to sale. The value of the construction services or construction-related services to be reported is the actual cost of the construction services purchased using nttcs, and the tax is due at the time of occupancy.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.20 NMAC - Rn, 3 NMAC 2.52.20, 5/31/01; A, 12/14/12]

3.2.210.21 - MUD ENGINEERING SERVICES

Gross receipts from providing a mud engineering service at the well site to supervise the mixing of various agents and to make recommendations as to the type of fluids needed for the particular formations encountered in drilling wells are receipts from providing construction-related services as defined in Section 7-9-52 NMSA 1978 and are deductible pursuant to Section 7-9-52 NMSA 1978. Receipts from mud engineering services performed on or after January 1, 2013, may be deductible pursuant to Section 7-9-52 NMSA 1978 if a buyer engaged in the construction business delivers a nontaxable transaction certificate to the seller.

[3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.21 NMAC - Rn, 3 NMAC 2.52.21 & A, 5/31/01; A, 12/14/12]

3.2.210.22 - LEASE OF CONSTRUCTION EQUIPMENT

A. This version of 3.2.210.22 NMAC applies to transactions prior to January 1, 2013. Receipts from the lease of construction equipment on or after January 1, 2013, may be deductible under Section 7-9-52.1 NMSA 1978, if all requirements set out in Section 7-9-52.1 NMSA 1978 and 3.2.249.8 and 9 NMAC are met.

B. Receipts from leasing construction equipment, with or without operators, to a person engaged in the construction business may not be deducted from the lessor's gross receipts pursuant to Section 7-9-52 NMSA 1978. Leasing of construction equipment is not a construction service as defined in Subsection A of Section 7-9-3.4 NMSA 1978.

C. In contrast, when a person who is regularly engaged in the selling of construction services, such as a subcontractor, uses the subcontractor's own construction equipment to perform construction services for a person engaged in the construction business, the subcontractor may deduct the receipts for the services and equipment under Section 7-9-52 NMSA 1978 if:

(1) the subcontractor is an independent contractor and not an employee of the person engaged in the construction business; and

(2) the subcontractor exercises control over the use of the property in performing the services; the controlling factor is whether the equipment owner has control over the performance of the construction service which involves using the equipment or is simply operating the equipment at the direction of some other person engaged in the construction business.

D. Example 1: A is regularly engaged in the lease and rental of construction equipment. A enters into an agreement to lease a crane with an operator to a contractor engaged in the construction business to be used on a construction project. The contractor will direct all of the activity of the crane and operator on the construction site. A's receipts from the lease of the crane with an operator are not receipts from performing construction services. A cannot deduct such receipts.

E. Example 2: X is a heating and air conditioning subcontractor on a construction project. X owns a crane which X regularly uses to lift equipment onto the roof of buildings on which X works. X's receipts for construction services includes payment for using the crane. X may deduct those receipts under Section 7-9-52 NMSA 1978. If, however, X agrees to lease the crane with an operator to the prime contractor for work unrelated to the subcontract, which work is performed at the direction of the prime contractor, X would not be able to deduct the receipts for the leasing of the crane.

[11/8/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.22 NMAC - Rn, 3 NMAC 2.52.22 & A, 5/31/01; A, 11/30/05; A, 12/14/12]

3.2.210.23 - CONSTRUCTION STAKING

Construction staking is a construction service.

[5/15/97; 3.2.210.23 NMAC – Rn, 3 NMAC 2.52.23, 5/31/01]

3.2.210.24 - CONSTRUCTION-RELATED INSPECTION SERVICES

A. The receipts from the sale of inspection services to a person engaged in the construction business may be deducted from the seller's gross receipts pursuant to Section 7-9-52 NMSA 1978 when they are directly contracted for or billed to a specific construction project and if all the requirements of Section 7-9-52 NMSA 1978 are met. These inspection services include but are not limited to:

(1) field sampling or testing of construction components in order to comply with building codes; and

(2) stormwater runoff testing and routine inspections for compliance with permits required under the federal Clean Water or Clean Air Acts.

B. Example 1: C is engaged in the construction business. C obtains the services of either H, a certified home energy rating system (HERS) or L, a leadership in energy and environmental design (LEED) consultant to perform inspections and make recommendations for compliance with the state's energy conservation code. The receipts from the services performed by H or L are deductible under Section 7-9-52 NMSA 1978 when they are directly contracted for or billed to a specific construction project and if all the requirements of Section 7-9-52 NMSA 1978 are met.

C. Example 2: X is engaged in the construction business. X obtains the services of Y, an engineering service company to perform the weld inspection and testing required as a "special inspection" under provisions of the state's commercial building code. Y also provides a "special

inspection" service that includes inspecting forming and reinforcing rods, and observing concrete being poured. Both of these services are deductible under Section 7-9-52 NMSA 1978 when they are directly contracted for or billed to a specific construction project and if all the requirements of Section 7-9-52 NMSA 1978 are met.

D. Example 3: S is engaged in the construction business. S obtains the services of W, a stormwater professional, to prepare a federally-required SWPPP and monitor the quality of stormwater runoff by writing reports, suggesting additional best management practices, and sending samples to a testing lab. Even though S is not in the business of selling construction-related services, S may issue nttcs to W, and the testing laboratories (if they bill separately) as those are construction-related services deductible under Section 7-9-52 NMSA 1978 when they are directly contracted for or billed to a specific construction project and if all the requirements of Section 7-9-52 NMSA 1978 are met.

E. This version of 3.2.210.23 NMAC applies to transactions occurring on or after January 1, 2013.

[3.2.210.24 NMAC - N, 12/14/12]

3.2.210.25 - TRANSACTIONS INVOLVING CONSTRUCTION-RELATED SERVICES

The following are examples of transactions that involve construction-related services and how the deduction for these services under Section 7-9-52 NMSA 1978 may or may not apply to the specific facts of these transactions.

A. Example 1: X is a general contractor who has been hired to design and build an office building. In addition to the typical construction service subcontractors, X also hires an Y, an engineering firm and Z, an architect, to perform construction-related services that are directly contracted for this particular construction project. If X provides Y and Z with an appropriate nontaxable transaction certificate, Y and Z can take the deduction for construction-related services under Section 7-9-52 NMSA 1978.

B. Example 2: T, a construction contractor, hires S, a security firm, to provide security services at T's ten construction sites. S has experienced some recent employment turnover and does not have enough employees to provide security services for all of T's construction sites. As a result, S is required to subcontract with W, an independent security company for two of the construction sites. T executes a nontaxable transaction certificate (nttc) pursuant to Section 7-9-52 NMSA 1978 to S for the security services for the ten construction sites which allows S to take the construction-related service deduction under Section 7-9-52 NMSA 1978. The receipts from the services provided by W to S are subject to gross receipts tax unless a specific exemption or deduction applies. The deduction under Section 7-9-52 NMSA 1978 does not apply to this transaction, because S is not a person engaged in the construction business and therefore not authorized to execute an nttc under that section. The general service for resale deduction under Section 7-9-48 NMSA 1978 also does not apply because this deduction requires that the resale of the security services by S to T must be subject to gross receipts tax. Since S is taking the deduction under Section 7-9-52 NMSA 1978 this requirement in Section 7-9-48 NMSA 1978 cannot be met. W's receipts from providing security services to S are subject to gross receipts tax.

C. Example 3: Same facts as in Example 2 except S does not enter into a subcontract with W. Instead, T amends the contract with S to provide security services for only eight of the construction sites and T enters into a separate contract with W to provide security services for the

remaining two sites. So long as T provides nttcs to S and W, both security providers can take the construction related service deduction under Section 7-9-52 NMSA 1978.
[3.2.210.25 NMAC - N, 12/14/12]

7-9-52.1. DEDUCTION--GROSS RECEIPTS TAX--LEASE OF CONSTRUCTION EQUIPMENT TO PERSONS ENGAGED IN THE CONSTRUCTION BUSINESS.--

A. Receipts from leasing construction equipment may be deducted from gross receipts if the construction equipment is leased to a person engaged in the construction business who delivers a nontaxable transaction certificate to the person leasing the construction equipment.

B. The lessee delivering the nontaxable transaction certificate shall only use the construction equipment at the construction location of:

(1) a construction project that is subject to the gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part;

(2) a construction project that is subject to the gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed; or

(3) a construction project that is located on the tribal territory of an Indian nation, tribe or pueblo.

C. As used in this section, "construction equipment" means equipment used on a construction project, including trash containers, portable toilets, scaffolding and temporary fencing.

(Laws 2012, Chapter 5, Section 6)

3.2.249.8 - LEASE OF CONSTRUCTION EQUIPMENT - GENERAL

A. Receipts from leasing construction equipment, with or without operators, on or after January 1, 2013, to a person engaged in the construction business may be deducted from the lessor's gross receipts pursuant to Section 7-9-52.1 NMSA 1978.

B. Example 1: A is regularly engaged in the lease and rental of construction equipment. A enters into an agreement to lease a crane with an operator to a contractor engaged in the construction business to be used on a construction project. The contractor will direct all of the activity of the crane and operator on the construction site. A's receipts from the lease of the crane with an operator are receipts from leasing construction equipment pursuant to Section 7-9-52.1 NMSA 1978 and are deductible.

C. Example 2: X is a heating and air conditioning subcontractor on a construction project. X owns a crane which X regularly uses to lift equipment onto the roof of buildings on which X works. X's receipts for construction services includes payment for using the crane. X may deduct those receipts under Section 7-9-52 NMSA 1978. If, however, X agrees to lease the crane with an operator to the prime contractor for work unrelated to the subcontract, which work is performed at the direction of the prime contractor, X would not be able to deduct the receipts for the leasing of the crane under Section 7-9-52 NMSA 1978, but could deduct the receipts under Section 7-9-52.1 NMSA 1978 as receipts from the lease of construction equipment.

D. Example 3: C is engaged in the construction business. C hires S, a scaffolding-rental company, to deliver scaffolding to a specific construction project, erect the scaffolding, inspect the equipment daily for continued safety compliance, disassemble the scaffolding and transport it away from the construction site upon completion of the project. C may execute a

nontaxable transaction certificate to S for the lease of the scaffolding pursuant to Section 7-9-52.1 NMSA 1978.

E. This version of 3.2.249.8 NMAC applies to transactions occurring on or after January 1, 2013.

[3.2.249.8 NMAC - N, 12/14/12]

3.2.249.9 - LEASE OF CONSTRUCTION EQUIPMENT - OIL FIELD

A. Receipts from the lease of construction equipment on or after January 1, 2013, may be deducted from gross receipts tax if the leased items are used on a construction project and the requirements of Section 7-9-52.1 NMSA 1978 are met. The following are some examples of items that if leased to a person engaged in the construction business would be deductible under Section 7-9-52.1 NMSA 1978:

(1) drilling equipment, including derricks, blocks, substructures, draw-works, flooring, rotary tables, engines, mud pumps, pipe racks, tanks, doghouses, hoses, water and fuel lines, water well equipment, blowout preventers and other drilling equipment and tools;

(2) drill stems, drill collars, subs and kelly; and

(3) fishing tools.

B. Receipts from the lease of the above items that remain on the oil field after the completion of the construction project, once the well is operational, do not qualify for the deduction under Section 7-9-52.1 NMSA 1978.

C. This version of 3.2.249.9 NMAC applies to transactions occurring on or after January 1, 2013.

[3.2.249.9 NMAC - N, 12/14/12]

7-9-53. DEDUCTION--GROSS RECEIPTS TAX--SALE OR LEASE OF REAL PROPERTY AND LEASE OF MANUFACTURED HOMES.--

A. Receipts from the sale or lease of real property and from the lease of a manufactured home as provided in Subsection B of this section, other than receipts from the sale or lease of oil, natural gas or mineral interests exempted by Section 7-9-32 NMSA 1978, may be deducted from gross receipts. However, that portion of the receipts from the sale of real property which is attributable to improvements constructed on the real property by the seller in the ordinary course of his construction business may not be deducted from gross receipts.

B. Receipts from the rental of a manufactured home for a period of at least one month may be deducted from gross receipts. Receipts received by hotels, motels, rooming houses, campgrounds, guest ranches, trailer parks or similar facilities, except receipts received by trailer parks from the rental of a space for a manufactured home or recreational vehicle for a period of at least one month, from lodgers, guests, roomers or occupants are not receipts from leasing real property for the purposes of this section.

C. Receipts attributable to the inclusion of furniture or appliances furnished as part of a leased or rented dwelling house, manufactured home or apartment by the landlord or lessor may be deducted from gross receipts. (Laws 1998, Chapter 94, Section 1)

3.2.211.7 - DEFINITIONS

A. **"Trailer park" defined:** As used in Section 7-9-53 NMSA 1978 and regulations thereunder, a "trailer park" is any facility where a manufactured home or recreational vehicle is or may be parked, which facility is operated by a person:

(1) who offers space for one or more manufactured homes or recreational vehicles, either with or without manufactured homes or recreational vehicles located thereon, for rent or hire; and

(2) who provides any of the customary services or facilities for those lodgers, guests, roomers or others who occupy manufactured homes, such as: utilities, garbage service, telephone service, cleaning service, protection service or ground keeping.

B. **"Month" defined:** As used in Section 7-9-53 NMSA 1978 and regulations thereunder, a "month" includes any consecutive 30-day period.

C. **"Recreational vehicle" defined:** As used in Section 7-9-53 NMSA 1978, the term "recreational vehicle" means a vehicle defined as a recreational vehicle in Section 66-1-4.15 NMSA 1978 or as a travel trailer in Section 66-1-4.17 NMSA 1978.

D. Subsection A of Section 3.2.211.7 NMAC is retroactively applicable to transactions occurring or receipts received on or after July 1, 1998. Subsection C of Section 3.2.211.7 NMAC is retroactively effective on July 1, 1998.

[11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 3/19/92, 11/15/96, 12/15/98, 4/30/99; 3.2.211.7 NMAC – Rn & A, 3 NMAC 2.53.7, 5/31/01]

3.2.211.8 - RECEIPTS FROM PROVIDING ACCOMMODATIONS

A. **Change of name of facility:** The operator of a hotel, motel, rooming house, campground, guest ranch, trailer park or other facility which operates in a manner similar to the listed facilities may not, by merely changing the name of the facility, qualify for the deduction granted by Section 7-9-53 NMSA 1978.

B. **Rental of space for less than one month:**

(1) Receipts of a person in the business of operating a trailer park from the rental of a space for a manufactured home or, on or after July 1, 1998, a recreational vehicle for a period of under one month are subject to the gross receipts tax.

(2) Receipts of a person in the business of operating a trailer park from the rental of a space for a manufactured home or, on or after July 1, 1998, a recreational vehicle for a period of over one month are deductible from gross receipts.

(3) Example 1: X owns and operates a trailer park located in the state of New Mexico. Y rents a trailer space for Y's manufactured home from X on April 15 on a month-to-month basis. Y pays one-half month's rent at that time and signs an agreement to pay rent in advance for each subsequent calendar month. Y pays May's rent on April 29. X may deduct all the receipts from the rental of trailer space to Y because the receipts are from the rental of a space for a manufactured home for over one month.

(4) Example 2: X owns and operates a trailer park located in New Mexico. X leases a trailer space to Y for Y's manufactured home for one year, taking a month's rent in advance. During the third week of the lease period and prior to 30 consecutive days of the lease term, Y breaks the lease and moves out. X may still deduct the rent received from Y covering the first month's occupancy if X is entitled to keep the rent attributable to the portion of the month in which there was no occupancy and if X does not rent that space to anyone else prior to the expiration of the first month.

(5) Example 3: X owns and operates a trailer park in New Mexico. Y does not enter into a lease with X but places a manufactured home in the trailer space as a tenant at will. After a period of three weeks X tells Y to move from the trailer park. X may not deduct the receipts derived from the rental of a trailer space to Y because the rental was for a period of less than one month, and X has no legal right to receive additional rent from Y.

C. **Rental of a house trailer:**

(1) This version of Paragraph (1) of Subsection C of Section 3.2.211.8 NMAC is applicable to transactions occurring or receipts received on or after July 1, 1998.

(2) This version of Paragraph (2) of Subsection C of Section 3.2.211.8 NMAC is applicable to transactions occurring or receipts received on or after July 1, 1998.

(3) This version of Paragraph (3) of Subsection C of Section 3.2.211.8 NMAC is applicable to transactions occurring or receipts received on or after July 1, 1998.

D. **Municipal lodgers and room tax:** Receipts of a hotel, motel, rooming house, campground, guest ranch, trailer park or similar facilities subject to the gross receipts tax do not include amounts paid to a municipality which has enacted by local ordinance a municipal lodgers or room tax pursuant to Sections 3-38-13 through 3-38-24 NMSA 1978.

E. **Utility sales by landlord:** Receipts of lessors of real property from leasing real property when the leases include separately stated amounts for natural gas, electricity or water conveyed as a condition of the lease of the real property to the lessee are deductible under Section 7-9-53 NMSA 1978. Receipts of trailer parks from space rentals which include

separately stated amounts for natural gas, electricity or water sold as a condition of the lease to occupants may be deducted under Section 7-9-53 NMSA 1978 only if the rental is for a period of at least one month.

F. **Rooming houses:** Receipts by operators of rooming houses from lodgers, guests, roomers or occupants are not receipts from leasing real property and, therefore, are subject to the gross receipts tax. A dormitory, fraternity or sorority house is a rooming house.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 3/16/79, 6/18/79, 5/3/80, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 3/19/92, 11/15/96, 12/15/98, 7/30/99; 3.2.211.8 NMAC – Rn & A, 3 NMAC 2.53.8, 5/31/01]

3.2.211.9 - AMOUNT ATTRIBUTABLE TO IMPROVEMENTS AND THE COST OF LAND

A. The proportion of the receipts from the sale of real property which is attributable to improvements constructed on the real property is determined by:

(1) subtracting from the sales price the cost of the land to the seller; or

(2) if there is substantial evidence that the value of the land is not the cost of the land to the seller, by subtracting from the sales price the value of the land as determined by an independent appraisal acceptable to the department, but in no case may the appraised value of the land exceed the difference between the sale price of the real property and the total cost of the improvements constructed on the real property.

B. The cost of the land to the seller is determined by the original cost of the land to the seller plus any amounts attributable to the land being sold, paid by the seller for offsite improvements such as paving.

C. Example 1: X, a construction company, purchases a lot in 1969 for $1,000. X builds a house on this lot in 1971. X then sells this real property to Y for $20,000. On the basis of an F.H.A. appraisal the value of the land is $5,000; however, the total cost of the improvements constructed on the lot is $18,000. X would be liable for gross receipts tax on $18,000. The F.H.A. appraisal, assuming acceptance by the department, is substantial evidence of an increase in the value of the land, but the appraisal value of the land cannot exceed the difference between the sale price of the real property and the total cost of the improvements constructed on the real property.

D. Example 2: X, a construction company, purchases a lot. In order to prepare the lot as a building site, X levels and excavates a portion of the real property. The receipts of X from the sale of real property which are attributable to improvements such as leveling and excavating the lot in preparation of a building site may not be deducted from gross receipts pursuant to Section 7-9-53 NMSA 1978.

E. Example 3: X, a construction company, purchases a lot, makes certain improvements, and then sells the lot in the ordinary course of business. The receipts of X from improvements on real property owned and sold by it in the ordinary course of business do not include amounts retained by financial institutions which loaned the purchase price directly to the purchaser as prepaid finance charges or discounts, if these amounts are not received by the real estate vendor. It is immaterial whether or not such amounts are included in the quoted real estate price. The receipts of X do include all amounts actually paid over to it which are attributable to improvements constructed on real property sold by X in the ordinary course of business. The receipts of such a business also include any amounts deducted by title insurance companies to

cover title insurance, legal fees, escrow fees, real estate brokerage commissions, real estate taxes, principal and interest on construction loans, liens and the like.
[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.211.9 NMAC - Rn, 3 NMAC 2.53.9 & A, 5/31/01; A, 11/30/05]

3.2.211.10 - REMODELING OR OTHER IMPROVEMENTS

A. A person possessing a valid contractor's license who purchases and improves real property by either remodeling or constructing additional improvements on the property and who subsequently sells the real property with the improvements is considered to be regularly engaged in the construction business. The receipts attributable to the remodeling or other improvements constructed on the real property are subject to the gross receipts tax. The receipts subject to tax are the sales price less the value of the real property purchased. The value of real property (VRP) purchased is computed through the use of a formula. The formula is the ratio of the cost of the real property (CRP) purchased divided by the cost of the real property (CRP) plus the cost of the remodeling or other improvements (CRI) times the sales price (SP), or:

$$VRP = \frac{(CRP)}{(CRP + CRI)} \times SP$$

B. The value of real property (VRP) is then subtracted from the sales price (SP) and the difference is the amount attributable to the value of remodeling or other improvements (VRI), which amount is subject to the gross receipts tax, or:

SP - VRP = VRI (Taxable receipts)

C. Example: C, a Construction Company, purchases a lot and house for $10,000. C then remodels the interior and exterior of the house at a cost of $15,000 and adds a concrete driveway, patio and walkway at a cost of $5,000. Upon completion of the remodeling and construction of the other improvements, C sells the real property with improvements for $60,000. C should compute its taxable receipts as follows:

(1) Cost of real property (CRP) = $10,000

(2) Cost of remodeling and improvements (CRI) = $15,000 + $5,000 or $20,000

(3) Sales price = $60,000

(4) $$VRP = \frac{CRP}{CRP + CRI} \times SP = \frac{\$10,000}{\$10,000 + \$20,000} \times \$60,000 = \$20,000$$

(5) SP - VRP = VRI (taxable receipts) = $60,000 - $20,000 = $40,000 (taxable receipts)

[5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.211.10 NMAC – Rn & A, 3 NMAC 2.53.10, 5/31/01]

3.2.211.11 - UTILITIES - SALE OF COMPANY FACILITIES

Receipts of an electric utility company from the sale of company facilities such as transformer installations or pole lines in place are receipts from the sale of real property and may be deducted from gross receipts pursuant to Section 7-9-53 NMSA 1978.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.211.11 NMAC – Rn & A, 3 NMAC 2.53.11, 5/31/01]

3.2.211.12 - LEASE OF ADVERTISING SIGNS

A. The receipts from leasing advertising signs which are placed or implanted in real

property in the possession of and occupied by the lessee, where the lessor reserves the right to remove the signs, are not receipts from leasing real property and are not deductible from gross receipts pursuant to Section 7-9-53 NMSA 1978. Such advertising signs are tangible personal property and are not real property.

B. Example: KR is an automobile manufacturer with dealerships all over the country. Because KR wants its dealerships to be easily recognized it requires them all to display large electric outdoor signs identifying the business as KR dealership. KR leases the signs to the dealerships but reserves the right to remove the signs. KR's receipts from leasing the signs to a New Mexico dealership are subject to the gross receipts tax. KR may not deduct its receipts from leasing these signs from gross receipts pursuant to Section 7-9-53 NMSA 1978 because KR is not leasing real property.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.211.12 NMAC – Rn & A, 3 NMAC 2.53.12, 5/31/01]

3.2.211.13 - GASOLINE SERVICE STATION EQUIPMENT LEASE RECEIPTS

Receipts attributable to the use by a lessee of equipment, tools and furniture included with the lease of a gasoline service station are not deductible as receipts from leasing real property pursuant to Section 7-9-53 NMSA 1978. Such receipts are from the leasing of tangible personal property. Where the receipts attributable to the leasing of tangible personal property are not shown on the lessor's books and records, the amount to be reported is the reasonable value of the tangible personal property leased prorated over the term of the lease, but in no event shall the reasonable value be less than the depreciated value of the tangible personal property at the beginning of the lease term.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.211.13 NMAC – Rn & A, 3 NMAC 2.53.13, 5/31/01]

3.2.211.14 - GENERAL EXAMPLES

A. The following examples illustrate the application of Section 7-9-53 NMSA 1978.

B. Example 1: Y owns a home in Tatum, New Mexico. Y is transferred from Tatum to Aztec and must sell the home. Y sells it to Z. Y does not have to register with the department or report the receipts from the sale of the house because Y is neither engaged in the business of selling houses nor holding out as being engaged in this business. This transaction is exempt from the gross receipts tax as an isolated and occasional sale pursuant to Section 7-9-28 NMSA 1978. However, if Y's house is sold by a real estate broker, the real estate broker's commission is taxable.

C. Example 2: V, a railroad company, rents motel rooms in X's motel on a permanent basis as lodging for its train crews while they wait for a return trip to their home station. The receipts X receives from V are not deductible under Section 7-9-53 NMSA 1978. If, however, V leases the entire motel from X, X's receipts are deductible under Section 7-9-53 NMSA 1978.

D. Example 3: X is engaged in constructing homes on land that X owns and has subdivided. X then sells them to interested individuals. X's sales are sales of real property, but X must pay gross receipts tax on that portion of the receipts that are attributable to the value of the houses and other improvements that X has constructed on the real property.

E. Example 4: X has lived in P, a motel, for fifteen years. X rents a room from the

motel for $1200 per year, payable in twelve monthly installments. P contends that the rental is a rental of real property and is deductible for the purposes of computing its tax liability under the gross receipts tax. The receipts which P receives from X are not deductible. Receipts from the rental of motel rooms are not deductible.
[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.211.14 NMAC – Rn & A, 3 NMAC 2.53.14, 5/31/01]

3.2.211.15 – [RESERVED]
[3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, Rp, 4/30/99; 3.2.211.5 NMAC – Rn, 3 NMAC 2.53.15, 5/31/01]

3.2.211.16 - LOCKER ROOMS IN A WAREHOUSE/SELF STORAGE WAREHOUSE UNITS

A. Receipts from providing individual locker rooms inside a warehouse facility where the tenant must rely on the warehouse owner to gain access to the inside of the building, are receipts from granting a license to use and are not deductible as the lease of real property.

B. Receipts from individual, self-contained storage warehouse units where the tenant has exclusive possession, use and access to the unit and pays a specified periodic rental for the unit are receipts from leasing real property and, therefore, are deductible under Section 7-9-53 NMSA 1978.
[3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.211.16 NMAC – Rn & A, 3 NMAC 2.53.16, 5/31/01]

3.2.211.17 - RECEIPTS FROM LICENSE TO USE REAL PROPERTY

A. Receipts derived from a license to use real property may not be deducted from gross receipts under Section 7-9-53 NMSA 1978, except that receipts derived from selling or leasing the entirety of the hunting rights with respect to a property for a period of one year or more will be considered the sale or lease of real property for the purposes of this deduction. Receipts from selling a hunting package are subject to gross receipts tax to the extent that the individual components of the package are not deductible or exempt from the gross receipts tax pursuant to the Gross Receipts and Compensating Tax Act. A person that sells a hunting package that consists of taxable and nontaxable components must reasonably allocate the receipts based on the value of the individual components. For purposes of this section, a “hunting package” may include the following components:

(1) lodging;
(2) meals;
(3) delivery and transportation services;
(4) guide services;
(5) license to use the property;
(6) carcass of the hunted animal; or
(7) other services or tangible personal property included in the package.

B. Example 1: X owns a ranch in New Mexico and is engaged in the business of ranching. Incidental to X's main business, X permits members of the public to go on X's property to hunt and fish for specified periods. X collects a fee from each person who does so. X's receipts from these fees are subject to the gross receipts tax because X merely granted a license to use. No

property is leased or sold. If X sells or leases the entirety of the hunting rights on X's property for one year or more to a single individual or entity, as distinct from permitting several different individuals to hunt for various periods during a year, that constitutes the sale or lease of real property and receipts therefrom may be deducted under Section 7-9-53 NMSA 1978.

C. Example 2: X owns an unlighted dirt parking lot in Albuquerque. Y enters into an agreement with X whereby Y agrees to pay a monthly fee and X agrees to permit Y to park Y's car in an assigned space for a period of one month. Z brings an automobile to X's parking lot and parks it there for a daily fee. Z does so only once. X's receipts from providing the service of supplying parking spaces or selling a license to use parking spaces to Y and Z are not deductible from gross receipts as a lease of real property pursuant to Section 7-9-53 NMSA 1978.

D. Example 3:

(1) S owns a flying service and related facilities. S enters into several types of agreements with its customers:

(a) an agreement with A on a month-to-month basis, permitting A to store an aircraft in an assigned “stall” in one of several hangars each containing eight to twelve such “stalls”, in return for a monthly fee. S specifically limits A's use of the premises to storage of the aircraft in the conduct of A's business in an adjacent airport;

(b) an agreement with B, on a month-to-month basis, permitting B to store an aircraft in an assigned “tie-down” space in a large open-span hangar containing spaces for eight such aircraft, in return for a monthly fee;

(c) an agreement with C, a transient customer, on an overnight or day- to-day basis, permitting C to store an aircraft in a specified "tie-down" space in the open-span hangar described above, in return for a daily fee.

(2) S's receipts from providing the service of supplying hangar space and open storage space for aircraft, or of granting a license to use such space, to A, B and C are subject to the gross receipts tax. S's receipts are not deductible from gross receipts as a lease of real property pursuant to Section 7-9-53 NMSA 1978.

E. Example 4: X owns a ranch in New Mexico and sells guided hunting packages. Included in the price for the hunt X guarantees that the hunter will retrieve an animal, lodging at the ranch, meals, experienced hunting guide, retrieval, caping, delivery to local meat processor and taxidermist. Not included in the price are expenses associated with alcohol consumption, meat processing, taxidermy services or gratuities for guides. X receipts from the sale of this type of hunting package includes receipts from providing services, the sale of tangible personal property (meals), the sale of the carcass (possibly livestock) and from granting a license to use the land within the ranch boundaries. X must determine a reasonable method of allocating their receipts between components that are subject to gross receipts tax and those that are exempt from gross receipts tax (sale of livestock).

[1/30/78, 6/17/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 7/15/96; 3.2.211.17 NMAC – Rn, 3 NMAC 2.53.17 & A, 5/31/01; A, 8/15/12]

7-9-54. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS TAX--SALES TO GOVERNMENTAL AGENCIES.--

A. Receipts from selling tangible personal property to the United States or New Mexico or a governmental unit, subdivision, agency, department or instrumentality thereof may be deducted from gross receipts or from governmental gross receipts. Unless contrary to federal law, the deduction provided by this subsection does not apply to:

(1) receipts from selling metalliferous mineral ore;

(2) receipts from selling tangible personal property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code;

(3) receipts from selling construction material, excluding tangible personal property, whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or ten-year property, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may be amended or renumbered; or

(4) that portion of the receipts from performing a "service" that reflects the value of tangible personal property utilized or produced in performance of such service.

B. Receipts from selling tangible personal property for any purpose to an Indian tribe, nation or pueblo or a governmental unit, subdivision, agency, department or instrumentality thereof for use on Indian reservations or pueblo grants may be deducted from gross receipts or from governmental gross receipts.

C. When a seller, in good faith, deducts receipts for tangible personal property sold to the state or a governmental unit, subdivision, agency, department or instrumentality thereof, after receiving written assurances from the buyer's representative that the property sold is not construction material, the department shall not assert in a later assessment or audit of the seller that the receipts are not deductible pursuant to Paragraph (3) of Subsection A of this section.

(Laws 2018, Chapter 58, Section 1)

3.2.212.8 - LEASING OF TANGIBLE PERSONAL PROPERTY TO A GOVERNMENTAL AGENCY

A. The receipts from the leasing of tangible personal property to a governmental agency are not deductible pursuant to Section 7-9-54 NMSA 1978. Only receipts from selling tangible personal property to a governmental agency are deductible.

B. Example 1: B rents computers to the United States for use in New Mexico. B contends that the gross receipts from these rentals are deductible for the purpose of computing gross receipts tax. The receipts are not deductible. Only receipts from selling tangible personal property to the United States are deductible.

C. Example 2: A county election board made the decision that in the last election they would use Q's electronic voting system. Because the county is small and the system is very new and expensive, the parties agreed to lease the equipment. All the installation and supplies were provided by Q under the contract. Q deducted the receipts from the transaction. The deduction is not allowable under Section 7-9-54 NMSA 1978 because this is not a sale of tangible personal property to a political subdivision of the state of New Mexico.
[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.212.8 NMAC – Rn & A, 3 NMAC 2.54.8, 5/31/01]

3.2.212.9 - SALE OF SERVICE TO A GOVERNMENTAL AGENCY

A. Receipts from the sale of a service to a governmental agency are not deductible pursuant to Section 7-9-54 NMSA 1978. Only the receipts from selling tangible personal property to a governmental agency are deductible.

B. Example 1: The city contracts with E, an employment agency, to provide substitutes for vacationing city secretarial employees each summer. E deducts the receipts from the city in computing its gross receipts tax liability. This is a sale of services to a political subdivision of the state of New Mexico and not a sale of tangible personal property. The deduction cannot be allowed.

C. Example 2: B is an attorney who performs legal services in New Mexico for various Indian tribes and Indian pueblos. B is not an enrolled member of any Indian nation, tribe or pueblo. B's receipts from these services are not deductible under Section 7-9-54 NMSA 1978. A deduction from gross receipts under Section 7-9-54 NMSA 1978 is allowed only for receipts from the sale of tangible personal property to the governing bodies of Indian tribes or Indian pueblos for use on Indian reservations or pueblo grants. (If the services are performed on the tribe's territory, however, they may be exempt under Subsection D of Section 3.2.4.9 NMAC).
[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.212.9 NMAC – Rn & A, 3 NMAC 2.54.9, 5/31/01]

3.2.212.10 CONSTRUCTION PERFORMED FOR A GOVERNMENTAL AGENCY:

A. Except as provided in Subsection B, receipts from performing a construction project for a governmental agency are receipts derived from performing a service and are not deductible pursuant to Section 7-9-54 NMSA 1978. The deduction is not available for construction materials whether the materials are billed separately on the same contract as the construction services or are billed under a separate contract.

B. Receipts from the sale of construction material that is tangible personal property, whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, are deductible. The amount of the deduction is the asset basis, as those terms are defined by the Internal Revenue Code of 1986, as that code may be amended or renumbered.

C. Example: A contractor enters a contract with a municipality to construct a building and to furnish and equip it. Construction is a service, and receipts from selling construction, including construction materials except for certain tangible personal property, are not deductible under Section 7-9-54 NMSA 1978. An analysis is performed to distinguish the

value of the construction, construction materials and tangible personal property included in the project. The contractor's receipts from the sale of tangible personal property, whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property including the indirect costs related to the asset basis, pursuant to Section 168 of the Internal Revenue Code, as that section may be amended or renumbered, are deductible provided the analysis includes sufficient information to demonstrate that the requirements of Section 7-9-54 NMSA 1978 are met.
[9/29/1967, 12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.212.10 NMAC - Rn & A, 3 NMAC 2.54.10, 5/31/2001; A, 12/27/2018]

3.2.212.11 - SALE OF MEALS

The receipts from selling meals on a contract basis to a governmental agency are receipts from selling tangible personal property. Such receipts may be deducted from gross receipts. Receipts of a private supplier from furnishing meals to persons visiting a governmental agency may not be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978 unless the meal is sold to that governmental agency.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.212.11 NMAC – Rn & A, 3 NMAC 2.54.11, 5/31/01]

3.2.212.12 - LODGING

Receipts derived from the rental of lodging in hotels, motels, boarding houses, etc. to a governmental agency may not be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978 because the rental of such lodging is not the sale of tangible personal property.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.212.12 NMAC – Rn & A, 3 NMAC 2.54.12, 5/31/01]

3.2.212.13 - PUBLIC HOUSING AUTHORITY

Receipts from selling tangible personal property, other than nonfissionable metalliferous ore, to a public housing authority may be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978 if the public housing authority is the state of New Mexico or any political subdivision thereof or the United States or any agency or instrumentality thereof.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.212.13 NMAC – Rn & A, 3 NMAC 2.54.13, 5/31/01]

3.2.212.14 LANDSCAPING:

A. Except when the landscape items are part of a construction project, receipts from selling and installing landscape items such as plants, shrubs, sod, seed, trees, rocks and ornaments are receipts from the sale of tangible personal property. Therefore, the receipts from the sale and installation of these landscape items pursuant to a contract with a governmental agency may be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978. Receipts from selling and installing these landscape items as part of a construction project may not be deducted pursuant to Section 7-9-54 NMSA 1978. This version of Subsection A of Section 3.2.212.14 NMAC applies to transactions occurring on or after March 2, 2018.

B. Receipts from the installation of sprinkler systems are receipts from the performance of a service and are not receipts from selling tangible personal property. Therefore, receipts from the installation of sprinkler systems for a governmental agency may not be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978.
[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996, 3.2.212.14 NMAC - Rn & A, 3 NMAC 2.54.14, 10/31/2000; A, 12/27/2018]

3.2.212.15 - SALE OF DENTURES TO INMATES OF PRISONS

A. The receipts of a dental laboratory from selling dentures to the New Mexico state penitentiary for use by inmates are receipts from selling tangible personal property to the state of New Mexico and may be deducted from gross receipts where:

(1) a dentist not associated with a dental laboratory examines an inmate, makes the necessary impressions of the mouth and teeth and prescribes the type of denture to be made by the dental laboratory; and

(2) the laboratory makes dentures and delivers them directly to the New Mexico state penitentiary; and

(3) the dental laboratory and the dentist send separate statements to and are paid separately by the New Mexico state penitentiary; and

(4) no contractual relationship exists between the dental laboratory and the dentist.

B. If each of these conditions is present, receipts of the dental laboratory from the sale of dentures to the New Mexico state penitentiary for use by inmates are receipts from selling tangible personal property to the state of New Mexico and may be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.212.15 NMAC – Rn & A, 3 NMAC 2.54.15, 5/31/01]

3.2.212.16 - SCHOOL PICTURES

Receipts of a photographer from sales of photographs taken by the photographer to school children or parents of school children are subject to gross receipts tax even if a public school makes actual payment to the photographer from a “picture fund” made up of contributions of school children or parents of school children. The receipts from the portion of such sales attributable to any separately stated item of tangible personal property, such as prints, may not be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978 since it is not a sale to a public school. Receipts from the portion of such sales attributable to services are subject to the gross receipts tax and may not be deducted pursuant to Section 7-9-54 NMSA 1978 because it is not a sale of tangible personal property.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.212.16 NMAC – Rn & A, 3 NMAC 2.54.16, 5/31/01]

3.2.212.17 - NONAPPROPRIATED ACTIVITIES OF MILITARY SERVICES

Receipts from selling tangible personal property, other than nonfissionable metalliferous ore or that which will become an ingredient or component part of a construction project, to nonappropriated fund activities of military services may be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978 where such nonappropriated fund activities are declared to be

instrumentalities of the United States by military regulations promulgated and signed by the Secretary of the Army, the Secretary of the Navy or the Secretary of the Air Force.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.212.17 NMAC – Rn & A, 3 NMAC 2.54.17, 5/31/01]

3.2.212.18 - SALE OF DRUGS TO WELFARE PATIENTS

The receipts of a pharmacist from selling drugs to welfare patients may be deducted from gross receipts in a situation in which the health and environment department remits to the pharmacist the wholesale cost of the drug sold and a fixed amount per prescription filled. Such receipts are derived from the sale of tangible personal property to the state of New Mexico and may be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.212.18 NMAC – Rn & A, 3 NMAC 2.54.18, 5/31/01]

3.2.212.19 - PROOF OF PAYMENT

A. A seller must be able to prove that payment for the tangible personal property sold was made from the United States, or any agency or instrumentality thereof, or from the state of New Mexico, or any political subdivision thereof, or from the governing body of any Indian nation, tribe or pueblo or the deduction will not be allowed.

B. Proof of payment acceptable to the secretary consists of either a Type 9 nontaxable transaction certificate or other documentation demonstrating payment by a governmental entity. Such other documentation includes:

(1) for sales to any governmental entity (including federal agencies), documents related to the transaction showing the governmental entity's name, such as purchase orders, copies of warrants issued in payment and contracts covering the items purchased;

(2) for sales to federal agencies only, the federal contract number; and

(3) other documents determined by the secretary to constitute proof of payment.

[3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.212.19 NMAC – Rn, 3 NMAC 2.54.19, 5/31/01]

3.2.212.20 - METROPOLITAN REDEVELOPMENT PROJECTS

A. Receipts from selling tangible personal property which is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code in New Mexico are subject to gross receipts tax.

B. A seller of tangible personal property which is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code may not claim the deduction from gross receipts provided by Section 7-9-54 NMSA 1978 by accepting a nontaxable transaction certificate from the municipality in question nor by proving payment from government funds.
[10/2/85, 4/2/86, 11/26/90, 11/15/96; 3.2.212.20 NMAC – Rn & A, 3 NMAC 2.54.20, 5/31/01]

3.2.212.21 - GOVERNMENT CREDIT OR PROCUREMENT CARD PURCHASES

A. Receipts from sales of tangible personal property to an agency of the United States Government or the state of New Mexico are deductible from the gross receipts of the seller when paid for by a credit or procurement_card issued to the United States government or the state of

New Mexico. Through November 29, 1998, credit or procurement cards bearing the legends "U S GOVT TAX EXEMPT' and "I.M.P.A.C." are such credit or procurement cards issued to the United States government. On and after November 30, 1998, credit or procurement cards bearing the legends "United States of America" and "Tax Exempt I.D. 140001849" are such credit or procurement cards issued to the United States Government. On or after June 30, 2003, credit or procurement cards bearing the legend "State of New Mexico" and the state seal are such credit or procurement cards issued to the state of New Mexico.

B. Receipts from credit or procurement card sales of construction materials or services or receipts from credit or procurement card payments of leases of tangible property are not deductible. Receipts from credit or procurement card sales to employees or representatives of the federal government or the state of New Mexico using a credit or procurement card other than a card issued to the United States government or the state of New Mexico are not deductible from gross receipts under Section 7-9-54 NMSA 1978.

[10/24/89, 11/26/90, 11/15/96, 3/31/99; 3.2.212.21 NMAC – Rn & A, 3 NMAC 2.54.21, 5/31/01; A, 10/15/03]

3.2.212.22 TANGIBLE PERSONAL PROPERTY IN PROJECTS FINANCED BY INDUSTRIAL REVENUE OR SIMILAR BONDS:

A. For the purposes of this section, a "bond project" is an arrangement entered into under the authority of the Industrial Revenue Bond Act, the County Industrial Revenue Bond Act or similar act in which a private person agrees:

(1) to arrange for the constructing and equipping of a facility for a state or local government by acting as agent for the government in procuring construction services, other services, tangible personal property which becomes an ingredient or component part of a construction project and other tangible personal property necessary for constructing and equipping the facility;

(2) to lease the completed facility from the government; and

(3) to buy the facility upon repayment of the bonds. The government agrees to own the facility, to finance the project in whole or in part through the issuance of bonds, to designate the private person as its agent in procuring the necessary property and services, to lease the facility to the private person and to sell the facility to the private person upon repayment of the bonds.

B. Receipts from the sale of tangible personal property to the private person who is acting as agent for the government with respect to the bond project are deductible under Section 7-9-54 NMSA 1978 if the tangible personal property is not construction material excluding tangible personal property whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may be amended or renumbered. To be deductible, the cost of the bond project tangible personal property must not increase the basis, as determined under the provisions of Section 1011 of the Internal Revenue Code in effect on the date the bond project commences, of the structure or other facility included in the definition of construction.

C. A bond project commences when the governing body of the state or local government takes official action to enter into the arrangement, but no earlier than the adoption of an inducement resolution.

D. This version of 3.2.212.22 NMAC applies to transactions occurring on or after March 2, 2018.
[2/22/1995, 11/15/1996; 3.2.212.22 NMAC - Rn & A, 3 NMAC 2.54.22, 5/31/2001; A, 12/27/2018]

3.2.212.23 - SALE OF A LICENSE TO A GOVERNMENT

Licenses are intangible property. Receipts from selling licenses are not deductible under Section 7-9-54 NMSA 1978.
[4/30/97; 3.2.212.23 NMAC – Rn & A, 3 NMAC 2.54.23, 5/31/01]

3.2.212.24 CUSTOM SOFTWARE:

A. Because it is a service, receipts from developing or selling custom software for governmental entities are not deductible under Section 7-9-54 NMSA 1978.

B. Example 1: X contracts with the United States to develop software to test certain devices which the United States is considering purchasing. X is performing a service under this contract.

C. Example 2: Same facts as in Example 1 except that X is to modify an existing software test program. X is nonetheless performing a service under the contract.

D. Example 3: X enters into a qualifying research and development contract with a signatory agency of the United States. The contract is to develop software to test certain devices which the United States is considering purchasing. X is performing a service under this contract. To create the testing program X buys several pieces of packaged software and develops new programming to interconnect the packaged software into a coherent testing program. X may execute, and the vendors may accept in good faith, Type 15 non-taxable transaction certificates or alternative evidence as provided by Section 7-9-43 NMSA 1978 for the purchase of the packaged software.
[4/30/1997; 3.2.212.24 NMAC - Rn & A, 3 NMAC 2.54.24, 5/31/2001; A, 12/27/2018]

3.2.212.25 - FEDERAL CREDIT UNIONS ARE GOVERNMENTAL INSTRUMENTALITIES BUT STATE CREDIT UNIONS ARE NOT

A. Federal courts have ruled that credit unions chartered under the Federal Credit Union Act are instrumentalities of the federal government. See *United States v. State of Maine*, 524 F. Supp. 1056 (1981) and *United States v. State of Michigan*, 851 F.2d 803 (1988). Therefore persons who sell tangible personal property to federal credit unions are entitled to the deduction provided by Section 7-9-54 NMSA 1978.

B. Although Section 58-11-61 NMSA 1978 exempts from gross receipts tax the receipts of a credit union organized under or subject to the Credit Union Regulatory Act to the same extent that the receipts of a credit union chartered under federal law are exempt, the receipts of a vendor who sells tangible personal property to credit unions organized under or subject to the Credit Union Regulatory Act are not deductible under Section 7-9-54 NMSA 1978. The gross receipts tax is imposed on the receipts of the vendor; it is not imposed on the credit union. Credit unions organized under or subject to the Credit Union Regulatory Act are not instrumentalities of the federal government and no statute or judicial determination makes them instrumentalities of New Mexico. A vendor's receipts from selling tangible personal property to state-chartered credit unions, however, may be deductible under Section 7-9-61.2 NMSA 1978.

This version of Subsection B of Section 3.2.212.25 NMAC applies to transactions occurring on or after July 1, 2000.

C. Section 3.2.212.25 NMAC is applicable to transactions on or after July 1, 1997.

[5/31/97; 3.2.212.25 NMAC - Rn & A, 3 NMAC 2.54.25, 10/31/2000]

3.2.212.26 - AMERICAN NATIONAL RED CROSS

Since the American National Red Cross chartered pursuant to 36 U.S.C. 300101 *et seq.* is an instrumentality of the federal government, persons who sell tangible personal property to the American National Red Cross are entitled to the deduction provided by Section 7-9-54 NMSA 1978.

[5/31/97; 3.2.212.26 NMAC – Rn & A, 3 NMAC 2.54.26, 5/31/01]

3.2.212.27 - SALE OF GASES

Gases, such as natural gas, nitrogen, carbon dioxide, helium, propane, oxygen, acetylene and nitrous oxide, are tangible personal property. Therefore receipts from selling gases to a governmental agency may be deducted from gross receipts under Section 7-9-54 NMSA 1978.

[3.2.212.27 - N, 3/15/10]

7-9-54.1. DEDUCTION--GROSS RECEIPTS FROM SALE OF AEROSPACE SERVICES TO CERTAIN ORGANIZATIONS.--

A. As used in this section:

(1) "aerospace services" means research and development services sold to or for resale to an organization for resale by the organization to the United States air force; and

(2) "organization" means an organization described in Subsection A of Section 7-9-29 NMSA 1978 other than a prime contractor operating facilities in New Mexico designated as a national laboratory by act of congress.

B. Receipts from performing or selling, on or after October 1, 1995, an aerospace service for resale may be deducted from gross receipts if the sale is made to a buyer who delivers a nontaxable transaction certificate. The buyer delivering the nontaxable transaction certificate shall separately state the value of the aerospace service purchased in the buyer's charge for the aerospace service on its subsequent sale to an organization or, if the buyer is an organization, on the organization's subsequent sale to the United States, and the subsequent sale shall be in the ordinary course of business of selling aerospace services to an organization or to the United States.

C. A percentage of the receipts from selling aerospace services to or for resale to an organization may be deducted from gross receipts in accordance with the following table:

Receipts During the Period	Deductible Percentage
October 1, 1995 through September 30, 1996	10%
October 1, 1996 through September 30, 1997	25%
October 1, 1997 through September 30, 1999	50%
October 1, 1999 and thereafter	100%.

(Laws 1995, Chapter 183, Section 1)

7-9-54.2. GROSS RECEIPTS--DEDUCTION--SPACEPORT OPERATION--SPACE OPERATIONS--LAUNCHING, OPERATING AND RECOVERING SPACE VEHICLES OR PAYLOADS--PAYLOAD SERVICES--OPERATIONALLY RESPONSIVE SPACE PROGRAM SERVICES.--

A. Receipts from launching, operating or recovering space vehicles or payloads in New Mexico may be deducted from gross receipts.

B. Receipts from preparing a payload in New Mexico are deductible from gross receipts.

C. Receipts from operating a spaceport in New Mexico are deductible from gross receipts.

D. Receipts from the provision of research, development, testing and evaluation services for the United States air force operationally responsive space program may be deducted from gross receipts.

E. As used in this section:

(1) "operationally responsive space program" means a program authorized pursuant to 10 U.S.C. 2273a;

(2) "payload" means a system, subsystem or other mechanical structure or material to be conveyed into space that is designed, constructed or intended to perform a function in space;

(3) "space" means any location beyond altitudes of sixty thousand feet above the earth's mean sea level;

(4) "space operations" means the process of commanding and controlling payloads in space; and

(5) "spaceport" means an installation and related facilities used for the launching, landing, operating, recovering, servicing and monitoring of vehicles capable of entering or returning from space.

F. Receipts from the sale of tangible personal property that will become an ingredient or component part of a construction project or from performing construction services may not be deducted under this section.

(Laws 2007, Chapter 172, Section 5)

7-9-54.3. DEDUCTION--GROSS RECEIPTS TAX--WIND AND SOLAR GENERATION EQUIPMENT--SALES TO GOVERNMENTS.--

A. Receipts from selling wind generation equipment or solar generation equipment to a government for the purpose of installing a wind or solar electric generation facility may be deducted from gross receipts.

B. The deduction allowed pursuant to this section shall not be claimed for receipts from an expenditure for which a taxpayer claims a credit pursuant to Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978.

C. As used in this section:

(1) "government" means the United States or the state or a governmental unit or a subdivision, agency, department or instrumentality of the federal government or the state;

(2) "related equipment" means transformers, circuit breakers and switching and metering equipment used to connect a wind or solar electric generation plant to the electric grid;

(3) "solar generation equipment" means solar thermal energy collection, concentration and heat transfer and conversion equipment; solar tracking hardware and software; photovoltaic panels and inverters; support structures; turbines and associated electrical generating equipment used to generate electricity from solar thermal energy; and related equipment; and

(4) "wind generation equipment" means wind generation turbines, blades, nacelles, rotors and supporting structures used to generate electricity from wind and related equipment.

(Laws 2010, Chapter 77, Section 2; Laws 2010, Chapter 78, Section 2)

7-9-54.4. DEDUCTION--COMPENSATING TAX--SPACE-RELATED TEST ARTICLES.--

A. The value of space-related test articles used in New Mexico exclusively for research or testing, placing on public display after research or testing or storage for future research, testing or public display may be deducted in computing compensating tax due. This subsection does not apply to any other use of a space-related test article.

B. The value of equipment and materials used in New Mexico for research or testing, or for supporting the research or testing of, space-related test articles or for storage of such equipment or materials for research or testing, or supporting the research and testing of, space-related test articles may be deducted in computing compensating tax due. This subsection does not apply to any other use of such equipment and materials.

C. As used in this section, a "space-related test article" is a material or device intended to be used primarily in research or testing to determine properties and qualities of the material or properties, qualities or functioning of a device or technology when the principal use of the material, device or technology is intended to be in space or as part of, or associated with, a space vehicle.

(Laws 2003, Chapter 62, Section 4)

7-9-54.5. DEDUCTION--COMPENSATING TAX--TEST ARTICLES.--

A. The value of test articles upon which research or testing is conducted in New Mexico pursuant to a contract with the United States department of defense may be deducted in computing the compensating tax due.

B. As used in this section, "test article" means a material or device upon which research or testing is conducted to determine the properties and qualities of the material or the properties, qualities or functioning of the device or a technology used with the device.

C. The deduction provided by this section does not apply to the value of property purchased by a prime contractor operating a facility designated as a national laboratory by an act of congress.

(Laws 2004, Chapter 16, Section 3)

7-9-55. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS TAX--TRANSACTION IN INTERSTATE COMMERCE.--

A. Receipts from transactions in interstate commerce may be deducted from gross receipts to the extent that the imposition of the gross receipts tax would be unlawful under the United States constitution.

B. Receipts from transactions in interstate commerce may be deducted from governmental gross receipts.

C. Receipts from transmitting messages or conversations by radio other than from one point in this state to another point in this state and receipts from the sale of radio or television broadcast time when the advertising message is supplied by or on behalf of a national or regional seller or advertiser not having its principal place of business in or being incorporated under the laws of this state, may be deducted from gross receipts. Commissions of advertising agencies from performing services in this state may not be deducted from gross receipts under this section.

(Laws 1993, Chapter 31, Section 12)

3.2.213.7 - DEFINITIONS

A. **"Regional" defined:** As used in Section 7-9-55 NMSA 1978, a "regional" seller or advertiser is a person who sells from locations in more than one state or who advertises in more than one state.

B. **"Seller or advertiser" defined:** As used in Section 7-9-55 NMSA 1978, "seller or advertiser" means a person whose identity, business, service, product or products are the primary subject of the advertising message.

[3/3/86, 4/2/86, 11/26/90, 11/15/96; 3.2.213.7 NMAC – Rn & A, 3 NMAC 2.55.7, 5/31/01]

3.2.213.8 - ADVERTISING RECEIPTS OF PUBLICATION FROM OUT-OF-STATE CUSTOMERS

Receipts of a newspaper or magazine which is published within New Mexico and circulated to subscribers within and without New Mexico from the sale of advertising space to advertisers within and without New Mexico are subject to the gross receipts tax. The gross receipts tax levied on advertising receipts does not impose an unconstitutional burden on interstate commerce.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.213.8 NMAC – Rn & A, 3 NMAC 2.55.8, 5/31/01]

3.2.213.9 - BROADCASTING AND RELATED ADVERTISING

A. **Microwave carriers:** The receipts of a microwave carrier from relaying television signals for another party for a fee from a point of origin outside this state to a point of destination within this state may be deducted from gross receipts even though a portion of those receipts is derived from relaying the signals between towers located within New Mexico.

B. **Deduction available to broadcaster and advertising agency:** A New Mexico radio or television broadcaster may deduct from its gross receipts the receipts derived from the

sale of broadcast time which is sold either directly to a national or regional seller or advertiser not having its principal place of business in or being incorporated under the laws of New Mexico, or to an advertising agency which purchases the broadcast time on behalf of, or for subsequent sale to, such national or regional seller or advertiser. No nontaxable transaction certificate is required. If the advertising agency subsequently sells the broadcast time to a New Mexico seller or advertiser, however, compensating tax will be due on the value of the broadcast time.

C. **Sales of broadcast time:** Receipts from sales of broadcast time by New Mexico radio and television broadcasters to advertising agencies are subject to gross receipts tax, but may be deductible under Section 7-9-48 NMSA 1978 or Section 7-9-55 NMSA 1978.

D. **Cable television systems:** Cable television systems are eligible for the deduction provided by Section 7-9-55 NMSA 1978 for receipts from the sale of broadcast time to a national or regional advertiser.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 3/3/86, 4/2/86, 11/26/90, 9/20/93, 11/15/96; 3.2.213.9 NMAC – Rn, 3 NMAC 2.55.9 & A, 5/31/01, A, 9/30/04]

3.2.213.10 - INTERSTATE TRANSPORTATION

A. **Transporting forest fire fighting materials:** The receipts from transporting forest firefighting materials, such as slurry, in airplanes from a point inside New Mexico to a point outside New Mexico are deductible from gross receipts.

B. **Star route contractors:**

(1) A person holding a contract for the transportation of United States mail as a "star route contractor" from points within New Mexico to other points outside New Mexico may deduct the portion of gross receipts which were derived from transactions in interstate commerce.

(2) In order to determine the portion of the receipts from the contract which is subject to the gross receipts tax, the total receipts from the contract are to be multiplied by a fraction, the numerator of which is the total number of delivery points in New Mexico and the denominator of which is the total number of delivery points. A delivery point is any point at which mail is required, by contract, to be delivered.

C. **Hauling livestock or produce:** Receipts from hauling livestock or agricultural products in a single shipment from points within New Mexico to points outside New Mexico, or from points outside New Mexico to points within New Mexico, are deductible from gross receipts as transactions in interstate commerce.

D. **Transportation by aircraft:**

(1) Receipts from transporting persons by aircraft from one point to another are deductible as receipts from transactions in interstate commerce.

(2) Receipts from transporting property by aircraft in a single flight from points within New Mexico to points outside New Mexico, or from points outside New Mexico to points within New Mexico are deductible from gross receipts as receipts from transactions in interstate commerce.

(3) Receipts from transporting property by aircraft from one point in New Mexico to another point in New Mexico are not deductible as transactions in interstate commerce.

E. **Federal preemption – transportation by motor carrier:** 49 USC 14505 prohibits New Mexico and its political subdivisions from imposing tax on receipts from transporting passengers by motor carrier in interstate commerce. Such receipts, therefore, are

deductible under Section 7-9-55 NMSA 1978.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 3/31/94, 11/15/96, 1/31/97; 3.2.213.10 NMAC – Rn & A, 3 NMAC 2.55.10, 5/31/01]

3.2.213.11 - PRINTED REPORTS

Receipts from the sale of a printed report of oil and gas leasing activities, which is not a "newspaper" as that term is used in Section 7-9-64 NMSA 1978, to nonresidents of New Mexico where delivery is made out-of-state by the seller's vehicle, U.S. mail or common carrier are receipts from transactions in interstate commerce and such receipts may be deducted from the gross receipts of the seller.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.213.11 NMAC – Rn & A, 3 NMAC 2.55.11, 5/31/01]

3.2.213.12 - TRANSACTIONS NOT QUALIFIED AS INTERSTATE COMMERCE

A. Receipts of New Mexico sellers from sales of property to New Mexico residents who request that delivery be made out of state are not receipts from transactions in interstate commerce and are not deductible under Section 7-9-55 NMSA 1978.

B. Receipts of New Mexico sellers from sales of property to nonresidents of New Mexico who accept delivery of the property in New Mexico or where transfer of title or risk of loss passes to the nonresident buyer in New Mexico are not receipts from transactions in interstate commerce and are not deductible under Section 7-9-55 NMSA 1978.
[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.213.12 NMAC – Rn & A, 3 NMAC 2.55.12, 5/31/01]

7-9-56. DEDUCTION--GROSS RECEIPTS TAX--INTRASTATE TRANSPORTATION AND SERVICES IN INTERSTATE COMMERCE.--

A. Receipts from transporting persons or property from one point to another in this state may be deducted from gross receipts when such persons or property, including any special or extra service reasonably necessary in connection therewith, is being transported in interstate or foreign commerce under a single contract.

B. Receipts from handling, storage, drayage or packing of property or any other accessorial services on property, which property has moved or will move in interstate or foreign commerce, when such services are performed by a local agent for a carrier or by a carrier and when such services are performed under a single contract in relation to transportation services, may be deducted from gross receipts.

C. Receipts from providing telephone or telegraph services in this state that will be used by other persons in providing telephone or telegraph services to the final user may be deducted from gross receipts

(Laws 1994, Chapter 112, Section 2)

3.2.214.8 - GENERAL EXAMPLES

A. The deduction provided by Subsections A and B of Section 7-9-56 NMSA 1978 apply to the receipts of persons who are not a party to a single contract for the transportation of property or persons in interstate commerce but who are selling such services to the person who is obligated to furnish the transportation in interstate commerce under the terms of the contract.

B. Example 1: X, a pipe supply house in Durango, Colorado, sells C in Las Cruces, New Mexico, a truckload of pipe. T, a truck line service, regularly transports property from Durango to Albuquerque. B, another truck line service, has New Mexico authority to transport property from Albuquerque to Las Cruces. X ships the pipe under a through bill of lading to Las Cruces with T. T carries the pipe to Albuquerque. At Albuquerque B attaches a tractor to T's trailer and carries the pipe on to Las Cruces. B can deduct the receipts which B receives from hauling the pipe from a point in New Mexico to another point in New Mexico. The pipe is being shipped in interstate commerce under a single contract. T can deduct its receipts from this transaction under the provisions of Section 7-9-56 NMSA 1978.

C. Example 2: H, an employee of a national chain store, is transferred by the company from Los Angeles to Albuquerque. H contracts with B, a moving company, to move H's household goods from Los Angeles to B's warehouse in Albuquerque. H also contracts with B's Albuquerque agent for interim storage and drayage of the goods pending H's location of housing in Albuquerque. The receipts of B's agents from performing the second contract are subject to the gross receipts tax.

D. Example 3: Y orders materials from an out-of-state supplier and the materials are shipped to Albuquerque under a single contract. The materials are stored in Albuquerque and then Y hires X, a local hauler, to take the materials from the place of storage to the job site. X claims receipts from performing this service are deductible under Section 7-9-56 NMSA 1978.

X's receipts are not deductible. X's hauling was not under the single contract or tariff for the interstate shipment. The single contract has previously been completed.
[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 4/30/99; 3.2.214.8 NMAC – Rn & A, 3 NMAC 2.56.8, 5/31/01]

3.2.214.9 - COMMISSIONS OF NEW MEXICO AGENTS

A. Commissions to a person in New Mexico for originating interstate transportation of persons are not deductible pursuant to either Section 7-9-56 NMSA 1978 or Section 7-9-66 NMSA 1978. Such commissions are a fee for service rendered in New Mexico.

B. Example: A, an airline company, secures passage on an interstate flight of another airline for one of its passengers because all of its flights to that particular destination are full. A receives a commission from the other airline for originating the transportation for that airline. The commission A receives is subject to the gross receipts tax.
[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.214.9 NMAC – Rn & A, 3 NMAC 2.56.9, 5/31/01]

3.2.214.10 - REPAIR OF DAMAGED HOUSEHOLD EFFECTS

When damage occurs to personal effects during transit by an interstate carrier and the carrier is required to hire a repair facility to restore the damaged articles, receipts of the repair facility are not deductible pursuant to Section 7-9-56 NMSA 1978. Such receipts are not from transporting property in interstate commerce or performing accessorial services under a single contract. The interstate carrier cannot issue a nontaxable transaction certificate pursuant to Section 7-9-48 NMSA 1978 since it is not reselling but is consuming the repair service.
[3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.214.10 NMAC – Rn & A, 3 NMAC 2.56.10, 5/31/01]

3.2.214.11 - PUBLIC DISTRIBUTION WAREHOUSE

A. A “public distribution warehouse center” is a person who is engaged in the business of storing and distributing the property of others and who performs the following package of services for at least the majority of its clients:

(1) stores tangible personal property owned by the client; and

(2) upon order of the client,

(a) withdraws the tangible personal property from storage;

(b) re-packages or otherwise prepares the tangible personal property for delivery; and

(c) delivers the tangible personal property to customers of the client from the client's stored property, regardless of whether delivery is accomplished through the person's own employees and vehicles or through those of a third party.

B. Section 3.2.214.11 NMAC is retroactively applicable to transactions occurring on or after July 1, 1994.
[2/22/95, 11/15/96; 3.2.214.11 NMAC – Rn & A, 3 NMAC 2.56.11, 5/31/01]

7-9-56.1. DEDUCTION--GROSS RECEIPTS TAX--INTERNET SERVICES.--On and after July 1, 1998, receipts from providing leased telephone lines, telecommunications services, internet services, internet access services or computer programming that will be used by other persons in providing internet access and related services to the final user may be deducted from gross receipts if the sale is made to a person who is subject to the gross receipts tax or the interstate telecommunications gross receipts tax.
(Laws 2000, Chapter 84, Section 6)

7-9-56.2. DEDUCTION--GROSS RECEIPTS TAX--HOSTING WORLD WIDE WEB SITES.--Receipts from hosting world wide web sites may be deducted from gross receipts. For purposes of this section, "hosting" means storing information on computers attached to the internet.
(Laws 1998, Chapter 92, Section 2)

7-9-56.3. DEDUCTION--GROSS RECEIPTS--TRADE-SUPPORT COMPANY IN A BORDER ZONE.--

A. The receipts of a trade-support company may be deducted from gross receipts if:

(1) the trade-support company first locates in New Mexico within twenty miles of a port of entry on New Mexico's border with Mexico on or after July 1, 2003 but before July 1, 2013 or on or after January 1, 2016 but before January 1, 2021;

(2) the receipts are received by the company within a five-year period beginning on the date the trade-support company locates in New Mexico and the receipts are derived from its business activities and operations at its border zone location; and

(3) the trade-support company employs at least two employees in New Mexico.

B. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

C. The department shall compile an annual report on the deduction created pursuant to this section that shall include the number of taxpayers approved by the department to receive the deduction, the aggregate amount of deductions approved and any other information necessary to evaluate the effectiveness of the deduction. Beginning in 2016 and every four years thereafter that the deduction is in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction.

D. As used in this section:

(1) "employee" means an individual, other than an individual who:

(a) bears any of the relationships described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to the employer or, if the employer is a corporation, to an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, to an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interests in the entity;

(b) if the employer is an estate or trust, is a grantor, beneficiary or fiduciary of the estate or trust or is an individual who bears any of the relationships described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to a grantor, beneficiary or fiduciary of the estate or trust; or

(c) is a dependent, as that term is described in 26 U.S.C. Section 152(a)(9), of the employer, or, if the taxpayer is a corporation, of an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, an individual who owns, directly or indirectly,

more than fifty percent of the capital and profits interests in the entity or, if the employer is an estate or trust, of a grantor, beneficiary or fiduciary of the estate or trust;

(2) "port of entry" means an international port of entry in New Mexico at which customs services are provided by United States customs and border protection; and

(3) "trade-support company" means a customs brokerage firm or a freight forwarder.

(Laws 2015 S.S., Chapter 2, Section 8)

7-9-57. DEDUCTION--GROSS RECEIPTS TAX--SALE OF CERTAIN SERVICES TO AN OUT-OF-STATE BUYER.--

A. Receipts from performing a service may be deducted from gross receipts if the sale of the service is made to an out-of-state buyer who delivers to the seller either an appropriate nontaxable transaction certificate or other evidence acceptable to the secretary unless the buyer of the service or any of the buyer's employees or agents makes initial use of the product of the service in New Mexico or takes delivery of the product of the service in New Mexico.

B. Receipts from performing a service that initially qualified for the deduction provided in this section but that no longer meets the criteria set forth in Subsection A of this section shall be deductible for the period prior to the disqualification.

(Laws 2000, Chapter 84, Section 7)

3.2.215.8 - [RESERVED.]

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96: Rp, 10/31/2000; 3.2.215.8 NMAC – Rn, 3 NMAC 2.57.8, 5/31/01]

3.2.215.9 - SERVICES PERFORMED ON FEDERAL AREAS

Federal areas located within the boundaries of New Mexico are not outside New Mexico for purposes of Section 7-9-57 NMSA 1978.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.215.9 NMAC – Rn & A, 3 NMAC 2.57.9, 5/31/01]

3.2.215.10 - OTHER EVIDENCE

A. As used in Section 7-9-57 NMSA 1978, "other evidence acceptable to the secretary" includes invoices, contracts, photostatic copies of checks and letters which show that the sale is to an out-of-state buyer and which indicate that the initial use of the product of the service did not occur in New Mexico.

B. Example 1: E drafts a manuscript about deer hunting in New Mexico and sends the manuscript to a sports magazine publisher in New York. The publisher accepts by letter the story for publication and encloses a check. E may deduct this payment from gross receipts if E preserves the letter or a photostatic copy of the check.

C. Example 2:

(1) W is a writer who performs some writing services in New Mexico. W's manuscripts and all rights thereto are sold by W's literary agent in New York City, exclusively to publishers, motion picture companies and other media located outside New Mexico. None of the rights to W's manuscripts or other literary works are sold to publishers, editors or media within the state of New Mexico. Funds are remitted to the literary agent in New York by the out-of-state purchaser of the rights to W's works. The agent then pays W. W's receipts may be deducted from gross receipts if:

(a) The buyers of W's works deliver nontaxable transaction certificates to W;

or

(b) W's agent certifies in writing that all of W's work is published or otherwise initially used outside New Mexico; or

(c) W's agent accounts to W for each sale on a document or documents clearly indicating that the sales are to out-of-state buyers and that the initial use of the product of the service did not occur in New Mexico and W preserves the agent's detailed accounting.

(2) If the buyers rewrite, publish or otherwise initially use W's writing services inside New Mexico, the compensating tax imposed by Subsection B of Section 7-9-7 NMSA 1978 is due from the buyer on the value of the services at the time they were rendered.

[10/17/73, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.215.10 NMAC – Rn & A, 3 NMAC 2.57.10, 5/31/01]

3.2.215.11 - PRODUCT OF SERVICE WHICH IS REVIEWED AND ACCEPTED OUTSIDE OF NEW MEXICO BUT INITIALLY USED IN NEW MEXICO

A. Effective July 1, 1989, and for so long as the provisions of that version of Section 7-9-57 NMSA 1978 enacted by Laws 1989, Chapter 262, Section 6 remain in effect, the deduction provided by Section 7-9-57 NMSA 1978 does not apply to the receipts from the sale of a service the product of which is initially used for the intended purpose in New Mexico even though the product of the service is delivered to the buyer outside of New Mexico for review and acceptance. Review and acceptance of the product of the service does not constitute “initial use” or “initially used” as those terms are defined in Section 7-9-3 NMSA 1978. The initial use of the product of the service is the “first employment for the intended purpose”.

B. Example 1: X, an architect, prepares in New Mexico plans for a construction project to be built in New Mexico. On completion of the plans, X delivers the plans outside of New Mexico to the project owner for the owner's review and acceptance. After accepting the plans, the owner delivers the plans to the construction contractor who uses the plans during the construction of the project in New Mexico. Since the intended purpose of architectural plans is to serve as instructions for construction of a project, the initial use of the plans occurred when the contractor used the plans during the actual construction of the project in New Mexico. Therefore, X's receipts for preparing architectural plans for a construction project to be built in New Mexico are not deductible under the provisions of Section 7-9-57 NMSA 1978.

C. Example 2: Y, a research and development contractor, has a contract with the government to develop a new application for existing technology. In order to complete the contract, Y subcontracts a portion of the service to Z who analyzes particular data and prepares a report, all work being done outside New Mexico. Z delivers the report to the government in Washington, D.C., for review and acceptance. Upon granting approval of Z's report, the government delivers the report to Y in New Mexico. Y uses the report to construct a prototype as a component of the service which Y performs under the terms of its contract with the government. The initial use of Z's report is Y's use of the information contained in the report to construct the prototype. The review and acceptance of the report is not the initial use of the report. Since the initial use occurred in New Mexico, Z's receipts from the sale of Z's service are not deductible under the provisions of Section 7-9-57 NMSA 1978. Z, however, may be entitled to the deduction provided by Section 7-9-48 NMSA 1978 if Y provides a Type 5 Nontaxable Transaction Certificate (nttc) to Z. Y must meet the requirements set forth by Section 7-9-48 NMSA 1978 if Y issues the nttc to Z.

D. Section 3.2.215.11 NMAC applies to transactions on or after July 1, 1989.
[3/8/91, 11/15/96; 3.2.215.11 NMAC – Rn & A, 3 NMAC 2.57.11, 5/31/01]

3.2.215.12 - GENERAL EXAMPLES

For transactions occurring on or after July 1, 1989, the following statements illustrate circumstances which:

A. contravene the requirements necessary for deducting the sale of a service for initial use out-of-state under Section 7-9-57 NMSA 1978 and, therefore, eliminate the deduction and cause the transaction to be taxable;

(1) the product of the service is delivered in New Mexico to the purchaser or to an employee, agent or authorized representative of the purchaser; or

(2) the purchaser's initial use of the product of the service occurs in New Mexico;

B. do not contravene the conditions set forth in Section 7-9-57 NMSA 1978, thereby allowing the deduction for the receipts from the transaction;

(1) the purchaser has a person or persons assigned in this state to oversee the performance of the service in New Mexico by the contractor but the product of the service is delivered to the purchaser outside of this state and the purchaser initially uses the product of the service outside of this state;

(2) the purchaser has a person or persons in New Mexico assigned to the project who work in conjunction with employees of the seller on the product or the service required by the contract but the product of the service is delivered to the purchaser outside of this state and the purchaser initially uses the product of the service outside of this state;

(3) the purchaser or employees, agents or authorized representatives of the purchaser exercise administrative control from within New Mexico over the performance of the service by the contractor but the product of the service is delivered to the purchaser outside of this state and the purchaser initially uses the product of the service outside of this state; or

(4) the purchaser maintains a place of business in New Mexico and is performing work in this state related to the subject matter of the contract but the product of the service is delivered to the purchaser outside of this state and the purchaser initially uses the product of the service outside of this state.
[12/29/89, 11/26/90, 3/15/95, 3.2.215.12 NMAC - Rn & A, 3 NMAC 2.57.12, 10/31/2000]

7-9-57.1. DEDUCTION--GROSS RECEIPTS TAX--SALES THROUGH WORLD WIDE WEB SITES.--Receipts of any person derived from the sale of a service or property made through a world wide web site to a person with a billing address outside New Mexico may be deducted from gross receipts.
(Laws 1998, Chapter 92, Section 3)

7-9-57.2. DEDUCTION--GROSS RECEIPTS TAX--SALE OF SOFTWARE DEVELOPMENT SERVICES.--

A. To stimulate new business development, the receipts of an eligible software development company from the sale of software development services that are performed in a qualified area may be deducted from gross receipts.

B. As used in this section:

(1) "eligible software development company" means a taxpayer who is not a successor in business of another taxpayer and whose primary business in New Mexico is established after the effective date of this section, is providing software development services and who had no business location in New Mexico other than in a qualified area during the period for which a deduction under this section is sought;

(2) "qualified area" means the state of New Mexico except for an incorporated municipality with a population of more than fifty thousand according to the most recent federal decennial census; and

(3) "software development services" means custom software design and development and web site design and development but does not include software implementation or support services.
(Laws 2002, Chapter 10, Section 1)

7-9-58. DEDUCTION--GROSS RECEIPTS TAX--FEED--FERTILIZERS.--

A. Receipts from selling feed for livestock, including the baling wire or twine used to contain the feed, fish raised for human consumption, poultry or animals raised for their hides or pelts and from selling seeds, roots, bulbs, plants, soil conditioners, fertilizers, insecticides, germicides, insects used to control populations of other insects, fungicides or weedicides or water for irrigation purposes may be deducted from gross receipts if the sale is made to a person who states in writing that he is regularly engaged in the business of farming, ranching or raising animals for their hides or pelts.

B. Receipts of auctioneers from selling livestock or other agricultural products at auction may also be deducted from gross receipts.

(Laws 2002, Chapter 48, Section 3)

3.2.216.7 - DEFINITIONS

A. **"Farming" defined:**

(1) A person regularly engaged in the business of "farming" is a person who regularly engages in the business of:

(a) cultivating a tract of land of over one acre with the purpose of producing a plant which is grown primarily for sale or use in the ordinary course of business as fiber or as food for human or animal consumption;

(b) growing plants in a greenhouse or by hydroponics primarily for sale or use in the ordinary course of business as fiber or as food for human or animal consumption; or

(c) cultivating an orchard on a tract of land of over one acre with the purpose of producing nuts, fruit or other products for sale or use in the ordinary course of business for human or animal consumption.

(2) A person whose farming operation has been determined by the internal revenue service to be a hobby for federal income tax purposes is not regularly engaged in the business of farming.

B. **"Ranching" defined:**

(1) A person regularly engaged in "ranching" is a person who regularly engages in the business of:

(a) grazing or rearing livestock, such as horses, cattle, sheep or goats, on a tract of land of over one acre either with the purpose of deriving receipts from selling the livestock or livestock products such as meat, wool, mohair and dairy products;

(b) feeding, pasturing, penning or handling of livestock;

(c) raising fish for human consumption; or

(d) raising poultry.

(2) A person whose ranching operation has been determined by the internal revenue service to be a hobby for federal income tax purposes is not regularly engaged in the business of ranching.

C. **"Feed for livestock" defined:** "Feed for livestock" includes livestock feed supplements in a liquid state, which contain proteins, phosphorus, molasses, trace minerals, vitamins or other additives.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96;

3.2.216.7 NMAC – Rn, 3 NMAC 2.58.7, 6/14/01]

3.2.216.8 - WRITTEN STATEMENT OF FARMING OR RANCHING

A. Receipts from selling certain items to persons who state in writing that they are regularly engaged in the business of farming or ranching may be deducted from the seller's gross receipts pursuant to Section 7-9-58 NMSA 1978 if the statement:

(1) contains a declaration that the purchaser-signer is regularly engaged in the business of ranching or farming; and

(2) is personally signed by the purchaser or the purchaser's agent who makes the statement; and

(3) is accepted in good faith by the seller.

B. The following sentence is an example of a statement that will be accepted by the department as conclusive evidence that receipts from selling enumerated items to persons signing the statement may be deducted from the seller's gross receipts pursuant to Section 7-9-58 NMSA 1978 if the seller accepted such a statement in good faith. "I swear or affirm that I am regularly engaged in the business of farming or ranching. This declaration is made for the purpose of allowing receipts from selling feed for livestock, fish raised for human consumption, poultry or for animals raised for their hides or pelts, seeds, roots, bulbs, plants, soil conditioners, fertilizers, insecticides, insects used to control populations of other insects, fungicides or weedicides or water for irrigation purposes to be deducted from the gross receipts of the seller pursuant to Section 7-9-58 NMSA 1978."

C. The following statement signed by the purchaser or authorized agent is insufficient as a statement in writing that a person is regularly engaged in the business of farming or ranching as required by Section 7-9-58 NMSA 1978. "I hereby certify the product or products purchased are for agricultural use only."

D. Receipts from selling any of the items mentioned in Section 7-9-58 NMSA 1978 may not be deducted from gross receipts unless the sale is made to a person who makes a written statement which is in compliance with Section 3.2.216.8 NMAC.

E. For the purposes of Section 7-9-58 NMSA 1978 it is sufficient if the seller receives one written statement from each purchaser, provided the seller maintains that statement on file.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.216.8 NMAC – Rn, 3 NMAC 2.58.8 & A, 6/14/01]

3.2.216.9 - GOOD FAITH ACCEPTANCE OF BUYER'S STATEMENT

A. When a seller accepts in good faith a person's written statement that the person is regularly engaged in the business of farming or ranching, the written statement shall be conclusive evidence that the proceeds from the transaction with the person having made this statement are deductible from the seller's gross receipts.

B. Example 1: X owns a water company that furnishes water to Y for use in irrigating Y's cotton crop. Y gives X the proper written statement that Y is regularly engaged in the business of farming. X may deduct the gross receipts received from the sale of the water.

C. Example 2: Z also buys water from X, a water company. Z is not engaged in the business of farming or ranching but nevertheless gives X a written statement in proper form that X is engaged in the business of farming. X accepts the statement in good faith. X may deduct the

gross receipts received from the sale of the water but Z is liable for the compensating tax and may be liable for making false statements.

D. Example 3: C buys one hundred gallons of chemicals from E for $15.00. The chemicals are used to delint cotton in C's cotton gin. E maintains that E can deduct the $15.00 from gross receipts since the chemical helps the seed to germinate and therefore must be a fertilizer. E may not take the deduction.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.216.9 NMAC – Rn, 3 NMAC 2.58.9, 6/14/01]

3.2.216.10 - FEED FOR HORSES

For the period July 1, 1991 through June 30, 1992 only, the receipts from selling feed for those horses not included within the definition of livestock pursuant to Section 7-9-3.1 NMSA 1978 are not deductible under the provisions of Section 7-9-58 NMSA 1978 in effect for that period.

[10/18/77, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 3/19/92, 12/23/92, 11/15/96; 3.2.216.10 NMAC – Rn, 3 NMAC 2.58.10 & A, 6/14/01]

7-9-59. DEDUCTION--GROSS RECEIPTS TAX--WAREHOUSING, THRESHING, HARVESTING, GROWING, CULTIVATING AND PROCESSING AGRICULTURAL PRODUCTS.--

A. Receipts from warehousing grain or other agricultural products may be deducted from gross receipts.

B. Receipts from threshing, cleaning, growing, cultivating or harvesting agricultural products, including the ginning of cotton, testing and transporting milk for the producer or nonprofit marketing association from the farm to a milk processing or dairy product manufacturing plant or processing for growers, producers or nonprofit marketing associations of agricultural products raised for food and fiber, including livestock, may be deducted from gross receipts.

(Laws 2000, Chapter 87, Section 1)

3.2.217.8 - FERTILIZERS AND INSECTICIDES

Receipts from the application of fertilizer and insecticide by the use of custom application rigs are the receipts from "growing" agricultural products and are deductible from gross receipts pursuant to Section 7-9-59 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.217.8 NMAC – Rn, 3 NMAC 2.59.8 & A, 6/14/01]

3.2.217.9 - STORAGE, GRADING AND PACKING APPLES

The receipts of a marketing association or corporation, whether or not organized for profit, from storing, grading or packing apples for apple growers are receipts from warehousing and processing agricultural products and may be deducted from gross receipts pursuant to Section 7-9-59 NMSA 1978. This deduction applies to the total receipts from the grading and packing contract even though the cost of the cartons used in the packing is included in the charge for service.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.217.9 NMAC – Rn, 3 NMAC 2.59.9 & A, 6/14/01]

3.2.217.10 - GINNING OF COTTON

The receipts of a cotton gin from the ginning of cotton, including the charge for bagging and ties used in the ginning, may be deducted from gross receipts pursuant to Section 7-9-59 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.217.10 NMAC – Rn, 3 NMAC 2.59.10 & A, 6/14/01]

3.2.217.11 - HAULING OF AGRICULTURAL PRODUCTS

A. The receipts from hauling agricultural products from point to point in New Mexico or from loading or unloading agricultural products in New Mexico are subject to the gross receipts tax. These receipts are derived from performing services in New Mexico and are not derived from warehousing, threshing or cleaning agricultural products within the meaning of Section 7-9-59 NMSA 1978.

B. Receipts from hauling agricultural products from point to point, however, does not include receipts from hauling which is an integral part of the harvesting process nor does it include transportation of milk from the place of production to a place of processing. Such receipts are deductible under Section 7-9-59 NMSA 1978.

C. *Example 1:* H is a commercial harvester of grain who owns combines and trucks. For consideration, H will contract with a farmer to harvest the farmer's grain. As part of the contract, H delivers the harvested grain from the farmer's land to an elevator owned by a third party. H's receipts from harvesting the farmer's grain is deductible under Section 7-9-59 NMSA 1978 but H's receipts from hauling the harvested grain to the elevator are not deductible.

D. *Example 2:* X is engaged in the business of transporting for farmers alfalfa hay from the field where the alfalfa is raised to the farmer's own storage facility. The distance from the field to the farmer's storage facility may be three or four miles. X's hauling is part of the harvesting process and X's receipts are deductible under Section 7-9-59 NMSA 1978.

E. *Example 3:* Y is engaged in the business of hauling potatoes from farms to the plant of a potato chip maker. Y picks up harvested potatoes from farmers' storage facilities and delivers them to the potato chip maker's receiving facility. Y's receipts from this activity are not deductible under Section 7-9-59 NMSA 1978.

F. *Example 4:* V, a labor contractor, negotiates an agreement with a farmer for the harvesting of onions. After the agreement is made V hires people to harvest the onions. Harvesting begins with pulling the onions out of the ground by hand and clipping off the roots and tops. The onions are put into buckets which are dumped into burlap sacks when full. The process continues with arranging the burlap sacks into straight rows in the field. The sacks are then loaded by a conveyor onto a truck, emptied, and the sacks tossed back to the ground. The onions are then delivered to the processing shed by the truck. V's receipts from these activities are deductible under Section 7-9-59 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.217.11 NMAC - Rn & A, 3 NMAC 2.59.11, 10/31/2000]

3.2.217.12 - SHEARING SHEEP

Receipts from shearing sheep may be deducted from gross receipts pursuant to Section 7-9-59 NMSA 1978 because they are receipts from harvesting agricultural products.

[1/9/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 12/23/92, 11/15/96; 3.2.217.12 NMAC – Rn, 3 NMAC 2.59.12 & A, 6/14/01]

7-9-60. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS TAX--SALES TO CERTAIN ORGANIZATIONS.--

A. Except as provided otherwise in Subsection B of this section, receipts from selling tangible personal property to 501(c)(3) organizations may be deducted from gross receipts or from governmental gross receipts if the sale is made to an organization that delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate shall employ the tangible personal property in the conduct of functions described in Section 501(c)(3) and shall not employ the tangible personal property in the conduct of an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1986, as amended or renumbered.

B. The deduction provided by this section does not apply to receipts from selling construction material, excluding tangible personal property, whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or ten-year property, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, or from selling metalliferous mineral ore; except that receipts from selling construction material or from selling metalliferous mineral ore to a 501(c)(3) organization that is organized for the purpose of providing homeownership opportunities to low-income families may be deducted from gross receipts. Receipts may be deducted under this subsection only if the buyer delivers a nontaxable transaction certificate to the seller. The buyer shall use the property in the conduct of functions described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not employ the tangible personal property in the conduct of an unrelated trade or business, as defined in Section 513 of that code.

C. For the purposes of this section, "501(c)(3) organization" means an organization that has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended or renumbered.

(Laws 2018, Chapter 58, Section 2)

3.2.218.8 - SALE TO A 501(c)(3) ORGANIZATION

Receipts from selling tangible personal property to organizations which demonstrate to the department that they have been granted an exemption from federal income tax as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1954, Section 501(c)(3) of the United States Internal Revenue Code of 1986 or Section 101(6) of the United States Internal Revenue Code of 1939 may be deducted from the seller's gross receipts if the buyer delivers a nontaxable transaction certificate (nttc) to the seller and if the tangible personal property sold is employed by the 501(c)(3) organization in its ordinary functions. Receipts from the sale of tangible personal property to a 501(c)(3) or 101(6) organization which

are employed in the conduct of an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1986, as amended or renumbered, or Section 422(b) of the United States Internal Revenue Code of 1939, may not be deducted pursuant to Section 7-9-60 NMSA 1978. If the 501(c)(3) organization delivering the nttc employs the property purchased in the conduct of an unrelated trade or business, the compensating tax is due.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.218.8 NMAC – Rn, 3 NMAC 2.60.8 & A, 6/14/01]

3.2.218.9 SERVICES, LEASES, CONSTRUCTION SERVICES:

A. Receipts from services performed for and from leases entered into with 501(c)(3) organizations are not deductible pursuant to Section 7-9-60 NMSA 1978.

B. Except as provided in Subsection C, receipts from selling construction, including construction material to a 501(c)(3) organization, are receipts derived from performing a service and are not eligible for the deduction pursuant to Section 7-9-60 NMSA 1978.

C. Receipts from selling construction material that is tangible personal property, whether removable on non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, may be deducted from gross receipts when the sale is made to a 501(c)(3) organization.
[3/16/1979, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.218.9 NMAC - Rn, 3 NMAC 2.60.9 & A, 6/14/2001; A, 12/27/2018]

3.2.218.10 - CUSTOM SOFTWARE

Because it is a service, receipts from developing or selling custom software for 501(c)(3) organizations are not deductible under Section 7-9-60 NMSA 1978.
[4/30/97; 3.2.218.10 NMAC – Rn, 3 NMAC 2.60.10 & A, 6/14/01]

3.2.218.11 SALE OF MEALS: Meals are tangible personal property. Therefore receipts from selling meals to a 501(c)(3) organization are receipts from selling tangible personal property. Such receipts may be deducted from gross receipts under Section 7 9 60 NMSA 1978 if the organization delivers a properly executed Type 9 non-taxable transaction certificate or alternative evidence to the seller. Sales of meals directly to members of a 501(c)(3) organization may not be deducted under Section 7 9 60 NMSA 1978 even if the meals are served at a function of the organization. The 501(c)(3) organization is an entity distinct from its members.
[10/29/1999; 3.2.218.11 NMAC - Rn, 3 NMAC 2.60.11 & A, 6/14/2001, 12/27/2018]

3.2.218.12 - LODGING

Receipts derived from the rental of lodging in hotels, motels, boarding houses or similar facilities to a Section 501(c)(3) organization may not be deducted from gross receipts pursuant to Section 7-9-60 NMSA 1978 because the rental of such lodging is not the sale of tangible personal property.
[1/15/00; 3.2.218.12 NMAC – Rn, 3 NMAC 2.60.12 & A, 6/14/01]

3.2.218.13 SALE OF GASES:

Gases, such as natural gas, nitrogen, carbon dioxide, helium, oxygen, propane, acetylene and nitrous oxide, are tangible personal property. Therefore receipts from selling gases to a 501(c)(3) organization may be deducted from gross receipts under Section 7 9 60 NMSA 1978 if the organization delivers a properly executed non-taxable transaction certificate or alternative evidence to the seller.
[3.2.218.13 NMAC - N, 3/15/2010; A, 12/27/2018]

3.2.218.14 SINGLE MEMBER LIMITED LIABILITY COMPANY WHOSE SOLE MEMBER IS A 501(c)(3) ORGANIZATION:

A. A single member limited liability company (llc) whose sole member is a 501(c)(3) organization will be treated like a 501(c)(3) organization and receive the same treatment for purposes of Section 7-9-60 NMSA 1978 so long as the llc is recognized by the internal revenue service as a disregarded entity for federal income tax purposes.

B. Receipts from the sale of tangible personal property to an llc described in Subsection A above when the property is employed in the conduct of an unrelated trade or business as defined in Section 513 of the Internal Revenue Code of 1986, as amended or renumbered, are not deductible pursuant to Subsection A of Section 7-9-60 NMSA 1978. If the llc, or its 501(c)(3) single member, delivering the non-taxable transaction certificate or alternative evidence employs the tangible personal property in the conduct of an unrelated trade or business, the llc, or its 501(c)(3) single member, is liable for the seller's gross receipts tax plus penalty and interest pursuant to Section 7-9-43 NMSA 1978.
[3.2.218.14 NMAC - N, 1/15/2015; A, 12/27/2018]

7-9-61.1. DEDUCTION--GROSS RECEIPTS TAX--CERTAIN RECEIPTS.--Receipts from charges made in connection with the origination, making or assumption of a loan or from charges made for handling loan payments may be deducted from gross receipts.

3.2.219.8 - ESCROW FEES - INSTALLMENT CONTRACTS

The receipts of an escrow agent from charges made for handling installment purchase agreements (such as real estate contracts) are not receipts from handling loan payments and are not deductible from gross receipts under the provisions of Section 7-9-61.1 NMSA 1978.
[10/24/89, 11/26/90, 9/20/93, 11/15/96; 3.2.219.8 NMAC – Rn, 3 NMAC 2.61.1.8 & A, 6/14/01]

3.2.219.9 - CERTAIN CHARGES ARE DEDUCTIBLE

A. A charge by a bank or other financial institution with respect to an honored commitment (using funds other than the depositor's to cover an overdraft) are charges made in connection with the origination, making or assumption of a loan and are deductible under Section 7-9-61.1 NMSA 1978.

B. An overdraft protection fee charged by a bank or other financial institution is equivalent to a fee for maintaining a line of credit. The overdraft protection fee is a charge made in connection with the origination, making or assumption of a loan and is deductible under Section 7-9-61.1 NMSA 1978.
[9/20/93, 11/15/96; 3.2.219.9 NMAC – Rn, 3 NMAC 2.61.1.9 & A, 6/14/01]

3.2.219.10 - CERTAIN CHARGES ARE NOT DEDUCTIBLE

A. Fees charged by a bank or other financial institution from transferring funds from one account of a depositor to another of that same depositor are not charges made in connection with the origination, making or assumption of a loan, even if the transfer is made to cover an overdraft in one of the accounts. Such charges are not deductible under Section 7-9-61.1 NMSA 1978.

B. If a bank or other financial institution does not honor a check or other instrument when presented because insufficient funds are in the account or accounts, any fees charged relating to the dishonoring are not deductible under Section 7-9-61.1 NMSA 1978.
[9/20/93, 11/15/96; 3.2.219.10 NMAC – Rn, 3 NMAC 2.61.1.10 & A, 6/14/01]

7-9-61.2. DEDUCTION--RECEIPTS FROM SALES TO STATE-CHARTERED CREDIT UNIONS.--Receipts from selling tangible personal property to credit unions chartered under the provisions of the Credit Union Act are deductible to the same extent that receipts from the sale of tangible personal property to federal credit unions may be deducted pursuant to the provisions of Section 7-9-54 NMSA 1978.
(Laws 2000, Chapter 48, Section 1)

7-9-62. DEDUCTION--GROSS RECEIPTS TAX--AGRICULTURAL IMPLEMENTS--AIRCRAFT MANUFACTURERS--VEHICLES THAT ARE NOT REQUIRED TO BE REGISTERED--AIRCRAFT PARTS AND MAINTENANCE SERVICES--REPORTING REQUIREMENTS.--

A. Except for receipts deductible under Subsection B of this section, fifty percent of the receipts from selling agricultural implements, farm tractors, aircraft or vehicles that are not required to be registered under the Motor Vehicle Code may be deducted from gross receipts; provided that, with respect to agricultural implements, the sale is made to a person who states in writing that the person is regularly engaged in the business of farming or ranching. Any deduction allowed under Section 7-9-71 NMSA 1978 must be taken before the deduction allowed by this subsection is computed.

B. Receipts of an aircraft manufacturer or affiliate from selling aircraft or from selling aircraft flight support, pilot training or maintenance training services may be deducted from gross receipts. Any deduction allowed under Section 7-9-71 NMSA 1978 must be taken before the deduction allowed by this subsection is computed.

C. Receipts from selling aircraft parts or maintenance services for aircraft or aircraft parts may be deducted from gross receipts. Any deduction allowed under Section 7-9-71 NMSA 1978 must be taken before the deduction allowed by this subsection is computed.

D. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

E. The department shall compile an annual report on the deductions provided by this section that shall include the number of taxpayers approved by the department to receive the deductions, the aggregate amount of deductions approved and any other information necessary to evaluate the effectiveness of the deductions. Beginning in 2019 and every five years thereafter that the deductions are in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deductions.

F. As used in this section:

(1) "affiliate" means a business entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the aircraft manufacturer;

(2) "agricultural implement" means a tool, utensil or instrument that is depreciable for federal income tax purposes and that is:

(a) designed to irrigate agricultural crops above ground or below ground at the place where the crop is grown; or

(b) designed primarily for use with a source of motive power, such as a tractor, in planting, growing, cultivating, harvesting or

processing agricultural crops at the place where the crop is grown; in raising poultry or livestock; or in obtaining or processing food or fiber, such as eggs, milk, wool or mohair, from living poultry or livestock at the place where the poultry or livestock are kept for this purpose;

(3) "aircraft manufacturer" means a business entity that in the ordinary course of business designs and builds private or commercial aircraft certified by the federal aviation administration;

(4) "business entity" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership or real estate investment trust, but does not mean an individual or a joint venture;

(5) "control" means equity ownership in a business entity that:

(a) represents at least fifty percent of the total voting power of that business entity; and

(b) has a value equal to at least fifty percent of the total equity of that business entity; and

(6) "flight support" means providing navigation data, charts, weather information, online maintenance records and other aircraft or flight-related information and the software needed to access the information. (Laws 2014, Chapter 19, Section 1)

3.2.220.8 - TRADE-IN ALLOWANCES

A. The deduction provided by Section 7-9-62 NMSA 1978 applies to the net receipts from the sale after any trade-in allowance for the same type of equipment has been applied.

B. Example: A is engaged in the business of selling heavy equipment. A sells B a D-11 tractor for $50,000. A allows B $5,000 on a used tractor which B trades in. A must compute the tax liability as follows:

$50,000	
5,000	(trade-in under Section 7-9-71 NMSA 1978)
$45,000	
22,500	(50% deduction)
$22,500	
x .05	(rate of tax)
$ 1,125	tax due

Therefore A owes a tax of $1,125.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.220.8 NMAC – Rn, 3 NMAC 2.62.8 & A, 6/14/01]

3.2.220.9 - PROPORTIONING PUMPS

Proportioning pumps used to distribute metered amounts of fertilizer, herbicides, pesticides, fumigants and the like to crop land by mixing those substances with irrigation water are agricultural implements as that term is used in Section 7-9-62 NMSA 1978. Accordingly, fifty percent of the receipts from selling these pumps may be deducted from gross receipts.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96;

3.2.220.9 NMAC – Rn, 3 NMAC 2.62.9 & A, 6/14/01]

3.2.220.10 - [RESERVED.]
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 7/31/98; Rp 1/29/99; 3.2.220.10 NMAC – Rn, 3 NMAC 2.62.10, 6/14/01]

3.2.220.11 - FEED STORAGE

Metal bins and similar devices designed to store feed on a farm or ranch, which, in addition to storing, measure and control the flow of livestock, are agricultural implements. Therefore, 50% of the receipts derived from selling those articles may be deducted from gross receipts pursuant to Section 7-9-62 NMSA 1978.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.220.11 NMAC - Rn, 3 NMAC 2.62.11 & A, 6/14/01; A, 10/31/05]

3.2.220.12 - FUEL FOR IRRIGATION PUMPS

Receipts derived from the sale of butane, propane, natural gas, electricity, or other fuel which is used in the operation of irrigation pumps are not receipts from the sale of agricultural implements and, therefore, are not subject to the 50% deduction from gross receipts provided by Section 7-9-62 NMAC 1978.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.220.12 NMAC – Rn, 3 NMAC 2.62.12 & A, 6/14/01]

3.2.220.13 - [RESERVED]
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96;
3.2.220.13 NMAC - Rn, 3 NMAC 2.62.13 & A, 6/14/01; Repealed, 10/31/07]

3.2.220.14 - MOTORIZED GOLF CARTS

Fifty percent of the receipts from selling motorized golf carts may be deducted from gross receipts because motorized golf carts are vehicles that are not required to be registered under the Motor Vehicle Code, Chapter 66.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.220.14 NMAC – Rn, 3 NMAC 2.62.14 & A, 6/14/01]

3.2.220.15 - BALING WIRE

Baling wire is not an agricultural implement within the meaning of Section 7-9-62 NMSA 1978, and therefore, the seller of baling wire to a farmer may not take the fifty percent deduction allowed under Section 7-9-62 NMSA 1978.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.220.15 NMAC – Rn, 3 NMAC 2.62.15 & A, 6/14/01]

3.2.220.16 - MINING EQUIPMENT

Mining equipment must be a “vehicle” as that term is defined in the Motor Vehicle Code in order to qualify for the deduction provided in Section 7-9-62 NMSA 1978 and Section 7-9-77 NMSA 1978. A “motor vehicle” as defined in the Motor Vehicle Code is a vehicle which is self-propelled. Mining equipment that receives its power from a trailing cable which conveys

electricity to it from an outside source is not self-propelled.
[3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.220.16 NMAC – Rn, 3 NMAC 2.62.16 & A, 6/14/01]

3.2.220.17 - WRITTEN STATEMENT OF FARMING OR RANCHING

A. The written statement required by Section 7-9-62 NMSA 1978 for receipts from the sale of agricultural implements on or after July 1, 1998 shall be in the form set out in Subsection B of Section 3.2.216.8 NMAC and must be signed personally by the purchaser or the purchaser's agent. The written statement must be accepted in good faith by the seller in order for the seller to take the deduction authorized by Section 7-9-62 NMSA 1978 with respect to transactions occurring on or after July 1, 1998. The good faith acceptance requirement applies to each transaction intended to be covered by the written statement.

B. Receipts from the sale of agricultural implements on or after July 1, 1998 may not be deducted under Section 7-9-62 NMSA 1978 unless the sale is made to a person who makes a written statement in compliance with Section 7-9-62 NMSA 1978.

C. For the purposes of Section 7-9-62 NMSA 1978, it is sufficient if the seller receives one written statement from each purchaser, provided the seller maintains that statement on file.

D. When a seller accepts in good faith a person's written statement that the person is regularly engaged in the business of farming or ranching, the written statement shall be conclusive evidence that the receipts from the transaction with the person having made the statement are deductible from the seller's gross receipts under Section 7-9-62 NMSA 1978.
[7/31/98; 3.2.220.17 NMAC – Rn, 3 NMAC 2.62.17 & A, 6/14/01]

7-9-62.1. DEDUCTION--GROSS RECEIPTS TAX - AIRCRAFT SALES AND SERVICES--REPORTING REQUIREMENTS.--

A. Receipts from the sale of or from maintaining, refurbishing, remodeling or otherwise modifying a commercial or military carrier over ten thousand pounds gross landing weight may be deducted from gross receipts.

B. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

C. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers approved by the department to receive the deduction, the aggregate amount of deductions approved and any other information necessary to evaluate the effectiveness of the deduction. Beginning in 2019 and every five years thereafter that the deduction is in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction.

(Laws 2014, Chapter 8, Section 1)

7-9-63. DEDUCTION--GROSS RECEIPTS TAX--PUBLICATION SALES.--Receipts from publishing newspapers or magazines, except from selling advertising space, may be deducted from gross receipts.

Receipts from selling magazines at retail may not be deducted from gross receipts.

3.2.221.8 - COLUMNISTS, CARTOONISTS AND WIRE SERVICES

A. The receipts of columnists, cartoonists and wire services from performing services in New Mexico are gross receipts and are not receipts from publishing as that term is used in Section 7-9-63 NMSA 1978.

B. The gross receipts of columnists, cartoonists and wire services from performing services in New Mexico are not deductible under the provisions of Section 7-9-63 NMSA 1978.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.221.8 NMAC – Rn, 3 NMAC 2.63.8 & A, 6/14/01]

3.2.221.9 - GENERAL EXAMPLES

A. A person engaged in the business of publishing magazines or newspapers in New Mexico can deduct the receipts from selling the published product to others for subsequent resale under Section 7-9-63 NMSA 1978. The publisher is not required to obtain a nontaxable transaction certificate from the purchaser for purposes of Section 7-9-63 NMSA 1978. The receipts of the publisher from the sale of advertising space and the receipts from selling magazines at retail are not deductible from the publisher's gross receipts.

B. *Example 1:* M is in the business of publishing a magazine. It compiles the stories and pictures. It then takes this material to E who prints the magazines and sells them to M for resale. E is classified as a manufacturer. As such, E may give nontaxable transaction certificates (NTTCs) to vendors of paper and ink. E can then accept NTTCs from the publisher for the sale of the magazine for resale. M is the publisher of the magazine and is liable for gross receipts tax. If M sells the magazine to news shops or other outlets for resale, M includes in gross receipts only those amounts that M receives from the sale of advertising space. If M also sells the magazine at retail to consumers, however, M would be liable for the gross receipts tax on the receipts derived from the sale of the magazine other than for resale as well as on receipts from the sale of advertising space.

C. *Example 2*: X, a newspaper, sells space in its newspaper for obituaries. It claims a deduction for these sales under Section 7-9-63 NMSA 1978. These receipts are not deductible because they are receipts from selling advertising space. However, if the space is sold to a person, such as a funeral home, who resells the space and gives X an NTTC, X's receipts from the sale to such a person are deductible. This version of Subsection C of Section 3.2.221.9 NMAC applies to transactions occurring on or after July 1, 2000.

[9/12/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 10/21/86, 11/26/90, 11/15/96, 3.2.221.9 NMAC - Rn & A, 3 NMAC 2.63.9, 10/31/2000]

7-9-64. DEDUCTION--GROSS RECEIPTS TAX--NEWSPAPER SALES.--Receipts from selling newspapers, except from selling advertising space, may be deducted from gross receipts.

3.2.222.8 - "NEWSPAPER" DEFINED

A. As used in Sections 7-9-63 and 7-9-64 NMSA 1978, the term "newspaper" is limited to those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly or other short intervals for the dissemination of news. The term does not include handbills, circulars, flyers or the like, unless printed and distributed as a part of a publication which otherwise constitutes a newspaper within the meaning of this subsection. Advertising is not considered to be news. Newspapers are not bound or stapled; magazines are.

B. Example: N is a newspaper publishing company. N also prints advertising circulars for various businesses. These circulars are delivered to the businesses which ordered them. The business then arranges for dissemination of the circulars in ways other than as inserts to N's newspaper. N's receipts from printing these circulars are not deductible under Section 7-9-64 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 5/7/93, 10/15/96; 3.2.222.8 NMAC – Rn, 3 NMAC 2.64.8 & A, 6/14/01]

3.2.222.9 - CREDIT BUREAU PUBLICATION

A. Receipts from selling the publication of a credit bureau which provides information to subscribers concerning such matters as the filing of suits, mortgages and deeds and other information of interest to merchants and others who extend credit, whether sold as part of a credit service agreement or sold separately to subscribers not using a credit service, are subject to the gross receipts tax.

B. Such a publication is not a newspaper within the meaning of either Section 7-9-63 NMSA 1978 or 7-9-64 NMSA 1978. The receipts from selling such a publication are not entitled to the deduction from gross receipts provided by Section 7-9-64 NMSA 1978.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/15/96; 3.2.222.9 NMAC – Rn, 3 NMAC 2.64.9 & A, 6/14/01]

3.2.222.10 - RACING FORMS

Racing forms are not "newspapers" within the meaning of either Section 7-9-63 NMSA 1978 or 7-9-64 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/15/96; 3.2.222.10 NMAC – Rn, 3 NMAC 2.64.10 & A, 6/14/01]

3.2.222.11 - REPORT OF RECREATIONAL CONDITIONS

A daily publication reporting solely recreational conditions, such as the hunting or fishing conditions of a particular recreational area, is not a "newspaper" within the meaning of either Section 7-9-63 NMSA 1978 or 7-9-64 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/15/96; 3.2.222.11 NMAC – Rn, 3 NMAC 2.64.11 & A, 6/14/01]

3.2.222.12 - SALE OF NEWSPAPER BY PRINTER

The receipts of a printer who manufactures newspapers for a publisher may take the deduction provided in Section 7-9-64 NMSA 1978 without regard to whether the newspapers are resold or distributed free of charge by the publisher. No nontaxable transaction certificate needs be delivered to the printer but the printer must retain sufficient documentation to show that the product manufactured was a newspaper.

[10/15/96; 3.2.222.12 NMAC – Rn, 3 NMAC 2.64.12 & A, 6/14/01]

7-9-65. DEDUCTION--GROSS RECEIPTS TAX--CHEMICALS AND REAGENTS.--Receipts from selling chemicals or reagents to any mining, milling or oil company for use in processing ores or oil in a mill, smelter or refinery or in acidizing oil wells, and receipts from selling chemicals or reagents in lots in excess of eighteen tons may be deducted from gross receipts. Receipts from selling explosives, blasting powder or dynamite may not be deducted from gross receipts.

3.2.223.7 - DEFINITIONS

A. **"Lots" defined:**

(1) As used in Section 7-9-65 NMSA 1978 the term "lots" means a parcel or single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(2) Example: H sells P fifteen tons of hydrochloric acid on March 1, 1978. On April 15, 1978, H sells P another ten tons of chemicals. P does not use the chemicals for exempt purposes. H wants to deduct the gross receipts from these sales since the total amount of chemicals sold exceeded eighteen tons. In this case one lot amounted to fifteen tons, the other to ten tons. The sales may not be added for the purpose of this deduction. The deduction will be disallowed.

B. **"Chemical" defined:** As used in Section 7-9-65 NMSA 1978 the term "chemical" means a substance used for producing a chemical reaction.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 10/23/85, 4/2/86, 11/26/90, 11/15/96; 3.2.223.7 NMAC – Rn, 3 NMAC 2.65.7 & A, 6/14/01]

3.2.223.8 - WELL-DRILLING MUD

Mud used in the drilling of wells is not a chemical or reagent.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.223.8 NMAC – Rn, 3 NMAC 2.65.8, 6/14/01]

3.2.223.9 - NATURAL GAS WELLS: SALT WATER DISPOSAL WELLS AND INJECTION WELLS

A. For purposes of Section 7-9-65 NMSA 1978, natural gas wells are oil wells, since they produce condensate or oil as a by-product. Receipts from the sale of chemicals or reagents for use in acidizing such wells may be deducted from the seller's gross receipts.

B. For purposes of deductions under Section 7-9-65 NMSA 1978, salt water disposal wells and injection wells are not oil wells. Receipts from the sale of chemicals or reagents, in lots of less than eighteen tons, for use in acidizing such wells may not be deducted from the seller's gross receipts.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.223.9 NMAC – Rn, 3 NMAC 2.65.9 & A, 6/14/01]

3.2.223.10 - TREATMENT FOR INHIBITING CORROSION

Receipts from selling chemicals or reagents used in treating oil wells for purposes of inhibiting or removing scale or corrosion, removing paraffin deposits and breaking down the

oil-water-sludge demolition into separate components are not receipts from selling chemicals or reagents for use in acidizing the wells pursuant to Section 7-9-65 NMSA 1978. However, receipts from selling these chemicals or reagents in lots in excess of eighteen tons may be deducted from gross receipts pursuant to Section 7-9-65 NMSA 1978.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.223.10 NMAC – Rn, 3 NMAC 2.65.10 & A, 6/14/01]

3.2.223.11 - GENERAL EXAMPLE

Y Company sells salt to the X Mining Company which uses the salt as a reagent in processing ores in a well, smelter or refinery. Y may deduct the receipts from this sale, whether or not the salt was sold to X in lots in excess of eighteen tons.
[3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.223.11 NMAC – Rn, 3 NMAC 2.65.11, 6/14/01]

7-9-66. DEDUCTION--GROSS RECEIPTS TAX--COMMISSIONS.--

A. Receipts derived from commissions on sales of tangible personal property which are not subject to the gross receipts tax may be deducted from gross receipts.

B. Receipts of the owner of a dealer store derived from commissions received for performing the service of selling from the owner's dealer store a principal's tangible personal property may be deducted from gross receipts.

C. As used in this section, "dealer store" means a merchandise facility open to the public that is owned and operated by a person who contracts with a principal to act as an agent for the sale from that facility of merchandise owned by the principal.

(Laws 1999, Chapter 169, Section 1)

3.2.225.8 - COMMISSIONS ON SALES OF REAL PROPERTY, INTANGIBLE PROPERTY OR PRIVILEGES

A. Receipts derived from commissions on sales of real property or intangible property such as negotiable instruments and stocks and bonds or privileges, such as licenses and tickets, are not deductible under Section 7-9-66 NMSA 1978.

B. Where a real estate brokerage commission is apportioned by prior agreement (written or oral) among the brokers who listed the property, the broker who sold the property and the sales personnel of each, gross receipts from the commission are to be allocated as provided in the agreement and are to be taxed in accordance with this allocation, provided that the real estate brokers are to withhold and pay over the gross receipts tax applicable to that portion of the commission allocated to sales personnel of that broker.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 3/8/91, 11/15/96; 3.2.225.8 NMAC – Rn, 3 NMAC 2.66.1.8 & A, 6/14/01]

3.2.225.9 - COMMISSIONS PAID TO NONEMPLOYEE AGENTS

A. Receipts from commissions for services rendered in New Mexico paid to non-employee agents of freight companies, bus transportation firms and the like are subject to the gross receipts tax.

B. The indicia outlined in Section 3.2.105.7 NMAC will be considered in determining whether a person is an employee or nonemployee agent.

C. The gross receipts of nonemployee agents include only the total commissions or fees received.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 3/8/91, 11/15/96; 3.2.225.9 NMAC – Rn, 3 NMAC 2.66.1.9 & A, 6/14/01]

3.2.225.10 - STOCKBROKERS

A. The receipts of New Mexico stockbrokers or mutual fund salespeople, who are independent contractors, from commissions from the sale of stocks, bonds, or mutual fund shares are subject to the gross receipts tax.

B. Receipts of out-of-state correspondents of New Mexico stockbrokers or out-of-state mutual fund sales companies from performance of service outside New Mexico are

not subject to the gross receipts tax.

C. Receipts of New Mexico stockbrokers or mutual fund salespeople, who are independent contractors from commissions on the sale of stocks, bonds or mutual fund shares do not include amounts which are paid over to their out-of-state correspondents or their out-of-state mutual fund sales companies for the correspondent's or companies' service performed outside New Mexico.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.225.10 NMAC – Rn, 3 NMAC 2.66.1.10, 6/14/01]

3.2.225.11 - AUCTIONEERS

The receipts of an auctioneer selling property, on a commission or a fee basis, are subject to the gross receipts tax to the extent that the deduction provided by Section 7-9-66 NMSA 1978 does not apply. The receipts of a person selling property through an auctioneer who sells property on a commission or fee basis are subject to the gross receipts tax. However, the person's receipts from such a sale are exempted from the gross receipts tax if the sale is isolated or occasional and the other is neither regularly engaged nor holding out as engaged in the business of selling or leasing the same or similar property.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.225.11 NMAC – Rn, 3 NMAC 2.66.1.11 & A, 6/14/01]

3.2.225.12 - SALES “NOT SUBJECT” TO GROSS RECEIPTS TAX

Receipts derived from commissions on sales of tangible personal property, the receipts from which sales are either exempted from the gross receipts tax or deductible from gross receipts, may be deducted from gross receipts.

[3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.225.12 NMAC – Rn, 3 NMAC 2.66.1.12, 6/14/01]

7-9-66.1. DEDUCTION--GROSS RECEIPTS TAX--CERTAIN REAL ESTATE TRANSACTIONS.--

A. Receipts from real estate commissions on that portion of the transaction subject to gross receipts tax pursuant to Subsection A of Section 7-9-53 NMSA 1978 may be deducted from gross receipts if the person claiming the deduction submits to the department evidence that the secretary finds substantiates the deduction.

B. For the purposes of this section, "commissions on that portion of the transaction subject to gross receipts tax" means that portion of the commission that bears the same relationship to the total commission as the amount of the transaction subject to gross receipts tax does to the total purchase price.

3.2.226.8 - CALCULATING THE DEDUCTIBLE PORTION OF A REAL ESTATE COMMISSION

A. The portion of a real estate commission which is deductible is calculated using the following formula: Deductible commission equals total real estate commission times a fraction, the numerator of which is the taxable receipts from the sale of the property and the denominator of which is the total receipts from the sale of the property, or

$$\text{Total commission} \times \frac{\text{taxable receipts from sale}}{\text{total receipts from sale}} = \text{deductible commission}$$

B. "Taxable receipts from the sale" means that portion of the receipts from the sale of real property which is attributable to improvements constructed on the real property by the seller in the ordinary course of the seller's construction business.

C. Example: A real estate broker receives a $6,000 commission on a $100,000 sale of property by a construction contractor. Of the $100,000, $70,000 is the value of improvements constructed by the seller, for which the seller is subject to gross receipts tax. $30,000 is the value of the underlying land, which the seller (contractor) can deduct from gross receipts pursuant to Section 7-9-53 NMSA 1978. The real estate broker must report $6,000 as gross receipts. The real estate broker may calculate the deductible portion using the formula given in Subsection A of Section 3.2.226.8 NMAC:

$$\$6{,}000 \times \frac{\$\ 70{,}000}{\$100{,}000} = \$4{,}200$$

Thus, the real estate broker deducts $4,200 and pays tax on the remaining $1,800.

[3/13/85, 4/2/86, 11/26/90, 11/15/96; 3.2.226.8 NMAC – Rn, 3 NMAC 2.66.2.8 & A, 6/14/01]

3.2.226.9 - REAL ESTATE COMMISSION ON SALES NOT SUBJECT TO GROSS RECEIPTS TAX ARE FULLY TAXABLE

A. No portion of a real estate commission is deductible if the total receipts from the sale of the real property are either deductible or exempt from gross receipts tax.

B. Example 1: A real estate broker receives a $6,000 commission on the sale of a home by the owner. The receipts of the homeowner from the sale are exempt as receipts from an isolated or occasional sale pursuant to Section 7-9-28 NMSA 1978. The real estate broker must pay tax on the entire $6,000 commission.

C. Example 2: A real estate broker receives a $6,000 commission on the sale of a piece of raw land by a developer. Receipts from the sale of the land are deductible from gross receipts as receipts from the sale of real property pursuant to Section 7-9-53 NMSA 1978. The real estate broker must pay tax on the entire $6,000 commission.

[3/13/85, 4/2/86, 11/26/90, 11/15/96; 3.2.226.9 NMAC – Rn, 3 NMAC 2.66.2.9 & A, 6/14/01]

7-9-67. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS TAX--REFUNDS--UNCOLLECTIBLE DEBTS.--

A. Refunds and allowances made to buyers or amounts written off the books as an uncollectible debt by a person reporting gross receipts tax on an accrual basis may be deducted from gross receipts. If debts reported uncollectible are subsequently collected, such receipts shall be included in gross receipts in the month of collection.

B. Refunds and allowances made to buyers or amounts written off the books as an uncollectible debt by a person reporting governmental gross receipts tax on an accrual basis may be deducted from governmental gross receipts. If debts reported uncollectible are subsequently collected, such receipts shall be included in governmental gross receipts in the month of collection.

(Laws 1994, Chapter 45, Section 6)

3.2.227.8 - TRADING STAMPS

A. Trading stamps are not allowances within the meaning of Section 7-9-67 NMSA 1978. Trading stamps represent promotional services and may not be deducted from gross receipts or governmental gross receipts pursuant to Section 7-9-67 NMSA 1978.

B. Example: B is in the business of selling groceries. When one of B's customers purchases groceries, B will give the customer trading stamps. B wishes to deduct the cost of the trading stamps, saying that they are an allowance. Trading stamps are not allowances, but represent promotional service. No deduction is allowed.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/28/94, 11/15/96; 3.2.227.8 NMAC – Rn, 3 NMAC 2.67.8 & A, 6/14/01]

3.2.227.9 - REFUNDABLE DEPOSITS

A. Receipts from selling soft drinks include amounts received in the form of refundable deposits on bottles, cartons and cases.

B. The amount of deposits refunded to purchasers of soft drinks may be deducted from gross receipts or governmental gross receipts under Section 7-9-67 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/28/94, 11/15/96; 3.2.227.9 NMAC – Rn, 3 NMAC 2.67.9 & A, 6/14/01]

3.2.227.10 - GENERAL EXAMPLES

A. The deduction for refunds and allowances made to buyers is applicable to taxpayers reporting gross receipts or governmental gross receipts on either a cash or an accrual basis, but the deduction for uncollectible accounts is available only to taxpayers who report gross receipts or governmental gross receipts on an accrual basis. The transaction or transactions which gave rise to either the refund or allowance or to the amount written off the books as an uncollectible account must have originally been subject to the gross receipts tax or governmental gross receipts tax.

B. Example 1: C operates an appliance store. C sells D an air conditioner for $200. D returns the air conditioner and C credits D's account with $150. C may deduct $150 from gross

receipts. However, C must include the remaining $50 in gross receipts.

C. Example 2: A buys goods for $100. A sells them for $25. A wishes to deduct the loss from gross receipts. The loss may not be deducted. A must pay tax on the $25 or the fair market value of the item sold, whichever is greater.

D. Example 3: X is an accrual basis taxpayer. Y buys a suit from X but does not pay for it. X reports the receipts from the sale on X's return. X then discovers that X cannot collect the sales price of the suit. X may take the deduction upon proper proof of the bad debt. This rule, however, would not apply if X had never reported the receipts from the sale.

E. Example 4: U is a university bookstore which reports governmental gross receipts on an accrual basis. U sells books and other materials to a student on account, reporting governmental gross receipts in the month of sale. The student subsequently leaves the university without fully settling the account. Because the receipts from the sale had already been reported, U may take the deduction upon proper proof of the bad debt.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/28/94, 11/15/96; 3.2.227.10 NMAC – Rn, 3 NMAC 2.67.10, 6/14/01]

3.2.227.11 - SALE OF REPOSSESSED PROPERTY

A person reporting gross receipts or governmental gross receipts on an accrual basis is entitled to deduct amounts written off the books as an uncollectible debt for the amount credited to the buyer from whom the property was repossessed. Receipts from a subsequent sale of the same property are subject to the gross receipts tax or governmental gross receipts.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/28/94, 11/15/96; 3.2.227.11 NMAC – Rn, 3 NMAC 2.67.11, 6/14/01]

3.2.227.12 - RETURNED CHECKS AND CREDIT CARD REVERSALS

A. When a check is received, deposited, dishonored and returned, and not subsequently honored within the same reporting period, the taxpayer has no gross receipts with respect to the check. If the check is received within one reporting period, gross receipts are reported with respect to that check for that period and the check is dishonored, returned and not subsequently honored in a subsequent reporting period, the taxpayer may claim a deduction under Section 7-9-67 NMSA 1978 for the amount of the returned check for the period in which the check was dishonored.

B. When a credit card charge is reversed within the same reporting period, the taxpayer has no gross receipts with respect to the charge. If the credit card charge is made within one reporting period, gross receipts are reported with respect to that charge for the period and the charge is reversed in a subsequent reporting period, the taxpayer may claim a deduction under Section 7-9-67 NMSA 1978 for the amount of the reversed credit card charge for the period in which the reversal occurred.

[10/15/98; 3.2.227.12 NMAC – Rn, 3 NMAC 2.67.12 & A, 6/14/01]

7-9-68. DEDUCTION--GROSS RECEIPTS TAX--WARRANTY OBLIGATIONS.--Receipts of a dealer from furnishing goods or services to the purchaser of tangible personal property to fulfill a warranty obligation of the manufacturer of the property may be deducted from gross receipts.

3.2.228.8 - WARRANTY SUBCONTRACTOR

If a dealer subcontracts with another person (subcontractor) to fulfill the dealer's warranty obligation of the manufacturer of the property, the receipts of the subcontractor may not be deducted pursuant to Section 7-9-68 NMSA 1978. The subcontractor is not the dealer of record.
[3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.228.8 NMAC – Rn, 3 NMAC 2.68.8 & A, 6/14/01]

3.2.228.9 - WARRANTY OBLIGATIONS - GENERAL EXAMPLES

A. A person authorized by the manufacturer to repair tangible personal property under the warranty of the manufacturer is a “dealer” for the purposes of Section 7-9-68 NMSA 1978. The person therefore may deduct receipts received directly from the manufacturer for parts and labor necessary to fulfill the manufacturer's warranty obligation. Receipts of the dealer which are received from any person other than the manufacturer may not be deducted under the provisions of Section 7-9-68 NMSA 1978.

B. Example 1: X, a washing machine company, offers a five-year warranty against defective parts (only) in all washing machines it manufactures and sells. C, who bought a washing machine manufactured by X, engages D, a dealer for X, to replace a defective part within the warranty period. D undertakes the repair and bills X for the parts used and C for the labor involved. X pays D for the parts and C pays D for the labor. D may deduct the receipts from X under Section 7-9-68 NMSA 1978 but D may not deduct under Section 7-9-68 NMSA 1978 the receipts derived from C for the labor charges not covered under the manufacturer's warranty.

C. Example 2: Y, a manufacturer of televisions, authorizes R, a television repair service, to repair televisions manufactured by Y under Y's warranty. R receives payment from Y to cover both parts and labor necessary to repair televisions manufactured by Y which are covered by Y's warranty. R may deduct the receipts from Y for fulfilling Y's warranty obligation.
[5/25/89, 11/26/90, 11/15/96; 3.2.228.9 NMAC – Rn, 3 NMAC 2.68.9 & A, 6/14/01]

3.2.228.10 - SERVICE CONTRACT AND MANUFACTURER'S WARRANTY DISTINGUISHED

A manufacturer's warranty may be distinguished from an automotive service contract, as that term is defined in Subsection C of Section 3.2.1.16 NMAC, on which the manufacturer is the promisor by the characterization used by the manufacturer so long as no separate charge is made to the ultimate customer for a manufacturer's undertaking characterized as a warranty.
[6/20/89, 11/26/90, 11/15/96; 3.2.228.10 NMAC – Rn, 3 NMAC 2.68.10 & A, 6/14/01]

3.2.228.11 - RECEIPTS FROM CO-PAYMENTS/DEDUCTIBLES UNDER WARRANTIES

The dealer's receipts from the “co-payment” or “deductible” amount paid to the dealer by the purchaser as required by some manufacturers' warranties are gross receipts and not deductible

from gross receipts under Section 7-9-68 NMSA 1978 since the receipts from the purchaser are not receipts from furnishing goods or services to fulfill the manufacturer's obligation. The manufacturer's obligation under such a warranty is limited to the charge for the goods and services minus the required co-payment or deductible.
[6/20/89, 11/26/90, 11/15/96; 3.2.228.11 NMAC – Rn, 3 NMAC 2.68.11 & A, 6/14/01]

7-9-69. DEDUCTION--GROSS RECEIPTS TAX--ADMINISTRATIVE AND ACCOUNTING SERVICES.--

A. Receipts of a business entity for administrative, managerial, accounting and customer services performed by it for an affiliate upon a nonprofit or cost basis and receipts of a business entity from an affiliate for the joint use or sharing of office machines and facilities upon a nonprofit or cost basis may be deducted from gross receipts.

B. For the purposes of this section:

(1) "affiliate" means a business entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with another business entity;

(2) "business entity" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership or real estate investment trust, but does not mean an individual or a joint venture; and

(3) "control" means equity ownership in a business entity that:

(a) represents at least fifty percent of the total voting power of that business entity; or

(b) has a value equal to at least fifty percent of the total equity of that business entity.

(Laws 2015, Chapter 38, Section 1)

3.2.229.8 - GENERAL EXAMPLES

A. The deduction provided by this section contains several restrictions, among them are these:

(1) receipts must be from activities performed on a nonprofit or cost basis;

(2) excluded are receipts from sharing equipment or facilities other than office equipment or offices; and

(3) excluded are receipts from transactions with entities other than affiliated corporations as defined in this section.

B. Example 1: D is a wholly owned subsidiary of C. C does the machine accounting for D for the actual cost of the accounting work plus ten percent. C may not deduct the receipts which it receives from D. The deduction is only for receipts from accounting services rendered on a nonprofit or cost basis.

C. Example 2: D, a wholly owned subsidiary of C, leases construction equipment to C on a cost basis. D cannot deduct the gross receipts which it received from this transaction. This transaction does not involve the performance of accounting, managerial or administrative services or the joint use or sharing of office machines and facilities upon a nonprofit or cost basis.

D. Example 3: B and C are subsidiaries of A. A owns 80% of the voting stock of B and 40% of the voting stock of C. B performs administrative and accounting services for A and C on a cost basis. B may deduct the receipts derived from performing the administrative and accounting services for A. B may not deduct the gross receipts which it receives from C because C is not an affiliated corporation as defined by this section.

E. This version of Section 3.2.229.8 NMAC is retroactively applicable to taxable events occurring on or after July 1, 1993.

[12/5/69, ..., 3/15/96; 3.2.229.8 NMAC – Rn, 3 NMAC 2.69.8 & A, 6/14/01]

7-9-70. DEDUCTION--GROSS RECEIPTS TAX--RENTAL OR LEASE OF VEHICLES USED IN INTERSTATE COMMERCE.--Receipts from the rental or leasing of vehicles used in the transportation of passengers or property for hire in interstate commerce under the regulations or authorization of any agency of the United States may be deducted.

3.2.230.8 - WHEN FEDERAL AUTHORITY REQUIRED

A. If a federal agency must grant authority for a person to engage lawfully in interstate transportation of persons or property, any person claiming a deduction under Section 7-9-70 NMSA 1978 must have rented or leased the vehicle to a person who holds federal authority for the transportation of passengers or property for hire in interstate commerce and who uses the vehicle for such purposes. The deduction under Section 7-9-70 NMSA 1978 is available to the lessor, not the lessee.

B. [Repealed.]

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 4/30/99; 3.2.230.8 NMAC – Rn, 3 NMAC 2.70.8 & A, 6/14/01]

7-9-71. DEDUCTION--GROSS RECEIPTS TAX--TRADE-IN ALLOWANCE.-- That portion of the receipts of a seller that is represented by a trade-in of tangible personal property of the same type being sold, except for the receipts represented by a trade-in of a manufactured home, may be deducted from gross receipts.
(Laws 1991, Chapter 203, Section 7)

3.2.231.8 - TRADE-IN MUST BE OF LIKE PROPERTY

A. A trade-in of tangible personal property, as used in Section 7-9-71 NMSA 1978, must be of the same type as the tangible personal property being sold.

B. Example 1: X, an appliance company, sells a refrigerator to Y and takes a radio as a trade-in. X cannot deduct that portion of its gross receipts on this transaction that is represented by the trade-in because a radio is not the same type of tangible personal property as a refrigerator.

C. Example 2: S, a construction equipment dealer, sells Y, a construction company, a crusher and takes a tractor as a trade-in. S cannot deduct that portion of its gross receipts on this transaction that is represented by the trade-in because a tractor is not the same type of tangible personal property as a crusher.

D. Example 3: A manufactured home is not the same type of tangible personal property as a "travel trailer" as defined in Section 66-1-4.17 NMSA 1978, for purposes of the trade-in allowance provided under Section 7-9-71 NMSA 1978.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 3/19/92, 11/15/96; 3.2.231.8 NMAC – Rn, 3 NMAC 2.71.8 & A, 6/14/01]

3.2.231.9 - MUSICAL INSTRUMENTS

That portion of the receipts of a music dealer which represents a trade-in of a musical instrument may be deducted from gross receipts only if the trade-in was accepted on the sale of another musical instrument of the same type as the instrument accepted for trade-in. Similarly, that portion of receipts of a music dealer which represents a trade-in of equipment for amplifying musical sound used in conjunction with musical instruments may be deducted from gross receipts only if the trade-in was accepted on the sale of other equipment for amplifying musical sound used in conjunction with musical instruments.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.231.9 NMAC – Rn, 3 NMAC 2.71.9, 6/14/01]

7-9-73. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS--SALE OF PROSTHETIC DEVICES.--Receipts from selling prosthetic devices may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person who is licensed to practice medicine, osteopathic medicine, dentistry, podiatry, optometry, chiropractic or professional nursing and who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must deliver the prosthetic device incidental to the performance of a service and must include the value of the prosthetic device in his charge for the service.
(Laws 1992, Chapter 100, Section 10)

3.2.232.8 - EYE WEAR

The receipts from selling contact lenses, eye glasses, eye glass frames and lens glass to ophthalmologists and optometrists may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate to the seller. Contact lenses, eye glasses, eye glass frames and lens glasses are "prosthetic devices" within the meaning of Section 7-9-73 NMSA 1978.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.232.8 NMAC – Rn, 3 NMAC 2.73.1.8 & A, 6/14/01]

3.2.232.9 - DENTAL SUPPLIES

The receipts from selling items of tangible personal property used in making dentures, as well as receipts from selling supplies, including gold, silver, cement used in fillings, amalgam, anesthetics, orthodontia platinum wire, facings, backings and similar items to dentists for use in their practices may not be deducted from gross receipts pursuant to Section 7-9-73 NMSA 1978. Such items sold are not “prosthetic devices” within the meaning of Section 7-9-73 NMSA 1978.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.232.9 NMAC – Rn, 3 NMAC 2.73.1.9 & A, 6/14/01]

7-9-73.1. DEDUCTION--GROSS RECEIPTS TAX--HOSPITALS.--Fifty percent of the receipts of hospitals licensed by the department of health may be deducted from gross receipts; provided, this deduction may be applied only to the taxable gross receipts remaining after all other appropriate deductions have been taken.
(Laws 1995, Chapter 50, Section 5)

7-9-73.2. DEDUCTION--GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX--PRESCRIPTION DRUGS--OXYGEN.--

A. Receipts from the sale of prescription drugs and oxygen and oxygen services provided by a licensed medicare durable medical equipment provider may be deducted from gross receipts and governmental gross receipts.

B. For the purposes of this section, "prescription drugs" means insulin and substances that are:

(1) dispensed by or under the supervision of a licensed pharmacist or by a physician or other person authorized under state law to do so;

(2) prescribed for a specified person by a person authorized under state law to prescribe the substance; and

(3) subject to the restrictions on sale contained in Subparagraph 1 of Subsection (b) of 21 USCA 353.

(Laws 2007, Chapter 361, Section 3)

3.2.234.8 - PACKAGING AND STORAGE CONTAINERS

A. "INJECTIBLES": Injectibles are a combination of tangible personal property sold as a unit for a single price in which a prescription drug is pre-loaded by the manufacturer into a device, such as a syringe, to administer the prescription drug. Receipts from selling the device, such as a syringe, by itself are not deductible under Section 7-9-73.2 NMSA 1978. When sold as part of an injectible, however, the device will be considered simply an elaborate form of packaging incidental to the sale of the prescription drug. Receipts from selling injectibles may be deducted from gross receipts under Section 7-9-73.2 NMSA 1978.

B. The receipts of an oxygen service provider from the lease of oxygen canisters, cylinders or similar storage containers to recipients of oxygen services are deductible pursuant to Section 7-9-73.2 NMSA 1978 if the oxygen service provider sells the entire package, including the lease of the containers, as part of the oxygen service they provide.

C. Receipts from the sale or lease of machines or equipment that produce oxygen or filter the air are not receipts from the sale of oxygen or from providing oxygen services and therefore not deductible under Section 7-9-73.2 NMSA 1978.

[10/29/99; 3.2.234.8 NMAC – Rn, 3 NMAC 2.73.3.8 & A, 6/14/01; A, 5/15/08]

3.2.234.9 – VACCINES

Vaccines required to be administered by a person licensed by the state to do so are prescription drugs.

[3.2.234.9 NMAC - N, 10/31/2000]

3.2.234.10 - ITEMS THAT ARE NOT PRESCRIPTION DRUGS

Tangible personal property that may be sold or dispensed for human consumption or administered to a human without a prescription of a person, such as a medical doctor, licensed to prescribe the property's use or to administer it are not "prescription drugs". Items that do not

require a prescription, such as medical equipment, vitamins and aspirin are not “prescription drugs” even if prescribed by a licensed medical doctor. Tangible personal property sold or dispensed for non-human consumption or administered to a non-human are not “prescription drugs”.
[3.2.234.10 NMAC - N, 10/31/2000; A, 5/15/2008; A, 9/30/2010]

7-9-73.3.--DEDUCTION--GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX--DURABLE MEDICAL EQUIPMENT--MEDICAL SUPPLIES.--

A. Receipts from transactions occurring prior to July 1, 2020 that are from the sale or rental of durable medical equipment and medical supplies may be deducted from gross receipts and governmental gross receipts.

B. The purpose of the deduction provided in this section is to help protect jobs and retain businesses in New Mexico that sell or rent durable medical equipment and medical supplies.

C. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

D. The deduction provided in this section shall be taken only by a taxpayer participating in the New Mexico medicaid program whose gross receipts are no less than ninety percent derived from the sale or rental of durable medical equipment, medical supplies or infusion therapy services, including the medications used in infusion therapy services.

E. Acceptance of a deduction provided by this section is authorization by the taxpayer receiving the deduction for the department to reveal information to the revenue stabilization and tax policy committee and the legislative finance committee necessary to analyze the effectiveness and cost of the deduction and whether the deduction is performing the purpose for which it was created.

F. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers approved by the department to receive the deduction, the aggregate amount of deductions approved and any other information necessary to evaluate the effectiveness of the deduction. Beginning in 2019 and every five years thereafter, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction and whether the deduction is performing the purpose for which it was created.

G. As used in this section:

(1) "durable medical equipment" means a medical assistive device or other equipment that:

(a) can withstand repeated use;

(b) is primarily and customarily used to serve a medical purpose and is not useful to an individual in the absence of an illness, injury or other medical necessity, including improved functioning of a body part;

(c) is appropriate for use at home exclusively by the eligible recipient for whom the durable medical equipment is prescribed; and

(d) is prescribed by a physician or other person licensed by the state to prescribe durable medical equipment;

(2) "infusion therapy services" means the administration of prescribed medication through a needle or catheter;

(3) "medical supplies" means items for a course of medical treatment, including nutritional products, that are:

(a) necessary for an ongoing course of medical treatment;

(b) disposable and cannot be reused; and

(c) prescribed by a physician or other person licensed by the state to prescribe medical supplies; and

(4) "prescribe" means to authorize the use of an item or substance for a course of medical treatment.

(Laws 2014, Chapter 26, Section 1)

7-9-74. DEDUCTION--GROSS RECEIPTS TAX--SALE OF PROPERTY USED IN THE MANUFACTURE OF JEWELRY.--Receipts from selling tangible personal property may be deducted from gross receipts if the sale is made to a person who states in writing that he will use the property so purchased in manufacturing jewelry. The buyer must incorporate the tangible personal property as an ingredient or component part of the jewelry that he is in the business of manufacturing. The deduction allowed a seller under this section shall not exceed five thousand dollars ($5,000) during any twelve-month period attributable to purchases by a single purchaser.
(Laws 1994, Chapter 94, Section 2)

7-9-75. DEDUCTION--GROSS RECEIPTS TAX--SALE OF CERTAIN SERVICES PERFORMED DIRECTLY ON PRODUCT MANUFACTURED.-- Receipts from selling the service of combining or processing components or materials may be deducted from gross receipts if the sale is made to a person engaged in the business of manufacturing who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must have the service performed directly upon tangible personal property which he is in the business of manufacturing or upon ingredients or component parts thereof.

3.2.235.7 - DEFINITIONS

A "manufacturing service" is the service of combining or processing components or materials owned by another.

[11/15/96, 12/15/99; 3.2.235.7 NMAC – Rn, 3 NMAC 2.75.7, 6/14/01]

3.2.235.8 - PLATING

A. Receipts from the sale of the service of plating are deductible from gross receipts if the sale is made to a person engaged in the business of manufacturing and the buyer delivers a nontaxable transaction certificate (nttc).

B. The buyer delivering the nttc must have the service performed directly upon tangible personal property which the buyer is in the business of manufacturing or upon ingredients or component parts thereof, or the buyer will be liable for the compensating tax on the value of the plating service at the time it was rendered.

[11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.235.8 NMAC – Rn, 3 NMAC 2.75.8, 6/14/01]

3.2.235.9 - HAULING FOR MANUFACTURER

Hauling components or materials for a person engaged in the manufacturing business is not a manufacturing service within the meaning of Section 7-9-75 NMSA 1978. The hauler is neither combining nor processing these items; therefore, the manufacturer may not issue to the hauler a nontaxable transaction certificate and the hauler may not deduct the receipts pursuant to Section 7-9-75 NMSA 1978. The hauler's receipts are fully subject to the gross receipts tax.

[3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.235.9 NMAC – Rn, 3 NMAC 2.75.9 & A, 6/14/01]

3.2.235.10 - RECEIPTS FROM MANUFACTURER FOR "GET READY"

Amounts paid to, or credited against the account of, an automotive dealer by a manufacturer to compensate the dealer for inspection and other "get ready" operations performed on new vehicles manufactured by that manufacturer may be deducted from gross receipts if the dealer has in possession a Type 13 (manufacturing services) Nontaxable Transaction Certificate (nttc) issued by the manufacturer of the vehicles since the dealer is performing services directly on the property which the manufacturer is in the business of manufacturing. A reduction in the dealer's invoice price for a new vehicle to compensate the dealer for "get ready" operations on that vehicle involves a receipt by the dealer, but a deduction of that amount may be claimed by

the dealer who has a Type 13 nttc issued by the manufacturer.
[6/20/89, 11/26/90, 11/15/96; 3.2.235.10 NMAC – Rn, 3 NMAC 2.75.10, 6/14/01]

3.2.235.11 - RECEIPTS FROM NON-MANUFACTURERS FOR "GET READY"

Amounts paid to a New Mexico automotive dealer by another dealer for inspection and other "get ready" operations performed on new vehicles being sold by the other dealer may not be deducted under a Type 13 Nontaxable Transaction Certificate issued by the other dealer since the New Mexico dealer is not performing the services for the manufacturer.
[6/20/89, 11/26/90, 11/15/96; 3.2.235.11 NMAC – Rn, 3 NMAC 2.75.11, 6/14/01]

3.2.235.12 - INSTALLING COMPUTER PROGRAMMING AS A COMPONENT PART

A. Receipts from performing the service of installing computer programming on a computer chip or other device for a manufacturer may be deducted under Section 7-9-75 NMSA 1978 when the chips are supplied by the manufacturer and the programmed chip or device is designed to control the operation of machinery or equipment.

B. Example 1: M, a manufacturer of widgets, contracts with X to install control logic (developed by M) on computer chips which are to be incorporated into M's widgets. The chips are designed to control certain operations of the widget. X's receipts from performing this service are deductible under Section 7-9-75 NMSA 1978 regardless of whether or not the programming is designed to allow the ultimate purchaser of the widgets to alter some or all of the programming parameters.

C. Example 2: M, a manufacturer of computer chips, accepts an order from B to make and sell specialty chips. The order requires that certain software be included on the chips. M contracts with X to install the programming on the chips. M ships the chips to X, who in turn ships the chips to B after installing the programming. X may deduct its receipts from installing the programming on the chips under Section 7-9-75 NMSA 1978.

D. Example 3: S, retailer of computers and packaged programming, hires X to install packaged programming on the computers S sells. X may not deduct its receipts from installing the programming for S under Section 7-9-75 NMSA 1978 because S is not a manufacturer. Other deductions, such as that under Section 7-9-48 NMSA 1978, however, may be available.
[4/30/97; 3.2.235.12 NMAC – Rn, 3 NMAC 2.75.12 & A, 6/14/01]

7-9-76. DEDUCTION--GROSS RECEIPTS TAX--TRAVEL AGENTS' COMMISSIONS PAID BY CERTAIN ENTITIES.--Receipts of travel agents derived from commissions paid by maritime transportation companies and interstate airlines, railroads and passenger buses for booking, referral, reservation or ticket services may be deducted from gross receipts.

7-9-76.1. DEDUCTION--GROSS RECEIPTS TAX--CERTAIN MANUFACTURED HOMES.-- Receipts from the resale of a manufactured home may be deducted from gross receipts if the sale is made of a manufactured home that was subject to the gross receipts, compensating or motor vehicle excise tax upon its initial sale or use in New Mexico. The seller shall retain and furnish proof satisfactory to the department that a gross receipts, compensating or motor vehicle excise tax was paid upon the initial sale or use in New Mexico of a manufactured home, and in the absence of such proof, it is presumed that the tax was not paid. Proof that a New Mexico certificate of title was issued for a manufactured home in 1972 or a prior year or proof that a manufactured home for which a New Mexico certificate of title has been issued was manufactured in 1967 or a prior year is proof that a motor vehicle excise tax was paid on the initial sale or use in New Mexico of that manufactured home.
(Laws 1991, Chapter 203, Section 8)

7-9-76.2. DEDUCTION--GROSS RECEIPTS TAX--FILMS AND TAPES.--Receipts from the leasing or licensing of theatrical and television films and tapes to a person engaged in the business of providing public or commercial entertainment from which gross receipts are derived may be deducted from gross receipts.

7-9-77. DEDUCTIONS--COMPENSATING TAX.--

A. Fifty percent of the value of agricultural implements, farm tractors, aircraft not exempted under Section 7-9-30 NMSA 1978 or vehicles that are not required to be registered under the Motor Vehicle Code may be deducted from the value in computing the compensating tax due; provided that, with respect to use of agricultural implements, the person using the property is regularly engaged in the business of farming or ranching. Any deduction allowed under Subsection B of this section is to be taken before the deduction allowed by this subsection is computed. As used in this subsection, "agricultural implement" means a tool, utensil or instrument that is:

(1) designed primarily for use with a source of motive power, such as a tractor, in planting, growing, cultivating, harvesting or processing agricultural produce at the place where the produce is grown; in raising poultry or livestock; or in obtaining or processing food or fiber, such as eggs, milk, wool or mohair, from living poultry or livestock at the place where the poultry or livestock are kept for this purpose; and

(2) depreciable for federal income tax purposes.

B. That portion of the value of tangible personal property on which an allowance was granted to the buyer for a trade-in of tangible personal property of the same type that was bought may be deducted from the value in computing the compensating tax due.

(Laws 1998, Chapter 89, Section 6)

3.2.237.8 - GENERAL EXAMPLE

A. The following example illustrates the application of Section 7-9-77 NMSA 1978.

B. Example: Y charters an airplane from X, an out-of-state airplane dealer. The charter is for one month. After one week Y decides to buy the airplane. X allows Y a “trade-in” for the remaining three weeks of Y's charter. Y cannot deduct the value of this “trade-in” from the value of the airplane in computing the compensating tax due. The “trade-in” was not tangible personal property.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.237.8 NMAC – Rn, 3 NMAC 2.77.8 & A, 6/14/01]

3.2.237.9 - TRANSPORTATION OR FREIGHT CHARGES

As transportation costs paid by the seller to the carrier are an element of the sales price of the property, when equipment not required to be registered under the Motor Vehicle Code is purchased outside New Mexico and is brought into New Mexico for use, the value of the equipment as well as the freight costs are subject to the 50% deduction in computing the compensating tax due.

[3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.237.9 NMAC – Rn, 3 NMAC 2.77.9, 6/14/01]

7-9-77.1. DEDUCTION--GROSS RECEIPTS TAX--CERTAIN MEDICAL AND HEALTH CARE SERVICES.--

A. Receipts of a health care practitioner from payments by the United States government or any agency thereof for provision of medical and other health services by a health care practitioner or of medical or other health and palliative services by hospices or nursing homes to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

B. Receipts of a health care practitioner from payments by a third-party administrator of the federal TRICARE program for provision of medical and other health services by medical doctors and osteopathic physicians to covered beneficiaries may be deducted from gross receipts.

C. Receipts of a health care practitioner from payments by or on behalf of the Indian health service of the United States department of health and human services for provision of medical and other health services by medical doctors and osteopathic physicians to covered beneficiaries may be deducted from gross receipts.

D. Receipts of a clinical laboratory from payments by the United States government or any agency thereof for medical services provided by the clinical laboratory to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

E. Receipts of a home health agency from payments by the United States government or any agency thereof for medical, other health and palliative services provided by the home health agency to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

F. Prior to July 1, 2024, receipts of a dialysis facility from payments by the United States government or any agency thereof for medical and other health services provided by the dialysis facility to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

G. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department. A taxpayer who has receipts that are deductible pursuant to this section and Section 7-9-93 NMSA 1978 shall deduct the receipts under this section prior to calculating the receipts that may be deducted pursuant to Section 7-9-93 NMSA 1978.

H. The department shall compile an annual report on the deductions created pursuant to this section that shall include the number of taxpayers approved by the department to receive each deduction, the aggregate amount of deductions approved and any other information necessary to evaluate the effectiveness of the deductions. The department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the

legislative finance committee with an analysis of the effectiveness and cost of the deductions and whether the deductions are providing a benefit to the state.

I. For the purposes of this section:

(1) "clinical laboratory" means a laboratory accredited pursuant to 42 USCA 263a;

(2) "dialysis facility" means an end-stage renal disease facility as defined pursuant to 42 C.F.R. 405.2102;

(3) "health care practitioner" means:

(a) an athletic trainer licensed pursuant to the Athletic Trainer Practice Act;

(b) an audiologist licensed pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

(c) a chiropractic physician licensed pursuant to the Chiropractic Physician Practice Act;

(d) a counselor or therapist practitioner licensed pursuant to the Counseling and Therapy Practice Act;

(e) a dentist licensed pursuant to the Dental Health Care Act;

(f) a doctor of oriental medicine licensed pursuant to the Acupuncture and Oriental Medicine Practice Act;

(g) an independent social worker licensed pursuant to the Social Work Practice Act;

(h) a massage therapist licensed pursuant to the Massage Therapy Practice Act;

(i) a naprapath licensed pursuant to the Naprapathic Practice Act;

(j) a nutritionist or dietitian licensed pursuant to the Nutrition and Dietetics Practice Act;

(k) an occupational therapist licensed pursuant to the Occupational Therapy Act;

(l) an optometrist licensed pursuant to the Optometry Act;

(m) an osteopathic physician licensed pursuant to the Osteopathic Medicine Act;

(n) a pharmacist licensed pursuant to the Pharmacy Act;

(o) a physical therapist licensed pursuant to Physical Therapy Act;

(p) a physician licensed pursuant to the Medical Practice Act;

(q) a podiatrist licensed pursuant to the Podiatry Act;

(r) a psychologist licensed pursuant to the Professional Psychologist Act;

(s) a radiologic technologist licensed pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act;

(t) a registered nurse licensed pursuant to the Nursing Practice Act;

(u) a respiratory care practitioner licensed pursuant to the Respiratory Care Act; and

(v) a speech-language pathologist licensed pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

(4) "home health agency" means a for-profit entity that is licensed by the department of health and certified by the federal centers for medicare and Medicaid services as a home health agency and certified to provide medicare services;

(5) "hospice" means a for-profit entity licensed by the department of health as a hospice and certified to provide medicare services;

(6) "nursing home" means a for-profit entity licensed by the department of health as a nursing home and certified to provide medicare services; and

(7) "TRICARE program" means the program defined in 10 U.S.C. 1072(7).

(Laws 2016 SS, Chapter 3, Section 4)

7-9-78. DEDUCTIONS--COMPENSATING TAX--USE OF TANGIBLE PERSONAL PROPERTY FOR LEASING.--

A. Except as provided otherwise in Subsection B of this section, the value of tangible personal property may be deducted in computing the compensating tax due if the person using the tangible personal property:

(1) is engaged in a business which derives a substantial portion of its receipts from leasing or selling tangible personal property of the type leased;

(2) does not use the tangible personal property in any manner other than holding it for lease or sale or leasing or selling it either by itself or in combination with other tangible personal property in the ordinary course of business; and

(3) does not use the tangible personal property in a manner incidental to the performance of a service.

B. The deduction provided by this section shall not apply to the value of:

(1) furniture or appliances furnished as part of a leased or rented dwelling house or apartment by the landlord or lessor;

(2) coin-operated machines; or

(3) manufactured homes.

(Laws 1991, Chapter 203, Section 9)

3.2.238.8 - AUTOMOBILE LEASING

The value of tires, engine repair parts and similar items used by a lessor in the maintenance of vehicles held for lease or already leased may be deducted in computing compensating tax if the following three conditions are met:

A. the parts are used by the lessor on vehicles held for lease or already leased and the receipts from leasing or selling vehicles are a substantial portion of the receipts;

B. the maintenance of the vehicles is performed at no additional cost to the lessee under the lease agreement; and

C. the lessor does not use the vehicles or parts in any manner other than holding them for lease or sale or leasing or selling them either by themselves or in combination with other tangible personal property in the ordinary course of business.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.238.8 NMAC – Rn, 3 NMAC 2.78.8, 6/14/01]

3.2.238.9 - GENERAL EXAMPLES

The following examples illustrate the application of Section 7-9-78 NMSA 1978:

A. Example 1: E, a New Mexico corporation, is solely engaged in the business of leasing electric typewriters to business establishments in New Mexico. E purchases a typewriter in Texas to hold for lease in the ordinary course of its business. E does not use the typewriter in any other manner. E may deduct the value of the typewriter in computing its compensating tax due.

B. Example 2: E, a Colorado company, buys stoves from Z, a Colorado company. E

initially uses the stoves in its business in Colorado but later converts their use solely to leasing. E then brings the stoves into New Mexico for purposes of leasing. E is not liable for the compensating tax if the stoves are leased to restaurants. If E brings the stoves into New Mexico to be furnished as part of a leased dwelling house of which E is the lessor, E is liable for the compensating tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.238.9 NMAC – Rn, 3 NMAC 2.78.9 & A, 6/14/01]

7-9-78.1. DEDUCTION--COMPENSATING TAX--URANIUM ENRICHMENT PLANT EQUIPMENT.--The value of equipment and replacement parts for that equipment may be deducted in computing the compensating tax due if the person uses the equipment and replacement parts to enrich uranium in a uranium enrichment plant.
(Laws 1999, Chapter 231, Section 4)

7-9-79. CREDIT--COMPENSATING TAX.--

A. If on property bought outside this state, a gross receipts, sales, compensating or similar tax has been levied by another state or political subdivision thereof on the transaction by which the person using the property in New Mexico acquired the property or a compensating, use or similar tax has been levied by another state on the use of the property subsequent to its acquisition by the person using the property and such tax has been paid, the amount of such tax paid may be credited against any compensating tax due this state on the same property.

B. When the receipts from the sale of real property constructed by a person in the ordinary course of his construction business are subject to the gross receipts tax, the amount of compensating tax previously paid by the person on materials which became an ingredient or component part of the construction project and on construction services performed upon the construction project, may be credited against the gross receipts tax due on the sale.

(Laws 1991, Chapter 203, Section 10)

3.2.301.8 - LIMIT ON CREDIT

A. The credit under Section 7-9-79 NMSA 1978 cannot exceed the amount of compensating tax assessed by New Mexico on the property on which the out-of-state tax was paid, and excess amounts cannot be applied to other out-of-state purchases.

B. Example 1: Q, a New Mexico construction company, purchased a power unit in California for $50,000 and a trenching implement in Texas for $20,000. The sales tax rates applicable to the purchases were 5.5% in California and 3% in Texas. When bringing the equipment into New Mexico, a 5% compensating tax is imposed on Q. Q is allowed a credit for similar taxes paid in other states on the same property. The New Mexico compensating tax imposed on the California transaction is $2,500 ($50,000 x .05). Q paid $2,750 ($50,000 x .055) in California tax and therefore is entitled to a credit for the full amount of the New Mexico compensating tax. On the Texas transaction, the New Mexico compensating tax is $1,000 ($20,000 x .05). Q paid $600 ($20,000 x .03) in Texas tax and therefore the balance of the New Mexico tax liability on this transaction is $400 ($1,000 - $600). Q cannot use the excess credit on the California transaction to offset the balance of the liability on the Texas transaction.

C. Example 2: B, a machine company, buys a lathe in Texas for $50,000. The Texas sales tax is 6% at the time the purchase is made, and B pays $3,000 Texas sales tax. B uses the lathe in Texas for six years and then brings it into New Mexico to use in a new shop it is opening. The value of the lathe at the time it enters New Mexico is $25,000. The New Mexico compensating tax owed is $1,250 ($25,000 x .05). The maximum amount of tax credit allowed B will be $3,000. B, therefore, does not owe New Mexico compensating tax on its use of the lathe.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.301.8 NMAC – Rn, 3 NMAC 2.79.1.8 & A, 6/14/01]

3.2.301.9 - CREDIT FOR COMPENSATING TAX PAID ON CONSTRUCTION PROJECTS

A. A credit, equal to the amount of compensating tax paid to the department on the value of a construction project by a person engaged in the construction business, is allowed against the gross receipts tax due from that person on the receipts from the sale.

B. Only the tax paid to the department by the person engaged in the construction business is creditable under Section 7-9-79 NMSA 1978. Penalty and interest assessed by the department on compensating tax not reported and paid on time will not be credited.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.301.9 NMAC – Rn, 3 NMAC 2.79.1.9 & A, 6/14/01]

7-9-79.1. CREDIT--GROSS RECEIPTS TAX--SERVICES.--If on services performed outside the state a gross receipts sales or similar tax has been levied by another state or a political subdivision thereof and such tax has been paid, the amount of the tax paid may be credited against any gross receipts tax due this state on the receipts after July 1, 1989 from the sale in New Mexico of the product of the services performed outside this state. The amount of credit shall not exceed an amount equal to the rate of tax imposed under Section 7-9-4 NMSA 1978 multiplied by the amount subject to tax by both New Mexico and the other state or political subdivision of that state.
(Laws 1994, Chapter 45, Section 7)

3.2.300.8 - CREDIT FOR TAX PAID TO ANOTHER STATE ON SERVICES

The credit allowed pursuant to the provisions of Section 7-9-79.1 NMSA 1978 shall not exceed the lesser of:

A. the actual amount of tax paid to the other state, paid to any political subdivision of the other state or the combined total paid to the other state and political subdivisions of that state; or

B. the amount determined by multiplying the total consideration received from the sale of the service exclusive of the amount of tax paid to the other state and any political subdivision of that state times the rate of gross receipts tax imposed under Section 7-9-4 NMSA 1978.

[10/24/89, 11/26/90, 11/15/96; 3.2.300.8 NMAC – Rn, 3 NMAC 2.79.2.8 & A, 6/14/01]

7-9-79.2. GROSS RECEIPTS TAX--COMPENSATING TAX--BIODIESEL BLENDING FACILITY TAX CREDIT.--

A. A taxpayer who is a rack operator as defined in the Special Fuels Supplier Tax Act and who installs biodiesel blending equipment in property owned by the taxpayer for the purpose of establishing or expanding a facility to produce blended biodiesel fuel is eligible to claim a credit against gross receipts tax or compensating tax. The credit shall be an amount equal to thirty percent of the purchase cost of the equipment plus thirty percent of the cost of installing that equipment. The credit provided by this section may be referred to as the "biodiesel blending facility tax credit".

B. The biodiesel blending facility tax credit shall not exceed fifty thousand dollars ($50,000) with respect to equipment installed at any one facility.

C. Upon application from a taxpayer wishing to claim the biodiesel blending facility tax credit, the energy, minerals and natural resources department shall determine if the equipment for which the tax credit will be claimed meets the requirements of this section and if purchase and installation costs reported by the taxpayer are legitimate. Upon these determinations being made in favor of the taxpayer, the energy, minerals and natural resources department shall issue a dated certificate of eligibility containing this information and an estimate of the amount of the biodiesel blending facility tax credit for which the taxpayer is eligible.

D. To claim the biodiesel blending facility tax credit, the taxpayer shall provide to the taxation and revenue department the certificate of eligibility from the energy, minerals and natural resources department. Upon receipt of the certificate, the taxation and revenue department shall approve the claim for the credit if the total cumulative amount of approved claims for the credit for all taxpayers for the calendar year does not exceed one million dollars ($1,000,000). The department shall maintain a record of the cumulative amount of claims for the credit that have been approved and when it determines that this cumulative amount has reached one million dollars ($1,000,000), it shall cease approving any additional claims for the biodiesel blending facility tax credit.

E. If a taxpayer who has received the biodiesel blending facility tax credit ceases biodiesel blending without completing at least one hundred eighty days of availability of the facility within the first three hundred sixty-five days after the issuance of the certificate of eligibility from the energy, minerals and natural resources department, any amount of approved credit not applied against the taxpayer's gross receipts tax or compensating tax liability shall be extinguished. The taxpayer must amend the taxpayer's return, self-assess the tax owed and return any biodiesel blending facility tax credit received within four hundred twenty-five days of the date of issuance of the certificate of eligibility.

F. The tax credit provided by this section may only be applied against the taxpayer's gross receipts tax liability or compensating tax liability. If the credit exceeds the taxpayer's tax liability in the reporting period for which it

is granted, the credit may be carried forward for four years from the date of the certificate of eligibility.

G. For the purposes of this section:

(1) "biodiesel" means renewable, biodegradable, monoalkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets American society for testing and materials D 6751 standard specification for biodiesel B100 blend stock for distillate fuels;

(2) "biodiesel blending equipment" means equipment necessary for the process of blending biodiesel with diesel fuel to produce blended biodiesel fuel;

(3) "blended biodiesel fuel" means a diesel fuel that contains at least two percent biodiesel; and

(4) "diesel fuel" means any diesel-engine fuel used for the generation of power to propel a motor vehicle.

(Laws 2007, Chapter 204, Section 9)

3.13.21.7 - DEFINITIONS

A. "Annual cap" means the annual aggregate amount of the biodiesel blending facility tax credit available to taxpayers.

B. "Applicant" means a taxpayer that installs biodiesel blending equipment for the purpose of establishing or expanding a biodiesel blending facility and that desires to have the department issue a certificate of eligibility for a biodiesel blending facility tax credit.

C. "Application package" means the application documents an applicant submits to the department to receive a certificate of eligibility for a biodiesel blending facility tax credit.

D. "Biodiesel" means renewable, biodegradable, monoalkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets the ASTM International D 6751 standard specification for biodiesel B100 blend stock for distillate fuels (Copyright ASTM International , 100 Barr Harbor Drive, West Conshohocken, PA 19428. This document is available for public viewing only at the New Mexico state records center and archives and may not be reproduced, in full or part. A copy of this publication may be obtained from ASTM International, www.astm.org.)

E. "Biodiesel blending equipment" means equipment necessary for the process of blending biodiesel with diesel fuel to produce blended biodiesel fuel.

F. "Biodiesel blending facility" means an installation that is part of a rack operation for the purpose of blending biodiesel fuel, including reactivating existing blending and storage equipment in place, expanding storage equipment at an existing facility, installing a new blending facility or site specific blending at a retail facility.

G. "Biodiesel blending facility tax credit" means the gross receipts or compensating tax credit the state of New Mexico issues to an applicant for a biodiesel blending facility.

H. "Blended biodiesel fuel" means a diesel fuel that contains at least two percent biodiesel.

I. "Bulk storage" means the storage of special fuels in any tank or receptacle, other than a supply tank, for the purpose of sale by a dealer or for use by a user or for any other purpose.

J. "Bulk storage user" means a user who operates, owns or maintains bulk storage in this state from which the user places special fuel into the supply tanks of motor vehicles that the user owns or operates.

K. “Certificate of eligibility” means the document, with a unique identifying number that specifies the amount and taxable year for the approved biodiesel blending facility tax credit.

L. "Dealer" means any person who sells and delivers special fuel to a user.

M. “Department” means the energy, minerals and natural resources department.

N. “Diesel fuel” means any diesel-engine fuel used for the generation of power to propel a motor vehicle.

O. “Installation of equipment” means to assemble and construct biodiesel blending equipment, including equipment necessary for receiving and off-loading B100 or pre-blended biodiesel, equipment for storage of B100 or blended biodiesel fuel and equipment for on-loading and dispensing B100 or blended biodiesel fuel.

P. "Motor vehicle" means a self-propelled vehicle or device that is either subject to registration pursuant to NMSA 1978 Section 66-3-1 or is used or may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer.

Q. Rack operations” means a facility that is a refinery in this state, any facility where special fuel is blended in this state or where special fuel is stored at a pipeline terminal in this state.

R. "Rack operator" means the operator of a refinery in this state, any person who blends special fuel in this state or the owner of special fuel stored at a pipeline terminal in this state.

S. “Supply tank” means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains special fuel or special fuel is delivered into it.

T. “Taxable year” means the annual accounting period for purposes of filing corporate income taxes, as defined by the Unites States internal revenue service.

U. “Taxpayer” means a rack operator who owns the rack operation where the rack operator installs biodiesel blending equipment and who applies for certification of an operating biodiesel blending facility in order to receive a biodiesel blending facility tax credit and is liable for payment of gross receipts or compensating taxes.

V. “Taxpayer identification number” means an 11-digit number the New Mexico taxation and revenue department issues that indicates that the taxpayer is registered with the taxation and revenue department to pay gross receipts and compensating taxes.

[3.13.21.7 NMAC - N, 10-31-07]

3.13.21.8 - GENERAL PROVISIONS

A. Only a taxpayer who on or after July 1, 2007 installs biodiesel blending equipment in New Mexico for the purpose of establishing or expanding a biodiesel blending facility may receive a certificate of eligibility for a biodiesel blending facility tax credit.

B. The biodiesel blending facility tax credit is an amount equal to 30 percent of the biodiesel blending equipment’s purchase cost plus 30 percent of the biodiesel blending equipment’s installation cost.

C. The biodiesel blending facility tax credit shall not exceed $50,000 for biodiesel

blending equipment installed at any one facility.

D. The annual aggregate amount of the biodiesel blending facility tax credit available to taxpayers is limited to $1,000,000. When the $1,000,000 limit for rack operations is reached based on the total certificates of eligibility the department has issued and New Mexico department of taxation and revenue has recorded, the department shall:

(1) if part of the eligible biodiesel blending facility tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable taxable year and issue a certificate of eligibility for the balance for the subsequent taxable year; or

(2) if no biodiesel blending facility tax credit funds are available, issue a certificate of eligibility for the next subsequent taxable year in which funds are available.

E. In the event of a discrepancy between a requirement of 3.13.21 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.13.21 NMAC's adoption, the existing rule governs.

[3.13.21.8 NMAC - N, 10-31-07]

3.13.21.9 - CERTIFICATE OF ELIGIBILITY APPLICATION

A. An applicant may obtain a certificate of eligibility application form from the department.

B. An application package shall include a completed certificate of eligibility application form and attachments as specified on the certificate of eligibility application form. The applicant shall submit the completed certificate of eligibility application form and required attachments at the same time. An applicant shall submit one certificate of eligibility application for each biodiesel blending facility. The applicant shall submit all material submitted in the application package on 8½ inch by 11 inch paper.

C. An applicant shall submit a complete application package to the department no later than 90 days before the end of taxable year for which the applicant seeks the biodiesel blending facility tax credit to allow time for approval and issuance of an approved certificate of eligibility. The department reviews application packages it receives after that date for the subsequent taxable year.

D. The completed certificate of eligibility application shall consist of the following information:

(1) taxpayer information, including the applicant's name, mailing address, telephone number, biodiesel blending facility tax credit's taxable year or years and CRS or taxpayer identification number;

(2) blending equipment information, including project location with county and legal description, blending equipment type (splash or injection), blending equipment description, blending equipment cost, blending equipment installation cost and date on which the biodiesel blending equipment and facility went into operation;

(3) proof of ownership of the rack, design schematic, equipment specifications and serial numbers, photographs, installation/construction documents, storage and blending capacities, description of operation, construction permit and environmental protection agency related plans with engineer's stamp and final inspection report;

(4) evidence of purchase of equipment and installation including receipts and invoices; and

(5) applicant agreement stating that the taxpayer agrees that all information in the

application packet is true and correct to the best of the applicant's knowledge, that the applicant has read the certification requirements of 3.13.21 NMAC, that the applicant understands that there is an annual aggregate biodiesel blending facility tax credit limit, that the department must certify the biodiesel blending facility documented in the application package is eligible for the biodiesel blending facility tax credit and that the applicant allows the department or its authorized representative to inspect the biodiesel blending facility that is described in the application package from the application package's submittal to three years after the department has certified the biodiesel blending facility upon the department providing a minimum of five days notice to the applicant.
[3.13.21.9 NMAC - N, 10-31-07]

3.13.21.10 - APPLICATION REVIEW PROCESS

A. The department considers certificate of eligibility applications in the order received, according to the day they are received, but not the time of day.

B. The department reviews the application package to calculate the biodiesel blending facility tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the biodiesel blending facility tax credit.

C. If the department verifies that no person has applied for a biodiesel blending facility tax credit for that biodiesel blending facility and if the department finds that the application package meets the requirements and funds for a biodiesel blending facility tax credit are available, the department issues the certificate of eligibility for a biodiesel blending facility tax credit. If funds for a biodiesel blending facility tax credit are partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year in which funds are available. The certificate of eligibility shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility project number, the biodiesel blending facility tax credit amount or amounts and the biodiesel blending facility tax credit's taxable year or years.

D. The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The department places the resubmitted application in the review schedule as if it were a new application.
[3.13.21.10 NMAC - N, 10-31-07]

3.13.21.11 - CLAIMING THE BIODIESEL BLENDING FACILITY TAX CREDIT

A. Upon receipt of a certificate of eligibility from the department, the taxpayer shall submit a completed form RPD-41339, biodiesel blending facility tax credit approval request form, to the taxation and revenue department. The taxpayer shall attach the certificate of eligibility received from the department and a copy of the invoice for the qualified equipment and installation costs. Once the taxation and revenue department notifies the taxpayer of approval for the biodiesel blending facility tax credit, the taxpayer may apply the biodiesel blending facility tax credit to gross receipts and compensating tax due. To apply the biodiesel blending facility tax credit, the taxpayer shall submit form RPD-41321, biodiesel blending facility tax credit claim form, along with a CRS-1 long form for the report period to which the taxpayer wishes to apply the biodiesel blending facility tax credit. Unused biodiesel blending facility tax credit may be

carried forward for four years from the date the department issues the certificate of eligibility.

B. If a rack operator who has claimed biodiesel blending facility tax credit against gross receipts tax or compensating tax due ceases biodiesel blending without completing at least 180 days of availability of the facility within the first 365 days after the department's issuance of a certificate of eligibility, the taxpayer shall notify taxation and revenue department that the taxpayer is no longer eligible for the approved biodiesel blending facility tax credit and that the liabilities for the reports to which the biodiesel blending facility tax credit had been applied are now due. The taxation and revenue department will extinguish any amount of the approved biodiesel blending facility tax credit not applied against the taxpayer's gross receipts tax or compensating tax liability and assess the taxpayer for the tax owed. The taxpayer shall pay the assessment within 425 days of the date of issuance of the certificate of eligibility. The taxpayer may still qualify for subsequent biodiesel blending facility tax credits, within the first 365 days after the department's issuance of the certificate of eligibility. When applying for biodiesel blending facility tax credits the taxpayer shall use only the CRS-1 long form.

C. Beginning with the taxable year on each certificate of eligibility, the taxation and revenue department applies 30 percent of the amount on the certificate of eligibility against the applicant's gross receipts or compensating tax liability for four years, unless the amount is less than or equal to $50,000, in which case the taxation and revenue department applies the entire biodiesel blending facility tax credit in the taxable year on the certificate.

D. If the amount of the biodiesel blending facility tax credit the applicant claims exceeds the applicant's gross receipts or compensating tax liability, the applicant may carry the excess forward for up to four consecutive taxable years.

[3.13.21.11 NMAC - N, 10-31-07]

****** REPEALED EFFECTIVE JANUARY 1, 2005, BY LAWS OF 2004, CHAPTER 116, SECTION 7. ******

7-9-82. CREDIT--GROSS RECEIPTS TAX--MUNICIPAL GROSS RECEIPTS TAX PAID.--A credit shall be allowed for each reporting period against the gross receipts tax for:

A. an amount of the municipal gross receipts tax equal to one-half of one percent of the taxable gross receipts for which the taxpayer is liable for that reporting period imposed by a municipality pursuant to Section 7-19D-4 NMSA 1978 if that municipality has imposed a total municipal gross receipts tax rate of at least one-half of one percent; or

B. an amount of the municipal gross receipts tax equal to one-fourth of one percent of the taxable gross receipts for which the taxpayer is liable for that reporting period imposed by a municipality pursuant to Section 7-19D-4 NMSA 1978 if that municipality has imposed a total municipal gross receipts tax rate of one-fourth of one percent.

(Laws 1995, Chapter 70, Section 6)

7-9-83. DEDUCTION--GROSS RECEIPTS TAX--JET FUEL.--

A. From July 1, 2003 through June 30, 2017, fifty-five percent of the receipts from the sale of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted from gross receipts.

B. After June 30, 2017, forty percent of the receipts from the sale of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted from gross receipts.

(Laws 2011, Chapter 74, Section 1)

7-9-84. DEDUCTION--COMPENSATING TAX--JET FUEL.--

A. From July 1, 2003 through June 30, 2017, fifty-five percent of the value of the fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted in computing the compensating tax due.

B. After June 30, 2017, forty percent of the value of the fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted in computing the compensating tax due.

(Laws 2011, Chapter 74, Section 2)

7-9-85. DEDUCTION--GROSS RECEIPTS TAX--CERTAIN ORGANIZATION FUNDRAISERS.--Receipts from not more than two fundraising events annually conducted by an organization that is exempt from the federal income tax as an organization described in Section 501(c), other than an organization described in Section 501(c)(3), of the United States Internal Revenue Code of 1986, as amended may be deducted from gross receipts.
(Laws 1994, Chapter 43, Section 1)

3.2.239.7 - "FUNDRAISING EVENT" DEFINED

A. For the purposes of Section 7-9-85 NMSA 1978 and subject to the limitation set forth in Part 3.2.239 NMAC, a "fundraising event" is an activity undertaken by an organization for the purpose of acquiring funds that will be used in the conduct of the organization's exempt activities. A fundraising event must be open to the public and not limited to members of the organization.

B. Example 1: A fraternal society operating under the lodge system, exempt from Federal income tax under Section 501(c)(10) of the Internal Revenue Code, conducts two fundraising events each calendar year to obtain the money necessary to purchase eyeglasses for underprivileged children. Each spring, they sell brooms to the general public. Each fall, they sell the services of their members to any person who wants assistance with house painting, gutter cleaning and similar household maintenance tasks. Both of these activities result in the organization receiving gross receipts and both qualify as fundraising events.

C. The solicitation of donations in itself, not connected with the sale or transfer of property or the performance of any service, is not a fundraising event and is not subject to the provisions of Section 7-9-85 NMSA 1978. Any event in which both the receipt of donations and the sale of tangible personal property or the performance of any service occur is a fundraising event.

D. Example 2: U, itself a 501(c)(3) organization, holds an annual fundraising drive for itself and thirty other 501(c) entities. U solicits the general population for donations but does not sell or transfer property to, nor perform services for, contributors. Each entity receives a fixed proportion of undesignated donations plus any donations designated for the entity. Ten of the entities are organizations qualifying for the deduction under Section 7-9-85 NMSA 1978. Because the fundraising activity consists solely of soliciting donations, none of the entities involved has conducted a fundraising event under Section 7-9-85 NMSA 1978.
[3/16/95, 11/15/96; 3.2.239.7 NMAC – Rn, 3 NMAC 2.85.7 & A, 6/14/01]

3.2.239.8 - CERTAIN ORGANIZATIONS NOT ELIGIBLE FOR DEDUCTION – "ORGANIZATION" DEFINED

A. No organization described in Section 501(c)(3) of the Internal Revenue Code may claim the deduction provided by Section 7-9-85 NMSA 1978 but the receipts of 501(c)(3) organizations, except for unrelated business income, are exempt from gross receipts tax under Section 7-9-29 NMSA 1978.

B. As used in Part 3.2.239 NMAC, "organization" means:

(1) any organization described in Section 501(c) of the Internal Revenue Code, other than organizations described in Section 501(c)(3); and

(2) any officially recognized chapter, lodge or similar affiliate of an organization described in Paragraph (1) of Subsection B of Section 3.2.239.8 NMAC of this section.
[3/16/95, 11/15/96; 3.2.239.8 NMAC – Rn, 3 NMAC 2.85.8 & A, 6/14/01]

3.2.239.9 - RECEIPTS NOT ELIGIBLE FOR DEDUCTION

The deduction provided by Section 7-9-85 NMSA 1978 does not apply to the receipts from more than two (2) fundraising events during any calendar year.
[3/16/95, 11/15/96; 3.2.239.9 NMAC - Rn, 3 NMAC 2.85.9 & A, 6/14/01; A, 4/30/07]

3.2.239.10 - WHO CONDUCTS FUNDRAISING EVENT

A. When several organizations jointly conduct a fundraising event, each participating organization receiving gross receipts from the event has conducted a fundraising event.

B. Example 1: A 501(c)(8) state organization and each of its four New Mexico lodges together conduct a fundraising event, with the proceeds shared by the state organization and the lodges. The state organization and each of its lodges have conducted a fundraising event.

C. The participation of members of one organization, even as an official activity of the organization, in a fundraising event of another is not a fundraising event of the members' organization if:

(1) the members' organization receives no revenues from the event; and

(2) the members' organization is not a chapter, lodge or other affiliate of any organization receiving revenues from the event.

D. Example 2: A television auction is broadcast to benefit M, a 501(c) organization. The members of several unaffiliated 501(c) organizations staff telephones, track bids, help display or demonstrate auctioned items and otherwise assist in the conduct of the auction. They are identified on the air as members of their respective organizations. None of the organizations other than M receives any revenues from the event. Only M has conducted a fundraising event.

E. Example 3: Same facts as in Example 1 except that the state organization retains all proceeds from the event. Regardless of the fact that the lodges receive no direct benefit from the fundraising event, each of the lodges as well as the state organization has conducted a fundraising event.
[3/16/95, 11/15/96; 3.2.239.10 NMAC – Rn, 3 NMAC 2.85.10, 6/14/01]

3.2.239.11 - PERIOD FOR FUNDRAISING EVENT LIMITED

A. A fundraising event must be of limited duration. A recurring, regularly scheduled activity, or any portion of a regularly scheduled activity, is not a fundraising event and the receipts are not deductible under Section 7-9-85 NMSA 1978. A fundraising event must have a specific commencement date and a specific ending date. The period of time between the commencement and ending dates may not exceed ten (10) consecutive calendar days except:

(1) fundraising events conducted in association with and coterminous with the annual state fair may be conducted for the period in which the state fair is held;

(2) planning, contracting, advertising and other organizational or administrative activities may take place at any time before the specific commencement date;

(3) ticket sales to a fundraising event may precede the specific commencement date by up to sixty (60) days before the specific commencement date but the department, upon written application from the organization showing good cause, may permit a longer period; and

(4) final accounting and similar administrative tasks may be conducted after the

specific ending date.

B. Example 1: The local garden club, exempt from federal income tax under Section 501(c)(5) of the Internal Revenue Code, raises money for the club's selected charity by selling flower bulbs donated by club members on two consecutive weekends in the spring. Because two consecutive Saturday/Sunday periods fall within ten consecutive calendar days, the bulb sale is a single fundraising event and the receipts may be deducted under Section 7-9-85 NMSA 1978.

C. Example 2: The local post of a national veteran's organization, exempt from Federal income taxation under Section 501(c)(19) of the Internal Revenue Code, raises money for the post's exempt activities by selling pies at the local county fair. The fair runs for two weeks, beginning on a Wednesday. The local post, however, sells pies only from the first Friday through the second Sunday during the fair. Because this period does not exceed ten consecutive calendar days, the pie sale is a single fundraising event and the receipts may be deducted under Section 7-9-85 NMSA 1978.

D. Example 3: A local social welfare organization, exempt from federal income tax under Section 501(c)(4) of the Internal Revenue Code, conducts a car wash on donated property every Saturday, weather permitting, as a way to raise funds for the organization's exempt activities. Because the car wash is a regularly scheduled, recurring event, it is not a fundraising event and the receipts from the car wash may not be deducted under Section 7-9-85 NMSA 1978.

E. If the fundraising event involves the solicitation of orders for the subsequent delivery of tangible personal property or the subsequent performance of personal services, the period of time in which orders are solicited will be considered the fundraising event. Delivery of the ordered tangible personal property or performance of the ordered personal service may occur after the specific ending date of the fundraising event.

F. Example 4: The local chapter of a national sorority, exempt from federal income tax under Section 501(c)(7) of the Internal Revenue Code, sells calendars and appointment books to raise money to benefit a selected charity. Members of the sorority solicit orders for the calendars and appointment books during October, so the items can be delivered in time for use as holiday gifts. If the order solicitation period in October is limited to no more than ten consecutive calendar days, the activity is a single fundraising event and the receipts may be deducted under Section 7-9-85 NMSA 1978 even though the calendars and appointment books will not be delivered until December.

[3/16/95, 11/15/96; 3.2.239.11 NMAC – Rn, 3 NMAC 2.85.11 & A, 6/14/01]

3.2.239.12 - IDENTIFICATION OF FUNDRAISING EVENTS

A. Each organization may deduct under Section 7-9-85 NMSA 1978 the receipts of two fundraising events conducted during a calendar year. If an organization conducts more than two fundraising events during a calendar year, the first two fundraising events will be presumed to be those qualifying for the deduction provided by Section 7-9-85 NMSA 1978 unless the organization has identified in writing in advance the two fundraising events for which the organization intends to claim the deduction prior to conducting any fundraising event during the calendar year.

B. Example 1: A civic league, exempt from federal income tax under Section 501(c)(4) of the Internal Revenue Code, sponsors the following activities each calendar year:

(1) a button sale on the second Sunday of February;
(2) an indoor track meet on the first Saturday of March;
(3) a fireworks display on the Saturday closest to July 4; and

(4) an art fair on the last weekend in September.

C. Each of these activities qualifies as a fundraising event. However, only the receipts from the button sale and the indoor track meet may be deducted under Section 7-9-85 NMSA 1978. The civic league must pay gross receipts tax on the receipts from the fireworks display and the art fair.

D. Example 2: The same facts as Example 1, except that the civic league adopts a resolution in January identifying the track meet and the fireworks display as the two fundraising events for which the civic league intends to claim the deduction provided in Section 7-9-85 NMSA 1978. The receipts from the track meet and the fireworks display may be deducted under Section 7-9-85 NMSA 1978. The civic league must pay gross receipts tax on the receipts from the button sale and the art fair.

E. Example 3: The same facts as Example 1, except that the civic league adopts a resolution at their meeting on the last Thursday of February identifying the track meet and the fireworks display as the two fundraising events for which the civic league intends to claim the deduction provided in Section 7-9-85 NMSA 1978. Because the resolution was not adopted prior to the first fundraising event sponsored by the civic league, the receipts from the button sale and the track meet may be deducted under Section 7-9-85 NMSA 1978. The civic league must pay gross receipts tax on the receipts from the fireworks display and the art fair.

F. The requirement for written advance identification can be satisfied by adopting a resolution to be retained in the permanent records of the organization or reflecting the decision in the minutes or other permanent records of the organization. The written identification must include, at a minimum:

(1) a general description of the event;
(2) a statement about how the proceeds of the event will be used;
(3) the specific commencement and ending dates for the event; and
(4) if any activity will precede or follow the event, an explanation of that activity.

G. The written advance identification must be retained by the organization and provided to the department on request.

[3/16/95, 11/15/96; 3.2.239.12 NMAC – Rn, 3 NMAC 2.85.12 & A, 6/14/01]

7-9-86. DEDUCTION--GROSS RECEIPTS TAX--SALES TO QUALIFIED FILM PRODUCTION COMPANY.--

A. Receipts from selling or leasing property and from performing services may be deducted from gross receipts or from governmental gross receipts if the sale, lease or performance is made to a qualified production company that delivers a nontaxable transaction certificate to the seller, lessor or performer.

B. For the purposes of this section:

(1) "film" means a single media or multimedia program, including an advertising message, that:

(a) is fixed on film, digital medium, videotape, computer disc, laser disc or other similar delivery medium;

(b) can be viewed or reproduced;

(c) is not intended to and does not violate a provision of Chapter 30, Article 37 NMSA 1978; and

(d) is intended for reasonable commercial exploitation for the delivery medium used;

(2) "production company" means a person that produces one or more films for exhibition in theaters, on television or elsewhere;

(3) "production costs" means the costs of the following:

(a) a story and scenario to be used for a film;

(b) salaries of talent, management and labor, including payments to personal services corporations for the services of a performing artist;

(c) set construction and operations, wardrobe, accessories and related services;

(d) photography, sound synchronization, lighting and related services;

(e) editing and related services;

(f) rental of facilities and equipment; or

(g) other direct costs of producing the film in accordance with generally accepted entertainment industry practice; and

(4) "qualified production company" means a production company that meets the provisions of this section and has registered or will register with the New Mexico film division of the economic development department.

C. A qualified production company may deliver the nontaxable transaction certificates authorized by this section only with respect to production costs.

(Laws 2003, Chapter 127, Section 3)

7-9-87. DEDUCTION--GROSS RECEIPTS TAX--LOTTERY RETAILER RECEIPTS.--Receipts of a lottery game retailer from selling lottery tickets pursuant to the New Mexico Lottery Act may be deducted from gross receipts.
(Laws 1995, Chapter 155, Section 35)

7-9-88.1. CREDIT--GROSS RECEIPTS TAX--TAX PAID TO CERTAIN TRIBES.--

A. If on a taxable transaction taking place on tribal land a qualifying gross receipts, sales or similar tax has been levied by the tribe, the amount of the tribe's tax may be credited against gross receipts tax due this state or its political subdivisions pursuant to the Gross Receipts and Compensating Tax Act and a local option gross receipts tax on the same transaction. The amount of the credit shall be equal to the lesser of seventy-five percent of the tax imposed by the tribe on the receipts from the transaction or seventy-five percent of the revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of local option gross receipts taxes imposed on the receipts from the same transaction. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amount of the gross receipts tax and local option gross receipts taxes and against the amount of distribution of those taxes pursuant to Section 7-1-6.1 NMSA 1978.

B. A qualifying gross receipts, sales or similar tax levied by the tribe shall be limited to a tax that:

(1) is substantially similar to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act;

(2) does not unlawfully discriminate among persons or transactions based on membership in the tribe;

(3) is levied on the taxable transaction at a rate not greater than the total of the gross receipts tax rate and local option gross receipts tax rates imposed by this state and its political subdivisions located within the exterior boundaries of the tribe;

(4) provides a credit against the tribe's tax equal to the lesser of twenty-five percent of the tax imposed by the tribe on the receipts from the transactions or twenty-five percent of the tax revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of the local option gross receipts taxes imposed on the receipts from the same transactions; and

(5) is subject to a cooperative agreement between the tribe and the secretary entered into pursuant to Section 9-11-12.1 NMSA 1978 and in effect at the time of the taxable transaction.

C. For purposes of the tax credit allowed by this section:

(1) "pueblo" means the Pueblo of Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Picuris, Pojoaque, Sandia, San Felipe, San Ildefonso, San Juan, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia or Zuni or the nineteen New Mexico pueblos acting collectively;

(2) "tribal land" means all land that is owned by a tribe located within the exterior boundaries of a tribe's reservation or grant and all land held by the United States in trust for that tribe; and

(3) "tribe" means a pueblo, the Jicarilla Apache Nation or the Mescalero Apache Tribe.

(Laws 2003, Chapter 414, Section 1)

7-9-88.2. CREDIT--GROSS RECEIPTS TAX--TAX PAID TO NAVAJO NATION ON RECEIPTS FROM SELLING COAL.--

A. If on receipts from selling coal severed from Navajo Nation land a qualifying gross receipts, sales, business activity or similar tax has been levied by the Navajo Nation, the amount of the Navajo Nation tax paid and not refunded may be credited against any gross receipts tax due this state or its political subdivisions pursuant to the Gross Receipts and Compensating Tax Act and any local option gross receipts tax on the same receipts. The amount of the credit shall be equal to:

(1) for the period from July 1, 2001 through June 30, 2002, the lesser of thirty-seven and one-half percent of the tax imposed by the Navajo Nation on the receipts or thirty-seven and one-half percent of the revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of local option gross receipts taxes imposed on the same receipts; and

(2) after June 30, 2002, the lesser of seventy-five percent of the tax imposed by the Navajo Nation on the receipts or seventy-five percent of the revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of local option gross receipts taxes imposed on the same receipts.

B. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amounts of the distributions made pursuant to Section 7-1-6.1 NMSA 1978 of the gross receipts tax and local option gross receipts taxes imposed on those receipts.

C. A qualifying gross receipts, sales, business activity or similar tax levied by the Navajo Nation shall be limited to a tax that:

(1) is substantially similar to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act;

(2) does not unlawfully discriminate among persons or transactions based on membership in the Navajo Nation;

(3) is levied on the receipts from selling coal at a rate not greater than the total of the gross receipts tax rate and local option gross receipts tax rates imposed by this state and its political subdivisions located within the exterior boundaries of the Navajo Nation;

(4) provides a credit against the Navajo Nation tax equal to:

(a) for the period from July 1, 2001 through June 30, 2002, the lesser of twelve and one-half percent of the tax imposed by the Navajo Nation on the receipts from selling coal severed from Navajo Nation land or twelve and one-half percent of the tax revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of the local option gross receipts taxes imposed on the same receipts; and

(b) after June 30, 2002, the lesser of twenty-five percent

of the tax imposed by the Navajo Nation on the receipts from selling coal severed from Navajo Nation land or twenty-five percent of the tax revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of the local option gross receipts taxes imposed on the same receipts;

(5) is not used to calculate an intergovernmental coal severance tax credit with respect to the same receipts or time period; and

(6) is subject to a cooperative agreement between the Navajo Nation and the secretary entered into pursuant to Section 9-11-12.2 NMSA 1978 and in effect at the time of the taxable transaction.

D. For purposes of the tax credit allowed by this section, "Navajo Nation land" means all land in New Mexico that, on March 1, 2001, was located within the exterior boundaries of the Navajo Nation reservation or within a dependent community of the Navajo Nation or was land held by the United States in trust for the Navajo Nation.

(Laws 2001, Chapter 134, Section 1)

7-9-89. DEDUCTION--SALES TO CERTAIN ACCREDITED DIPLOMATS AND MISSIONS.--Receipts from selling or leasing property to, or from performing services for, an accredited foreign mission or an accredited member of a foreign mission may be deducted from gross receipts when a treaty in force to which the United States is a party requires forbearance of tax when the legal incidence is upon the buyer or when the tax is customarily passed on to the buyer.
(Laws 1998, Chapter 89, Section 2)

7-9-90. DEDUCTIONS--GROSS RECEIPTS TAX--SALES OF URANIUM HEXAFLUORIDE AND ENRICHMENT OF URANIUM.--

A. Receipts from selling uranium hexafluoride and from providing the service of enriching uranium may be deducted from gross receipts.

B. The department shall annually report to the revenue stabilization and tax policy committee aggregate amounts of deductions taken pursuant to this section, the number of taxpayers claiming the deduction and any other information that is necessary to determine that the deduction is performing a purpose that is beneficial to the state.

C. A taxpayer deducting gross receipts pursuant to this section shall report the amount deducted separately and attribute the amount of the deduction to the authorization provided in this section in a manner required by the department that facilitates the evaluation by the legislature for the benefit to the state of this deduction.
(Laws 2012, Chapter 13, Section 1)

7-9-91. DEDUCTION--COMPENSATING TAX--CONTRIBUTIONS OF INVENTORY TO CERTAIN ORGANIZATIONS AND GOVERNMENTAL AGENCIES.--

A. Except as provided otherwise in Subsection D of this section, the value of tangible personal property that is removed from inventory and contributed to organizations that have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, may be deducted in computing the compensating tax due, provided that the contribution is deductible for federal income tax purposes by the person from whose inventory the property was withdrawn or, if the person from whose inventory the property was withdrawn is a pass-through entity as that term is defined in Section 7-3-2 NMSA 1978, the contribution is deductible by the owner or owners of the pass-through entity.

B. Except as provided otherwise in Subsection D of this section, the value of tangible personal property that is removed from inventory and contributed to the United States or New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof may be deducted in computing the compensating tax due.

C. Except as provided otherwise in Subsection D of this section, the value of tangible personal property that is removed from inventory and contributed to an Indian tribe, nation or pueblo or any governmental subdivision, agency, department or instrumentality thereof for use on that Indian reservation or pueblo grant may be deducted in computing the compensating tax due.

D. Unless contrary to federal law, the deduction provided by this section does not apply to:

(1) a contribution of metalliferous mineral ore;

(2) a contribution of tangible personal property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code;

(3) a contribution of tangible personal property that will become an ingredient or component part of a construction project; or

(4) a contribution of tangible personal property utilized or produced in the performance of a service.

E. For purposes of this section:

(1) "inventory" means tangible personal property held for sale or lease in the ordinary course of business; and

(2) "contributed" or "contribution" means a transfer of ownership without consideration. Public acknowledgment of the contribution does not constitute consideration for the purpose of this section.

(Laws 2001, Chapter 135, Section 1)

7-9-92. DEDUCTION--GROSS RECEIPTS--SALE OF FOOD AT RETAIL FOOD STORE.--

A. Receipts from the sale of food at a retail food store that are not exempt from gross receipts taxation and are not deductible pursuant to another provision of the Gross Receipts and Compensating Tax Act may be deducted from gross receipts. The deduction provided by this section shall be separately stated by the taxpayer.

B. For the purposes of this section:

(1) "food" means any food or food product for home consumption that meets the definition of food in 7 USCA 2012(g)(1) for purposes of the federal food stamp program; and

(2) "retail food store" means an establishment that sells food for home preparation and consumption and that meets the definition of retail food store in 7 USCA 2012(k)(1) for purposes of the federal food stamp program, whether or not the establishment participates in the food stamp program.

(Laws 2004, Chapter 116, Section 5)

3.2.240.7 - DEFINITIONS: "FOOD", "RETAIL FOOD STORE" AND "HOME CONSUMPTION"

For purposes of Section 7-9-92 NMSA 1978, the definitions of "food", "food retail store" and "home consumption" are the definitions set forth in the federal Food Stamp Act of 1964, codified at 7 USC 2011 *et seq.*, as amended or renumbered and any regulations, rules and administrative materials promulgated thereunder, as they may be amended or renumbered.

[3.2.240.7 NMAC - N, 1/31/05]

3.2.240.8 - WHO IS A RETAIL FOOD STORE

A. A taxpayer that is authorized to accept food stamps under the federal Food Stamp Act is presumed to be a retail food store for the purpose of Section 7-9-92 NMSA 1978 for tax periods during which the taxpayer is authorized to accept food stamps. A taxpayer that meets the definition of "retail food store" but does not participate in the federal food stamp program may qualify as a retail food store for the purpose of Section 7-9-92 NMSA 1978 if the secretary certifies that the taxpayer is a retail food store. A taxpayer seeking certification as a "retail food store" shall apply for certification in the manner and on forms as the secretary shall prescribe.

B. A taxpayer who is not authorized under the federal Food Stamp Act to accept food stamps, and who has not been certified as a food retail store by the secretary, is presumed not to be a food retail store.

[3.2.240.8 NMAC - N, 1/31/05]

3.2.240.9 - EQUIVALENCE OF FOOD SALES FOR FOOD STAMP AND SECTION 7-9-92 NMSA 1978 PURPOSES

Receipts from the sale of food for which a taxpayer could have accepted food stamps are receipts from the sale of food for purposes of Section 7-9-92 NMSA 1978.

[3.2.240.9 NMAC - N, 1/31/05]

3.2.240.10 - RECEIPTS EXEMPT OR DEDUCTIBLE UNDER OTHER SECTIONS

Taxpayers may not deduct under Section 7-9-92 NMSA receipts that may be exempted or deducted under other sections of the Gross Receipts and Compensating Tax Act, including:

A. receipts of a government exempted from the gross receipts tax by Section 7-9-13 NMSA 1978;

B. receipts subject to the stadium surcharge but exempted from the gross receipts tax by Section 7-9-13.3 NMSA 1978;

C. receipts of a nonprofit entity from running facilities accommodating retired elderly persons exempted from the gross receipts tax by Section 7-9-16 NMSA 1978;

D. receipts from selling livestock and receipts of growers, producers, trappers and nonprofit marketing associations from selling livestock, live poultry, unprocessed agricultural products, pelts and hides exempted from the gross receipts tax by Section 7-9-18 NMSA 1978;

E. receipts from the lawful acceptance of food stamps exempted from the gross receipts tax by Section 7-9-18.1 NMSA 1978;

F. receipts of 501(c)(3) and 501(c)(6) organizations exempted by Section 7-9-29 NMSA 1978;

G. receipts of nonprofit organizations from registration fees exempted by Section 7-9-39 NMSA;

H. receipts from selling food to manufacturers that may be deducted under Section 7-9-46 NMSA 1978;

I. receipts from selling food for re-sale that may be deducted under Section 7-9-47 NMSA 1978;

J. receipts from selling food to governments that may be deducted under Section 7-9-54 NMSA 1978;

K. receipts from selling food in interstate commerce that may be deducted under Section 7-9-55 NMSA 1978;

L. receipts from selling food to 501(c)(3) organizations that may be deducted under Section 7-9-60 NMSA 1978;

M. receipts from selling food to credit unions that may be deducted under Section 7-9-61.2 NMSA 1978; and

N. receipts from selling food to an accredited foreign mission or accredited member of a foreign mission that may be deducted under Section 7-9-89 NMSA 1978.

[3.2.240.10 NMAC - N, 1/31/05]

7-9-93. DEDUCTION--GROSS RECEIPTS--CERTAIN RECEIPTS FOR SERVICES PROVIDED BY HEALTH CARE PRACTITIONER.--

A. Receipts of a health care practitioner for commercial contract services or medicare part C services paid by a managed health care provider or health care insurer may be deducted from gross receipts if the services are within the scope of practice of the health care practitioner providing the service. Receipts from fee-for-service payments by a health care insurer may not be deducted from gross receipts.

B. The deduction provided by this section shall be applied only to gross receipts remaining after all other allowable deductions available under the Gross Receipts and Compensating Tax Act have been taken and shall be separately stated by the taxpayer.

C. For the purposes of this section:

(1) "commercial contract services" means health care services performed by a health care practitioner pursuant to a contract with a managed health care provider or health care insurer other than those health care services provided for medicare patients pursuant to Title 18 of the federal Social Security Act or for medicaid patients pursuant to Title 19 or Title 21 of the federal Social Security Act;

(2) "health care insurer" means a person that:

(a) has a valid certificate of authority in good standing pursuant to the New Mexico Insurance Code to act as an insurer, health maintenance organization or nonprofit health care plan or prepaid dental plan; and

(b) contracts to reimburse licensed health care practitioners for providing basic health services to enrollees at negotiated fee rates;

(3) "health care practitioner" means:

(a) a chiropractic physician licensed pursuant to the provisions of the Chiropractic Physician Practice Act;

(b) a dentist or dental hygienist licensed pursuant to the Dental Health Care Act;

(c) a doctor of oriental medicine licensed pursuant to the provisions of the Acupuncture and Oriental Medicine Practice Act;

(d) an optometrist licensed pursuant to the provisions of the Optometry Act;

(e) an osteopathic physician or an osteopathic physician's assistant licensed pursuant to the provisions of the Osteopathic Medicine Act;

(f) a physical therapist licensed pursuant to the provisions of the Physical Therapy Act;

(g) a physician or physician assistant licensed pursuant to the provisions of the Medical Practice Act;

(h) a podiatrist licensed pursuant to the provisions of the Podiatry Act;

(i) a psychologist licensed pursuant to the provisions of the Professional Psychologist Act;

(j) a registered lay midwife registered by the department of health;

(k) a registered nurse or licensed practical nurse licensed pursuant to the provisions of the Nursing Practice Act;

(l) a registered occupational therapist licensed pursuant to the provisions of the Occupational Therapy Act;

(m) a respiratory care practitioner licensed pursuant to the provisions of the Respiratory Care Act;

(n) a speech-language pathologist or audiologist licensed pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

(o) a professional clinical mental health counselor, marriage and family therapist or professional art therapist licensed pursuant to the provisions of the Counseling and Therapy Practice Act who has obtained a master's degree or a doctorate;

(p) an independent social worker licensed pursuant to the provisions of the Social Work Practice Act; and

(q) a clinical laboratory that is accredited pursuant to 42 U.S.C. Section 263a but that is not a laboratory in a physician's office or in a hospital defined pursuant to 42 U.S.C. Section 1395x;

(4) "managed health care provider" means a person that provides for the delivery of comprehensive basic health care services and medically necessary services to individuals enrolled in a plan through its own employed health care providers or by contracting with selected or participating health care providers. "Managed health care provider" includes only those persons that provide comprehensive basic health care services to enrollees on a contract basis, including the following:

(a) health maintenance organizations;

(b) preferred provider organizations;

(c) individual practice associations;

(d) competitive medical plans;

(e) exclusive provider organizations;

(f) integrated delivery systems;

(g) independent physician-provider organizations;

(h) physician hospital-provider organizations; and

(i) managed care services organizations; and

(5) "medicare part C services" means services performed pursuant to a contract with a managed health care provider for medicare patients pursuant to Title 18 of the federal Social Security Act.

(Laws 2016 SS, Chapter 3, Section 5)

3.2.241.7 - DEFINITIONS: "SCOPE OF PRACTICE" DEFINED

As used in Section 7-9-93 NMSA 1978, the term "scope of practice" means the health

care activities authorized to be conducted by, or at the direction of, the health care practitioner under a license granted to the health care practitioner by the appropriate body under any of the acts specified under Paragraph (3) of Subsection B of Section 7-9-93 NMSA 1978.
[3.2.241.7 NMAC - N, 4/29/05]

3.2.241.8 - RECEIPTS DEDUCTIBLE UNDER OTHER SECTIONS

Health care practitioners may not deduct under Section 7-9-93 NMSA 1978 receipts that are deductible under others sections of the Gross Receipts and Compensating Tax Act. Receipts deductible under other sections include:

A. receipts from the United States or an agent thereof under Part B of medicare (Title 18 of the federal Social Security Act); these receipts are deductible under Section 7-9-77.1 NMSA 1978;

B. receipts from a third party administrator of the federal TRICARE program; these receipts are deductible under Section 7-9-77.1 NMSA 1978; and

C. receipts from health care services sold to a hospital or other person for re-sale with respect to which the practitioner has accepted a Type 5 nontaxable transaction certificate executed by the buyer; these receipts are deductible under Section 7-9-48 NMSA 1978.
[3.2.241.8 NMAC - N, 4/29/05]

3.2.241.9 - RECEIPTS FROM THIRD PARTY CLAIMS ADMINISTRATORS

Payments by a third party claims administrator to a health care practitioner for health care services rendered by the practitioner within the scope of his or her practice and pursuant to a contract with a managed care company or a health insurer that are otherwise deductible under Section 7-9-93 NMSA 1978 may be deducted from gross receipts. A third party claims administrator is an entity that processes health care claims and performs related business functions for a health plan.
[3.2.241.9 NMAC - N, 4/29/05; 3.2.241.9 NMAC - N, 5/31/06]

3.2.241.10 - RECEIPTS OF HEALTH CARE PRACTITIONERS FROM MANAGED HEALTH CARE PROVIDERS AND HEALTH CARE INSURERS PURSUANT TO CONTRACT WITH INDEPENDENT PRACTICE ASSOCIATIONS

A. For purposes of Section 7-9-93 NMSA 1978, an “independent practice association” means an entity which acts as an administrative intermediary between health care practitioners and other managed health care providers or health care insurers. Independent practice associations generally contract with health care practitioners, other managed health care providers and health care insurers. In order for receipts of a health care practitioner to be deductible under Section 7-9-93 NMSA 1978, each health care practitioner contracted with the independent practice association must be qualified to receive reimbursement from each managed health care provider and health care insurer contracted with the independent practice association subject to limitations and a fee schedule established by the independent practice association and agreed to by both parties through their individual contracts with the independent practice association. Thus, a single contract between a health care practitioner and an independent practice association eliminates the need for the individual contracts between the health care practitioner and the independent practice association’s other managed health care providers and health care insurers. Receipts from payments by other managed health care providers and health care insurers to health care practitioners pursuant to the parties’ contracts with an independent

practice association and that are otherwise deductible under Section 7-9-93 NMSA 1978 are deductible. Receipts from payments by independent practice associations to health care practitioners are deductible under Section 7-9-93 NMSA 1978.

B. Example: A health care practitioner contracts with an independent practice association. The health care practitioner bills and receives payment through the independent practice association from a health care insurer that is also contracted with the independent practice association. The health care insurer is registered in New Mexico. Even though the health care practitioner does not have a direct contract with the health care insurer, he or she may deduct payments he or she receives for services that are otherwise deductible under Section 7-9-93 NMSA 1978 because he or she has contracted with the independent practice association.

C. Example: A health care practitioner contracts with an independent practice association. The health care practitioner bills the managed health care provider or health care insurer that the independent practice association has contracted with. The managed care provider or health care insurer makes payment to the independent practice association according to its contract with the independent practice association. The independent practice association then makes payment to the health care practitioner according to its contract with the health care practitioner. The receipts of the health care practitioner are deductible pursuant to Section 7-9-93 NMSA 1978.

[3.2.241.10 NMAC - N, 4/29/05; A, 5/31/06; 3.2.241.10 NMAC - N, 10/16/06]

3.2.241.11 - RECEIPTS FOR ADMINISTRATIVE SERVICES NOT DEDUCTIBLE

Receipts of a third party for administering a health insurance or medical plan are not deductible under Section 7-9-93 NMSA 1978.

[3.2.241.11 NMAC - N, 4/29/05; 3.2.241.11 NMAC - Rn, 3.2.241.16 NMAC, 5/31/06]

3.2.241.12 - RECEIPTS NOT DEDUCTIBLE UNDER SECTION 7-9-93 NMSA 1978

Receipts of a health care practitioner other than from payments by a managed health care provider or health care insurer for commercial contract services or medicare part C services provided by the health care practitioner are not deductible under Section 7-9-93 NMSA 1978. Receipts of health care practitioners not deductible under Section 7-9-93 NMSA 1978 include:

A. receipts from any payment, such as a co-payment, that is the responsibility of the patient under the managed health care plan or health insurance;

B. receipts on a fee-for-service basis; "fee-for-service" means a traditional method of paying for health care services under which health care practitioners are paid for each service rendered, as opposed to paying in accordance with a schedule of fees in a contract the health care provider has entered into with a third party;

C. receipts from providing services to medicaid patients; and

D. receipts from selling tangible personal property such as nonprescription medicine that is not incidental to the provision of a deductible service.

[3.2.241.12 NMAC - N, 4/29/05; 3.2.241.12 NMAC – Rn, 3.2.241.9 NMAC, 5/31/06]

3.2.241.13 - RECEIPTS OF CORPORATE PRACTICE

A corporation, unincorporated business association, or other legal entity may deduct under Section 7-9-93 NMSA 1978 its receipts from managed health care providers or health care insurers for commercial contract services or medicare part C services provided on its behalf by health care practitioners who own or are employed by the corporation, unincorporated business

association or other legal entity that is not:

A. an organization described by Subsection A of Section 7-9-29 NMSA 1978; or

B. an HMO, hospital, hospice, nursing home, an entity that is solely an outpatient facility or intermediate care facility licensed under the Public Health Act.

[3.2.241.13 NMAC - N, 4/29/05; 3.2.241.13 NMAC - Rn & A, 3.2.241.10 NMAC, 5/31/06]

3.2.241.14 - VALID CERTIFICATE OF COMPLIANCE REQUIRED

A person is not a "health care insurer" as defined by Section 7-9-93 NMSA 1978 if the person does not have a valid certificate of compliance issued by the public regulation commission under the New Mexico insurance code to act as an insurer, health maintenance organization, nonprofit health care plan or prepaid dental plan. Receipts of health care practitioners from persons without such a valid certificate of compliance are not deductible under Section 7-9-93 NMSA 1978.

[3.2.241.14 NMAC - N, 4/29/05; 3.2.241.14 NMAC - Rn, 3.2.241.11 NMAC, 5/31/06]

3.2.241.15 - SELF-INSURERS MAY BE "MANAGED HEALTH CARE PROVIDERS"

If a person provides for the delivery of comprehensive basic health care services and medically necessary services to the person's employees enrolled in a self-insurance plan through contracting with selected or participating health care practitioners, that person is a "managed health care provider". Example: New Mexico state government's self-insured plan under the Group Benefits Act.

[3.2.241.15 NMAC - N, 4/29/05; 3.2.241.15 NMAC - Rn, 3.2.241.12 NMAC, 5/31/06]

3.2.241.16 - PAYMENTS FROM WORKERS COMPENSATION

Receipts of a health care practitioner from the state of New Mexico pursuant to the Workers Compensation Act are not receipts from a managed health care provider or health care insurer and are not deductible under Section 7-9-93 NMSA 1978.

[3.2.241.16 NMAC - N, 4/29/05; 3.2.241.16 NMAC - Rn, 3.2.241.13 NMAC, 5/31/06]

3.2.241.17 - RECEIPTS OF HEALTH CARE FACILITIES NOT DEDUCTIBLE

An organization, whether or not owned exclusively by health care practitioners, licensed as a hospital, hospice, nursing home, an entity that is solely an outpatient facility or intermediate care facility under the Public Health Act is not a "health care practitioner" as defined by Section 7-9-93 NMSA 1978. Receipts of such an organization are not deductible under Section 7-9-93 NMSA 1978.

[3.2.241.17 NMAC – Rn & A, 3.2.241.14 NMAC, 5/31/06]

3.2.241.18 - RECEIPTS FROM "MEDIGAP" INSURANCE POLICIES NOT DEDUCTIBLE

Payments from an insurer in accordance with a medigap policy are not deductible under Section 7-9-93 NMSA 1978. Medigap policies are not paying for "commercial contract services" as defined by Section 7-9-93 NMSA 1978. For purposes of the deduction under Section 7-9-93 NMSA 1978, a medigap policy meets the statutory definition of a "medicare supplemental policy" contained in 42 U.S.C. 1395ss(g)(1). It is a health insurance policy or other health benefit plan offered by a private entity to those persons entitled to medicare benefits and is specifically designed to supplement medicare benefits. Medigap policies do not include limited benefit

coverage available to medicare beneficiaries such as "specified disease" or "hospital indemnity" coverage.
[3.2.241.18 NMAC - Rn & A, 3.2.241.15 NMAC, 5/31/06]

7-9-94. DEDUCTION -- GROSS RECEIPTS--MILITARY TRANSFORMATIONAL ACQUISITION PROGRAMS.--

A. Receipts from transformational acquisition programs performing research and development, test and evaluation at New Mexico major range and test facility bases pursuant to contracts entered into with the United States department of defense may be deducted from gross receipts through June 30, 2025.

B. As used in this section, "transformational acquisition program" means a military acquisition program authorized by the office of the secretary of defense force transformation and not physically tested in New Mexico on or before July 1, 2005.

C. The deduction provided in this section does not apply to receipts of a prime contractor operating facilities designated as a national laboratory by act of congress and is not applicable to current force programs as of July 1, 2005.

D. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deduction. No later than December 1 of each year that the deduction is in effect, the department shall compile and present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost and benefit to the state of the deduction.

(Laws 2015, Chapter 18, Section 1)

7-9-95. DEDUCTION--GROSS RECEIPTS TAX--SALES OF CERTAIN TANGIBLE PERSONAL PROPERTY--LIMITED PERIOD.--Receipts from the sale at retail of the following types of tangible personal property may be deducted if the sale of the property occurs during the period beginning at 12:01 a.m. on the first Friday in August and ending at midnight on the following Sunday:

A. an article of clothing or footwear designed to be worn on or about the human body if the sales price of the article is less than one hundred dollars ($100) except:

(1) any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed; and

(2) accessories, including jewelry, handbags, luggage, umbrellas, wallets, watches and similar items worn or carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing;

B. a desktop, laptop or notebook computer if the sales price of the computer does not exceed one thousand dollars ($1,000) and any associated monitor, speaker or set of speakers, printer, keyboard, microphone or mouse if the sales price of the device does not exceed five hundred dollars ($500); and

C. school supplies that are items normally used by students in a standard classroom for educational purposes, including notebooks, paper, writing instruments, crayons, art supplies, rulers, book bags, backpacks, handheld calculators, maps and globes, but not including watches, radios, compact disc players, headphones, sporting equipment, portable or desktop telephones, copiers, office equipment, furniture or fixtures.

(Laws 2005, Chapter 104, Section 25)

3.2.242.7 DEFINITIONS

A. As used in Section 7-9-95 NMSA 1978 “standard classroom” means a classroom that:

(1) is located in a school;

(2) is configured for a general education curriculum; and

(3) does not contain specialized equipment such as scientific laboratory equipment or musical instruments.

B. As used in Section 7-9-95 NMSA 1978 “school supplies normally used by students in a standard classroom for educational purposes” means implements and materials used by typical students of a general education curriculum. These include notebooks, paper, writing instruments, crayons, art supplies, paper clips, staples, staplers, scissors, and rulers valued at under $30 per unit, book bags, backpacks, maps and globes valued at under $100 per unit, and handheld calculators valued under $200. The items that qualify as school supplies for the

deduction under Section 7-9-95 NMSA 1978 do not have to be used for school; they only have to be items normally used by students in a standard classroom setting.
[3.2.242.7 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.8 ITEMS NORMALLY SOLD AS A UNIT

Articles normally sold as a unit must be sold that way during the time period specified in Section 7-9-95 NMSA 1978 to qualify for the deduction. They cannot be priced separately and sold as individual items to qualify for the deduction. For example, shoes normally sold in a pair for $180 cannot be sold singly for $90 each to qualify for the deduction.
[3.2.242.8 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.9 PURCHASES USING A RAIN CHECK

A "rain check" is an assurance to a customer that an item on sale that is sold out or out of stock may be purchased later at the sale price. Receipts from qualified purchases of tangible personal property made with a rain check during the time period specified in Section 7-9-95 NMSA 1978 are deductible. Purchases made after this time period with a rain check regardless of when the rain check was issued are not deductible.
[3.2.242.9 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.10 LAYAWAY SALES

A retailer performs a service when holding merchandise on a layaway plan at the request of the customer.

A. The initiation of a layaway plan does not constitute a sale even if the customer makes a deposit to the retailer. A sale of the merchandise under the layaway plan occurs only when the final payment is made and the merchandise is delivered to the customer.

B. If the final payment on a layaway plan and delivery of merchandise occur at a time other than during the time period specified in Section 7-9-95 NMSA 1978, the receipts from the sale are not deductible under Section 7-9-95 NMSA 1978.

C. If the final payment on a layaway plan and delivery of merchandise occur during the time period specified in Section 7-9-95 NMSA 1978, the receipts are deductible under Section 7-9-95 NMSA 1978 if the other requirements of the section are met.
[3.2.242.10 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.11 EXCHANGES AND REFUNDS

A. The exchange after the time period specified in Section 7-9-95 NMSA 1978 of tangible personal property that was purchased during the time period specified in Section 7-9-95 NMSA 1978 remains deductible if there is no additional charge for the exchange.

B. If an item of tangible personal property purchased during the time period specified in Section 7-9-95 NMSA 1978 and deductible under Section 7-9-95 NMSA 1978 is exchanged at a later time for an item of different value, the receipts from the subsequent sale are subject to gross receipts tax.
[3.2.242.11 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.12 INTERNET, MAIL ORDER AND TELEPHONE SALES

Qualified items sold to purchasers with a New Mexico billing address by mail, telephone, email and internet shall qualify for deduction under Section 7-9-95 NMSA 1978 if:

A. the item is both delivered to and paid for by the customer during the time period specified in Section 7-9-95 NMSA 1978; or

B. the customer orders and pays for the item and the retailer accepts the order during the time period specified in Section 7-9-95 NMSA 1978 for immediate shipment, even if delivery of the item is made after the exemption period.

[3.2.242.12 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.13 DOCUMENTING DEDUCTIBLE SALES

Retailers claiming the deduction under Section 7-9-95 NMSA 1978 are required to maintain in their records the type of item sold, the date sold and the sales price of deductible merchandise sold during the time period specified in Section 7-9-95 NMSA 1978.

[3.2.242.13 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.14 ITEMS THAT DO NOT QUALIFY FOR THE DEDUCTION UNDER SECTION 7-9-95 NMSA 1978

In addition to those items specifically excluded in the statute, the following are ineligible for the deduction:

A. e-readers that only have the ability to access the internet but that have no other computing functions such as word processing, spreadsheet capabilities, etc.;

B. personal digital assistants (PDAs), MP3 players, cassette players and recorders, cameras, books, magazines and other periodicals;

C. all computer and computer-related equipment not specifically deductible under Section 7-9-95 NMSA 1978 unless bundled with and included in the price of items that qualify for the deduction under Section 7-9-95 NMSA 1978;

D. all computer software unless bundled with and included in the price of items that qualify for the deduction under Section 7-9-95 NMSA 1978;

E. all games including video games, board games, computer games, and handheld gaming devices;

F. musical instruments;

G. materials and equipment used for making, repairing or altering clothing such as cloth, thread, yarn, needles, buttons, zippers, and patterns;

H. athletic and protective gloves, pads, supporters, and helmets;

I. swimwear, cover-ups, and caps;

J. specialized footwear not readily adaptable for wearing on the street, such as ski boots, riding boots, waders, bowling shoes and shoes with cleats or spikes; and

K. briefcases and luggage; prerecorded CDs, DVDs, and cassette tapes.

[3.2.242.14 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.15 RECEIPTS THAT ARE NOT DEDUCTIBLE

Receipts from the following transactions are not deductible under Section 7-9-95 NMSA 1978:

A. Receipts from performing services on tangible personal property that are deductible under Section 7-9-95 NMSA 1978, such as the alteration or repair of clothing.

B. Receipts from leasing or renting tangible personal property. In order for the deduction under Section 7-9-95 NMSA 1978 to apply the qualified items must be sold at retail.

[3.2.242.15 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.16 ITEMS CONSIDERED TO BE COMPUTERS FOR PURPOSES OF THE DEDUCTION UNDER SECTION 7-9-95 NMSA 1978

In addition to those computers that are specifically authorized in the statute, the following items are considered to be computers and qualify for the deduction as long as the cost of the item does not exceed the one thousand dollars ($1,000) threshold set in statute:

A. e-readers that have computing functions such as word processing, spreadsheet capabilities, etc.; and

B. tablet computers.

[3.2.242.16 NMAC – N, 7/31/12]

7-9-96. CREDIT--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS TAX--CERTAIN SALES FOR RESALE.--

A. A taxpayer may claim a credit against gross receipts tax or governmental gross receipts tax due for each reporting period beginning after June 2005 in an amount equal to ten percent of the receipts from selling a service for resale multiplied by:

(1) three and seven hundred seventy-five thousandths percent if the taxpayer's business location is within a municipality; or

(2) five percent if the taxpayer's business location is in the unincorporated area of a county.

B. A taxpayer may claim a credit pursuant to Subsection A of this section only if:

(1) the buyer resells the service in the ordinary course of business;

(2) the resale is not subject to the gross receipts tax or the governmental gross receipts tax; and

(3) the buyer delivers to the seller documentation in a form prescribed by the department clarifying that the service is purchased for resale in the ordinary course of business.

C. A credit permitted pursuant to this section does not apply to receipts from selling a service to a governmental entity or to a person who is a prime contractor that operates a facility in New Mexico designated as a national laboratory by an act of congress.

(Laws 2005, Chapter 104, Section 26)

3.2.302.8 - SERVICE FOR RESALE TAX CREDIT

A. **Qualifying sales conditions.** The seller of a service may qualify for the credit if the transaction meets these conditions:

(1) the sale for which the credit is sought is subject to gross receipts tax or governmental gross receipts tax;

(2) the service is sold for subsequent resale;

(3) the subsequent resale is not subject to the gross receipts tax; and

(4) the buyer of the service certifies to the seller in writing and in a form prescribed by the secretary that the subsequent resale is in the ordinary course of the buyer's business and will not be subject to gross receipts tax or governmental gross receipts tax.

B. **Amount of credit.** The amount of credit available for qualifying transaction is equal to 10% of the receipts from the sale multiplied by either 5%, if the taxpayer's business is located in the unincorporated area of the county or 3.775%, if the taxpayer's business is located in a municipality. Examples:

(1) A's business is located in a municipality. A sells engineering services to B. B resells the engineering services to C. C sells the services to the final consumer, D. B accepts an nttc pursuant to Section 7-9-48 NMSA 1978 from C because C's sale to D will be taxable. B,

however, cannot execute an nttc to A, because B's sale to C is not taxable. B provides written documentation to A that the resale of the service (B's sale to C) is in the ordinary course of business and will not be subject to gross receipts tax. A pays gross receipts tax on the sale to B; but takes a credit of 10 percent of the gross receipts from the sale to B multiplied by 3.775 percent (gross receipts multiplied by .10 multiplied by .03775).

(2) A, located in Albuquerque, sells a service to B for $10,000 on July 15, 2005. B provides documentation that the next sale is in the ordinary course of business and is not subject to gross receipts tax. A may claim a credit of $37.75 (10,000 multiplied by .10 multiplied by .03775).

(3) X, a business located in the unincorporated part of a county, sells accounting services which are performed on tribal land to Y (not a tribal member) who resells those services (in connection with other services which are also performed on tribal land) to Z, a Native American residing on tribal land of which he is a member. Y's sale to Z is not subject to the gross receipts tax because the service was performed on tribal land for a tribal member. Y therefore may not execute an nttc pursuant to Section 7-9-48 NMSA 1978 to X, because a deduction for services sold for resale is only allowed if the next sale is taxable. X, however, may reduce his tax due on the sale to Y by the amount of the credit -- 10 % of the gross receipts from the sale multiplied by 5% -- if Y provides written documentation that the resale (Y's sale to Z) is in the ordinary course of business and will not be subject to gross receipts tax.

C. **Claiming the sale of service for resale credit does not preclude executing an nttc.** A reseller who takes the sale-for-resale credit for the sale of a service may execute an nttc pursuant to Section 7-9-48 NMSA 1978 for the original purchase of that service.

D. **Example:** N purchases drafting services from M and resells them to O who resells them outside New Mexico for initial use outside New Mexico. N can reduce the tax due on his sale to O by the amount of the credit and N may execute an nttc to M for the purchase of the drafting services.

E. **Sale of service for resale credit; documentation.** In order to take the sale-for-resale credit, the seller must obtain from the buyer a completed form RPD-41305 *Declaration of Services Purchased for Resale* certifying that the service is purchased for resale in the ordinary course of business and stating the reason or reasons why the resale is not subject to gross receipts tax or governmental gross receipts tax.

[3.2.302.8 NMAC - N, 4/14/06]

7-9-96.1. CREDIT--GROSS RECEIPTS TAX--RECEIPTS OF CERTAIN HOSPITALS.--

A. A hospital licensed by the department of health may claim a credit for each reporting period against the gross receipts tax due for that reporting period as follows:

(1) for a hospital located in a municipality:

(a) on or after July 1, 2007 but before July 1, 2008, in an amount equal to seven hundred fifty-five thousandths percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken;

(b) on or after July 1, 2008 but before July 1, 2009, in an amount equal to one and fifty-one hundredths percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken;

(c) on or after July 1, 2009 but before July 1, 2010, in an amount equal to two and two hundred sixty-five thousandths percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken;

(d) on or after July 1, 2010 but before July 1, 2011, in an amount equal to three and two hundredths percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken; and

(e) on or after July 1, 2011, in an amount equal to three and seven hundred seventy-five thousandths percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken; and

(2) for a hospital located in the unincorporated area of a county:

(a) on or after July 1, 2007 but before July 1, 2008, in an amount equal to one percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken;

(b) on or after July 1, 2008, but before July 1, 2009, in an amount equal to two percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken;

(c) on or after July 1, 2009 but before July 1, 2010, in an amount equal to three percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken;

(d) on or after July 1, 2010 but before July 1, 2011, in an amount equal to four percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken; and

(e) on or after July 1, 2011, in an amount equal to five percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken.

B. For the purposes of this section, "hospital" means a facility providing emergency or urgent care, inpatient medical care and nursing care for acute illness, injury, surgery or obstetrics and includes a facility licensed

by the department of health as a critical access hospital, general hospital, long-term acute care hospital, psychiatric hospital, rehabilitation hospital, limited services hospital and special hospital.
(Laws 2007, Chapter 361, Section 7)

7-9-96.2. CREDIT--GROSS RECEIPTS TAX--UNPAID CHARGES FOR SERVICES PROVIDED IN A HOSPITAL.--

A. A licensed medical doctor or licensed osteopathic physician may claim a credit against gross receipts taxes due in the following amounts:

(1) from July 1, 2007 through June 30, 2008, thirty-three percent of the value of unpaid qualified health care services;

(2) from July 1, 2008 through June 30, 2009, sixty-seven percent of the value of unpaid qualified health care services; and

(3) on and after July 1, 2009, one hundred percent of the value of unpaid qualified health care services.

B. As used in this section:

(1) "qualified health care services" means medical care services provided by a licensed medical doctor or licensed osteopathic physician while on call to a hospital; and

(2) "value of unpaid qualified health care services" means the amount that is charged for qualified health care services, not to exceed one hundred thirty percent of the reimbursement rate for the services under the Medicaid program administered by the human services department, that remains unpaid one year after the date of billing and that the licensed medical doctor or licensed osteopathic physician has reason to believe will not be paid because:

(a) at the time the services were provided, the person receiving the services had no health insurance or had health insurance that did not cover the services provided;

(b) at the time the services were provided, the person receiving the services was not eligible for medicaid; and

(c) the charges are not reimbursable under a program established pursuant to the Indigent Hospital and County Health Care Act.

(Laws 2007, Chapter 361, Section 8)

7-9-97. DEDUCTION--GROSS RECEIPTS TAX--RECEIPTS FROM CERTAIN PURCHASES BY OR ON BEHALF OF THE STATE.--Receipts from the sale of property or services purchased by or on behalf of the state from funds obtained from the forfeiture of financial assurance pursuant to the New Mexico Mining Act or the forfeiture of financial responsibility pursuant to the Water Quality Act may be deducted from gross receipts.
(Laws 2005, Chapter 169, Section 1)

7-9-98. DEDUCTION--COMPENSATING TAX--BIOMASS-RELATED EQUIPMENT--BIOMASS MATERIALS.--

A. The value of a biomass boiler, gasifier, furnace, turbine-generator, storage facility, feedstock processing or drying equipment, feedstock trailer or interconnection transformer may be deducted in computing the compensating tax due.

B. The value of biomass materials used for processing into biopower, biofuels or biobased products may be deducted in computing the compensating tax due.

C. As used in this section:

(1) "biobased products" means products created from plant- or crop-based resources such as agricultural crops and crop residues, forestry, pastures and rangelands that are normally made from petroleum;

(2) "biofuels" means biomass converted to liquid or gaseous fuels such as ethanol, methanol, methane and hydrogen;

(3) "biomass material" means organic material that is available on a renewable or recurring basis, including:

(a) forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low commercial value materials or undesirable species, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;

(b) agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws and stover, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey and lactose;

(c) animal waste, including manure and slaughterhouse and other processing waste;

(d) solid woody waste materials, including landscape or right-of-way tree trimmings, range land maintenance residues, waste pallets, crates and manufacturing, construction and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;

(e) crops and trees planted for the purpose of being used to produce energy;

(f) landfill gas, wastewater treatment gas and biosolids, including organic waste byproducts generated during the wastewater treatment process; and

(g) segregated municipal solid waste, excluding tires and medical and hazardous waste; and

(4) "biopower" means biomass converted to produce electrical and thermal energy.

(Laws 2005, Chapter 179, Section 1)

7-9-99. DEDUCTION--GROSS RECEIPTS TAX--SALE OF ENGINEERING, ARCHITECTURAL AND NEW FACILITY CONSTRUCTION SERVICES USED IN CONSTRUCTION OF CERTAIN PUBLIC HEALTH CARE FACILITIES.--Receipts from selling an engineering, architectural or construction service used in the new facility construction of a sole community provider hospital that is located in a federally designated health professional shortage area may be deducted from gross receipts if the sale of the engineering, architectural or construction service is made to a foundation or a nonprofit organization that:

A. has entered into a written agreement with a county to pay at least ninety-five percent of the costs of new facility construction of that sole community provider hospital; and

B. delivers to the seller of the engineering, architectural or construction service either an appropriate nontaxable transaction certificate or other evidence acceptable to the secretary of a written agreement made in accordance with Subsection A of this section.

(Laws 2006, Chapter 35, Section 1)

7-9-100. DEDUCTION--GROSS RECEIPTS TAX--SALE OF CONSTRUCTION EQUIPMENT AND CONSTRUCTION MATERIALS USED IN NEW FACILITY CONSTRUCTION OF A SOLE COMMUNITY PROVIDER HOSPITAL THAT IS LOCATED IN A FEDERALLY DESIGNATED HEALTH PROFESSIONAL SHORTAGE AREA.--Receipts from selling construction equipment or construction materials used in the new facility construction of a sole community provider hospital that is located in a federally designated health professional shortage area may be deducted from gross receipts if the sale of the construction equipment or construction materials is made to a foundation or a nonprofit organization that:

A. has entered into a written agreement with a county to pay at least ninety-five percent of the costs of new facility construction of that sole community provider hospital; and

B. delivers to the seller either an appropriate nontaxable transaction certificate or other evidence acceptable to the secretary of a written agreement made in accordance with Subsection A of this section.

(Laws 2006, Chapter 35, Section 2)

7-9-101. DEDUCTION--GROSS RECEIPTS--EQUIPMENT FOR CERTAIN ELECTRIC TRANSMISSION OR STORAGE FACILITIES.-- **Receipts from selling equipment to the New Mexico renewable energy transmission authority or an agent or lessee of the authority may be deducted from gross receipts if the equipment is installed as part of an electric transmission facility or an interconnected storage facility acquired by the authority pursuant to the New Mexico Renewable Energy Transmission Authority Act.**
(Laws 2007, Chapter 3, Section 16)

7-9-102. DEDUCTION--COMPENSATING TAX--EQUIPMENT FOR CERTAIN ELECTRIC TRANSMISSION OR STORAGE FACILITIES.-- **The value of equipment installed as part of an electric transmission facility or an interconnected storage facility acquired by the New Mexico renewable energy transmission authority pursuant to the New Mexico Renewable Energy Transmission Authority Act may be deducted in computing compensating tax due.**
(Laws 2007, Chapter 3, Section 17)

7-9-103. DEDUCTION--GROSS RECEIPTS--SERVICES PROVIDED FOR CERTAIN ELECTRIC TRANSMISSION AND STORAGE FACILITIES.-- **Receipts from providing services to the New Mexico renewable energy transmission authority or an agent or lessee of the authority for the planning, installation, repair, maintenance or operation of an electric transmission facility or an interconnected storage facility acquired by the authority pursuant to the New Mexico Renewable Energy Transmission Authority Act may be deducted from gross receipts.**
(Laws 2007, Chapter 3, Section 18)

7-9-103.1. DEDUCTION--GROSS RECEIPTS TAX--CONVERTING ELECTRICITY.--

A. Receipts from the transmission of electricity where voltage source conversion technology is employed to provide such services and from ancillary services may be deducted from gross receipts.

B. The department shall report annually to the interim revenue stabilization and tax policy committee on the expansion of voltage source conversion technology use in the transmission of electricity in New Mexico and the use of the deduction provided in this section.

C. As used in this section, "ancillary services" means services that are supplied from or in connection with facilities employing voltage source conversion technology and that are used to support or enhance the efficient and reliable operation of the electric system.

(Laws 2012, Chapter 12, Section 2)

7-9-103.2. DEDUCTION--GROSS RECEIPTS--ELECTRICITY EXCHANGE.--

A. Receipts from operating a market or exchange for the sale or trading of electricity, rights to electricity and derivative products and from providing ancillary services may be deducted from gross receipts.

B. The department shall report annually to the interim revenue stabilization and tax policy committee on use of the deduction provided in this section.

C. As used in this section, "ancillary services" means services that are supplied from or in connection with facilities employing voltage source conversion technology and that are used to support or enhance the efficient and reliable operation of the electric system.

(Laws 2012, Chapter 12, Section 3)

7-9-104. DEDUCTION--GROSS RECEIPTS--NONATHLETIC SPECIAL EVENT AT POST-SECONDARY EDUCATIONAL INSTITUTION.--

Receipts received from July 1, 2007 through June 30, 2022 from admissions to a nonathletic special event held at a venue that is located on the campus of a post-secondary educational institution within fifty miles of the New Mexico border and that accommodates at least ten thousand persons may be deducted from gross receipts or from governmental gross receipts.

(Laws 2017, Chapter 46, Section 1)

7-9-105. CREDIT FOR PENALTY PURSUANT TO SECTION 7-1-71.2 NMSA 1978.--

A. A taxpayer who paid a penalty pursuant to the provisions of Section 7-1-71.2 NMSA 1978 in effect prior to July 1, 2007 may claim a credit for the amount of the penalty.

B. To claim the credit provided in Subsection A of this section, the taxpayer shall apply to the taxation and revenue department prior to July 1, 2010, on forms and in the manner prescribed by the department, and shall supply documentation as required by the department.

C. The amount of credit provided in Subsection A of this section may be claimed against the taxpayer's gross receipts tax, compensating tax and withholding tax due in a reporting period. Any amount of available credit that exceeds the taxpayer's gross receipts tax, compensating tax and withholding tax due for a reporting period may be claimed in subsequent reporting periods, for a period of three years.

(Laws 2007, Chapter 45, Section 6)

7-9-106. DEDUCTION--CONSTRUCTION SERVICES AND EQUIPMENT.--

A. Prior to July 1, 2022, receipts from construction services to implement a fighter aircraft pilot training mission project at a New Mexico military installation pursuant to contracts entered into with the United States department of defense may be deducted from gross receipts; provided that the military installation is located in a class B county with a population greater than sixty thousand according to the most recent federal decennial census.

B. The purpose of the deduction provided by this section is to encourage the permanent relocation of fighter aircraft squadrons from other states to a military installation in New Mexico.

C. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

D. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deduction. The department shall present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction and whether the deduction is performing the purpose for which it was created.

(Laws 2018, Chapter 62, Section 1)

7-9-107. DEDUCTION--GROSS RECEIPTS TAX--PRODUCTION OR STAGING OF PROFESSIONAL CONTESTS.--Receipts from producing or staging a professional boxing, wrestling or martial arts contest that occurs in New Mexico, including receipts from ticket sales and broadcasting, may be deducted from gross receipts.
(Laws 2007, Chapter 172, Section 9)

7-9-108. DEDUCTION--GROSS RECEIPTS--RECEIPTS FROM PERFORMING MANAGEMENT OR INVESTMENT ADVISORY SERVICES FOR MUTUAL FUNDS, HEDGE FUNDS OR REAL ESTATE INVESTMENT TRUSTS.--

A. Receipts from fees received for performing management or investment advisory services for a mutual fund, hedge fund or real estate investment trust may be deducted from gross receipts.

B. As used in this section:

(1) "hedge fund" means a private investment fund or pool, the assets of which are managed by a professional management firm, that:

(a) trades or invests, through public market or private transactions, in securities, commodities, currency, derivatives or similar classes of financial assets; or

(b) is not an investment company pursuant to the provisions of 15 U.S.C. 80a-3(c)(1) or 15 U.S.C. 80a-3(c)(7);

(2) "mutual fund" means an entity registered pursuant to the federal Investment Company Act of 1940, as amended; and

(3) "real estate investment trust" means an entity described in Section 856(a) of the Internal Revenue Code of 1986, as amended, the investments of which are limited to interests in mortgages on real property and shares of or transferable certificates of beneficial interest in an entity described in Section 856(a) of the Internal Revenue Code of 1986, as amended.
(Laws 2007, Chapter 172, Section 10)

7-9-109. DEDUCTION--GROSS RECEIPTS TAX--VETERINARY MEDICAL SERVICES, MEDICINE OR MEDICAL SUPPLIES USED IN MEDICAL TREATMENT OF CATTLE.--

A. Receipts from sales of veterinary medical services, medicine or medical supplies used in the medical treatment of cattle may be deducted from gross receipts if the sale is made to a person who states in writing that the person is regularly engaged in the business of ranching or farming, including dairy farming, in New Mexico or if the sale is made to a veterinarian who holds a valid license pursuant to the Veterinary Practice Act and who is providing veterinary medical services, medicine or medical supplies in the treatment of cattle owned by that person.

B. As used in this section, "cattle" means animals of the genus bos, including dairy cattle, and does not include any other kind of livestock.
(Laws 2007, Chapter 172, Section 11)

3.2.248.8 - WRITTEN STATEMENT OF FARMING OR RANCHING

A. Receipts from providing veterinary medical services or from selling medicine or medical supplies used in the medical treatment of cattle to a person who states in writing that they are regularly engaged in the business of ranching or farming may be deducted from the seller's gross receipts pursuant to Section 7-9-109 NMSA 1978. The written statement must be accepted in good faith by the seller in order for the seller to take the deduction authorized by Section 7-9-109 NMSA 1978. The good faith acceptance requirement applies to each transaction intended to be covered by the written statement.

B. The following is an example of a statement that will be accepted by the department as conclusive evidence that receipts from selling enumerated items to persons signing the statement may be deducted from the seller's gross receipts pursuant to Section 7-9-109 NMSA 1978 if the seller accepted such a statement in good faith. “I swear or affirm that I am regularly engaged in the business of farming or ranching. This declaration is made for the purpose of allowing receipts from selling veterinary medical services, medicine and medical supplies used in the medical treatment of cattle to be deducted from the gross receipts of the seller pursuant to Section 7-9-109 NMSA 1978.”

C. Receipts from selling any of the items mentioned in Section 7-9-109 NMSA 1978 to a person engaged in the farming or ranching business may not be deducted from gross receipts unless the sale is made to a person who makes a written statement which is in compliance with 3.2.248.8 NMAC.

D. For the purposes of Section 7-9-109 NMSA 1978 it is sufficient if the seller receives one written statement from each purchaser, provided the seller maintains that statement on file.

E. When the seller accepts in good faith a person’s written statement that the person is regularly engaged in the business of farming or ranching, the written statement shall be conclusive evidence that the receipts from the transaction with the person having made the statement are deductible from the seller’s gross receipts under Section 7-9-109 NMSA 1978.
[3.2.248.8 NMAC – N, 5/15/08]

7-9-110. EXEMPTION--GROSS RECEIPTS TAX--LOCOMOTIVE ENGINE FUEL. --Receipts from the sale of fuel to a common carrier to be loaded or used in a locomotive engine are exempted from the gross receipts tax. For the purposes of this section, "locomotive engine" means a wheeled vehicle consisting of a self-propelled engine that is used to draw trains along railway tracks.
(Laws 2008, Chapter 11, Section 1 – Contingent Effective Date of July 1, 2009, if certification is received prior to January 1, 2009; Contingent Effective Date of July 1, 2010, if certification is received between January 1, 2009, and January 1, 2010 – <u>never became effective</u>.)

7-9-110.1. DEDUCTION--GROSS RECEIPTS TAX--LOCOMOTIVE ENGINE FUEL.--Receipts from the sale of fuel to a common carrier to be loaded or used in a locomotive engine may be deducted from gross receipts. For the purposes of this section, "locomotive engine" means a wheeled vehicle consisting of a self-propelled engine that is used to draw trains along railway tracks.
(Laws 2011, Chapter 60, Section 1; Laws 2011, Chapter 61, Section 1)

7-9-110.2. DEDUCTION--COMPENSATING TAX--LOCOMOTIVE ENGINE FUEL.--The value of fuel to be loaded or used by a common carrier in a locomotive engine may be deducted in computing the compensating tax due. For the purposes of this section, "locomotive engine" means a wheeled vehicle consisting of a self-propelled engine that is used to draw trains along railway tracks.
(Laws 2011, Chapter 60, Section 2; Laws 2011, Chapter 61, Section 2)

7-9-110.3. PURPOSE AND REQUIREMENTS OF LOCOMOTIVE FUEL DEDUCTION.--

A. The purpose of the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax is to encourage the construction, renovation, maintenance and operation of railroad locomotive refueling facilities and other railroad capital investments in New Mexico.

B. To be eligible for the deduction on fuel loaded or used by a common carrier in a locomotive engine from compensating tax, the fuel shall be used or loaded by a common carrier that:

(1) after July 1, 2011, made a capital investment of one hundred million dollars ($100,000,000) or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is loaded or used; or

(2) on or after July 1, 2012, made a capital investment of fifty million dollars ($50,000,000) or more in new railroad infrastructure improvements, including railroad facilities, track, signals and supporting railroad network, located in New Mexico; provided that the new railroad infrastructure improvements are not required by a regulatory agency to correct problems, such as regular or preventive maintenance, specifically identified by that agency as requiring necessary corrective action.

C. To be eligible for the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts, a common carrier shall deliver an appropriate nontaxable transaction certificate to the seller and the sale shall be made to a common carrier that:

(1) after July 1, 2011, made a capital investment of one hundred million dollars ($100,000,000) or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is sold; or

(2) on or after July 1, 2012, made a capital investment of fifty million dollars ($50,000,000) or more in new railroad infrastructure improvements, including railroad facilities, track, signals and supporting railroad network, located in New Mexico; provided that the new railroad infrastructure improvements are not required by a regulatory agency to correct problems, such as regular or preventative maintenance, specifically identified by that agency as requiring necessary corrective action.

D. The economic development department shall promulgate rules for the issuance of a certificate of eligibility for the purposes of claiming a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or compensating tax. A common carrier may request a certificate of eligibility from the economic development department to provide to the taxation and revenue department to establish eligibility for a nontaxable transaction certificate for the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts. The taxation and revenue department shall issue nontaxable transaction certificates to a

common carrier upon the presentation of a certificate of eligibility obtained from the economic development department pursuant to this subsection.

E. The economic development department shall keep a record of temporary and permanent jobs from all railroad activity where a capital investment is made by a common carrier that claims a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or from compensating tax. The economic development department and the taxation and revenue department shall estimate the amount of state revenue that is attributable to all railroad activity where a capital investment is made by a common carrier that claims a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or from compensating tax.

F. The economic development department and the taxation and revenue department shall compile an annual report with the number of taxpayers who claim the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax, the number of jobs created as a result of that deduction, the amount of that deduction approved, the net revenue to the state as a result of that deduction and any other information required by the legislature to aid in evaluating the effectiveness of that deduction. A taxpayer who claims a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or from compensating tax shall provide the economic development department and the taxation and revenue department with the information required to compile that report. The economic development department and the taxation and revenue department shall present that report before the legislative interim revenue stabilization and tax policy committee and the legislative finance committee by November of each year. Notwithstanding any other section of law to the contrary, the economic development department and the taxation and revenue department may disclose the number of applicants for the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax, the amount of the deduction approved, the number of employees of the taxpayer and any other information required by the legislature or the taxation and revenue department to aid in evaluating the effectiveness of that deduction.

G. An appropriate legislative committee shall review the effectiveness of the deduction for each taxpayer who claims the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax every six years beginning in 2019.

(Laws 2013, Chapter 123, Section 1)

3.2.250.7 – DEFINITIONS

For the purposes of this section, “locomotive engine” means a wheeled vehicle consisting of a self-propelled engine that is used to draw trains along railway tracks.

[3.2.250.7 NMAC - N, 7/1/2012]

3.2.250.8 - QUALIFICATIONS AND REQUIREMENTS:

A. To be eligible for the deduction of receipts from the sale of fuel loaded or used by a common carrier in a locomotive engine from gross receipts, the sale shall be made to a common carrier that, after July 1, 2011, made a capital investment of one hundred million dollars ($100,000,000) or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is sold, and the common carrier shall deliver an appropriate nontaxable transaction certificate to the seller.

B. To be eligible for the deduction of the value fuel loaded or used by a common carrier in a locomotive engine in computing the compensating tax, the fuel shall be used or loaded by a common carrier that, after July 1, 2011, made a capital investment of one hundred million dollars ($100,000,000) or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is loaded or used.

C. A common carrier may request a certificate of eligibility from the economic development department to provide to the taxation and revenue department to establish eligibility for a nontaxable transaction certificate for the deduction of receipts from the sale of fuel loaded or used by a common carrier in a locomotive engine from gross receipts and for the deduction of the value of fuel loaded or used by a common carrier in a locomotive engine in computing the compensating tax.

(1) A common carrier shall apply to the economic development department for a certificate of eligibility on forms provided by the economic development department.

(2) Applications shall be considered in the order received.

(3) A common carrier requesting a certificate of eligibility from the economic development department shall provide such information as the economic development department deems necessary to determine that the common carrier has made a capital investment of one hundred million dollars ($100,000,000) or more in new construction or renovations at a railroad locomotive refueling facility after July 1, 2011.

(4) If the economic development department determines that a common carrier has applied for a certificate of eligibility on forms provided by the economic development department in the manner prescribed by these rules, made a capital investment of one hundred million dollars ($100,000,000) or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is sold, and complied with all reporting requirements, it shall issue a certificate of eligibility to the common carrier.

(5) The certificate of eligibility shall be dated.

[3.2.250.8 NMAC - N, 7/1/2012]

3.2.250.9 - REPORTING:

A. Every taxpayer that claims a deduction under Section 7-9-110.1 NMSA 1978 shall report to the economic development department, on forms provided by the department, the following information no later than August 1 for the full year ending on the previous June 30:

(1) the amount of the deduction claimed;

(2) the number of permanent jobs created by the taxpayer as a result of the deductions claimed;

(3) the number of temporary jobs created by the taxpayer as a result of the deductions claimed; and

(4) an estimate of the net revenue to the state as a result of the deductions claimed.

B. Every taxpayer that claims a deduction under Section 7-9-110.2 NMSA 1978 shall

report to the economic development department, on forms provided by the department, the amount of the deduction claimed, no later than 30 days after reporting the deduction to the taxation and revenue department.

C. If any deduction amount reported in Subsections A and B above is subsequently denied by the taxation and revenue department, the taxpayer must report the amount of the denial to the economic development department no later than 30 days after receiving notice of the denial or after the resolution of all administrative proceedings, whichever is later.

[3.2.250.9 NMAC - N, 7/1/2012; A, 7/1/2012]

7-9-111. DEDUCTION--GROSS RECEIPTS--HEARING AIDS AND VISION AIDS AND RELATED SERVICES.--

A. Receipts that are not exempt from gross receipts taxation and are not deductible pursuant to another provision of the Gross Receipts and Compensating Tax Act that are from the sale of vision aids or hearing aids or related services may be deducted from gross receipts.

B. As used in this section:

(1) "hearing aid" means a small electronic prescription device that amplifies sound and is usually worn in or behind the ear of a person that compensates for impaired hearing, including cochlear implants, amplification systems or other devices that are:

(a) specifically designed for use by and marketed to persons with hearing loss; and

(b) not normally used by a person who does not have a hearing loss;

(2) "low vision" means impaired vision with a significant reduction in visual function that cannot be corrected with conventional glasses or contact lenses;

(3) "related services" means services required to fit or dispense hearing aids or vision aids;

(4) "vision aid" means closed circuit television systems, monoculars, magnification systems, speech output devices or other systems that are:

(a) specifically designed for use by and marketed to persons with low vision or visual impairments; and

(b) not normally used by a person who does not have low vision or a visual impairment; and

(5) "visual impairment" means a central visual acuity of 20/200 or less in the better eye with the use of a correcting lens or a limitation in the fields of vision so that the widest diameter of the visual field subtends an angle of twenty degrees or less.

(Laws 2007, Chapter 361, Section 6)

7-9-112. DEDUCTION--GROSS RECEIPTS--SOLAR ENERGY SYSTEMS.--

A. Receipts from the sale and installation of solar energy systems may be deducted from gross receipts.

B. As used in this section, "solar energy system" means an installation that is used to provide space heat, hot water or electricity to the property in which it is installed and is:

(1) an installation that utilizes solar panels that are not also windows, including the solar panels and all equipment necessary for the installation and operation of the solar panels;

(2) a dark-colored water tank exposed to sunlight, including all equipment necessary for the installation and operation of the water tank as a part of the overall water system of the property; or

(3) a non-vented trombe wall, including all equipment necessary for the installation and operation of the trombe wall.

(Laws 2007, Chapter 204, Section 10)

3.2.247.7 - DEFINITIONS

The terms and phrases defined in 3.2.247.7 NMAC apply to the implementation of the deduction pursuant to Section 7-9-112 NMSA 1978.

A. **Equipment:** "Equipment" means an essential machine, mechanism, or a component or fitting thereof, used directly and exclusively in the installation or operation of a solar energy system. Equipment is included in the solar energy system when the cost can be included in the basis of the solar energy system as established under the applicable provisions of the Internal Revenue Code of 1986.

B. **Trombe wall:** A "trombe wall" is a sun-facing wall built from material that can act as a thermal mass, such as stone, concrete, adobe or water tanks, combined with an air space and glass to form a solar thermal collector.

C. **Solar panel:** A "solar panel" is a solar thermal collector, such as a solar hot water or air panel used to heat water, air or otherwise collect solar thermal energy. "Solar panel' may also refer to a photovoltaic system.

D. **Solar thermal collector:** A "solar thermal collector" means an energy system that collects or absorbs solar energy for conversion into heat for the purposes of space heating, space cooling or water heating.

E. **Solar thermal energy:** "Solar thermal energy" is a technology for harnessing solar power for practical applications from solar heating to electrical power generation.

F. **Photovoltaic system:** A "photovoltaic system" means an energy system that collects or absorbs sunlight for conversion into electricity.

G. **Installation of a solar energy system:** The "installation of a solar energy system" includes replacement of some part of the system, or a similar change to the system that would qualify as an adjustment to basis for federal income tax purposes. Labor for maintenance or service of a solar energy system does not qualify for the deduction in the absence of an installation of some part of the system. Labor to perform post-installation adjustments to the solar energy system qualifies for the deduction when the adjustments are performed to optimize

the operation of the solar energy system as part of the initial installation and are performed within one year of the initial installation.

H. **Solar energy system:** A “solar energy system” as defined in Subsection B of Section 7-9-112 NMSA 1978, includes components or systems for collecting and storing energy, but does not include components or systems related to the use of the energy. Examples of use would include the pipes carrying heated water to a faucet or the electrical wire carrying electricity to an outlet.

[3.2.247.7 NMAC – N, 3/14/08]

3.2.247.8 - WRITTEN STATEMENT

A. Receipts from selling equipment or installation services to persons who state in writing that they are purchasing the equipment or installation services for the exclusive use in installation and operation of a solar energy system pursuant Section 7-9-112 NMSA 1978, may be deducted from the seller's gross receipts pursuant to Section 7-9-112 NMSA 1978 if the statement:

(1) contains a declaration that the purchaser-signer will be using the equipment or component part in a qualified solar energy system pursuant to Section 7-9-112 NMSA 1978;

(2) that the equipment purchased or installed is an essential machine, mechanism, or a component or fitting thereof, used directly and exclusively in the installation or operation of a solar energy system

(3) that the equipment or component part can be included in the basis of the qualified solar energy system as established under the applicable provisions of the Internal Revenue Code of 1986;

(4) is personally signed by the purchaser or the purchaser's agent who makes the statement, and

(5) is accepted in good faith by the seller.

B. Receipts from selling or installing solar energy systems pursuant to Section 7-9-112 NMSA 1978 may not be deducted from gross receipts unless the sale is made to a person who makes a written statement which is in compliance with 3.2.247.8 NMAC, or can provide evidence acceptable to the department that the service or equipment is purchased solely for use in a qualified solar energy system.

C. For the purposes of Section 7-9-112 NMSA 1978 it is sufficient if the seller receives one written statement from each purchaser. The one written statement may cover multiple purchases of equipment or installation services used solely in a qualified solar energy system provided the seller maintains that statement on file.

[3.2.247.8 NMAC – N, 3/14/08]

3.2.247.9 - GOOD FAITH ACCEPTANCE OF BUYER'S WRITTEN STATEMENT

A. When a seller accepts in good faith a person's written statement that the person is purchasing the service or equipment for the sole use of the sale and installation of a solar energy system pursuant to Section 7-9-112 NMSA 1978, the written statement shall be conclusive evidence that the proceeds from the transaction with the person having made this statement are deductible from the seller's gross receipts.

B. Example 1: X is installing a non-vented trombe wall in his home. Y sells adobe blocks to X for the trombe wall. X gives Y the proper written statement that the block is for the sole use of installing a solar energy system. X may deduct the gross receipts received from the

sale of the adobe blocks.

C. Example 2: Same facts as example 1, but some of the adobe blocks being purchased from Y are to be used for the construction of a block wall around the perimeter of X's property. X is not using the adobe blocks solely to construct a non-vented trombe wall in his home. X gives Y the proper written statement that the block is for the sole use of installing a solar energy system. Y accepts the statement in good faith and may deduct the gross receipts received from the sale of the block. Because X is not using the block for the sole use of installing a solar energy system, X will be liable for the compensating tax on the value of the block and may be liable for making false statements.

D. Example 3: C buys a tractor from E, to haul materials used to construct a non-vented trombe wall in his personal residence. The equipment is not is an essential machine, mechanism, or a component or fitting thereof, used directly and exclusively in the installation or operation of a solar energy system and is not includable in the basis of the solar energy system to which the equipment is installed under the provisions of the Internal Revenue Code of 1986; E may not take the deduction.

E. Example 4: S is a contractor who performs construction services which includes the sale and installation of solar energy systems. S purchases materials and services from T. S may provide T with a buyers written statement pursuant to 3.2.247.8 NMAC. T cannot substantiate the deduction for the solar energy system materials and installation services with a nontaxable transaction certificate for the sale of construction materials that will become ingredients or components of a construction project pursuant to Section 7-9-51 NMSA 1978, or for construction services performed on a construction project pursuant to 7-9-52 NMSA 1978, because the next sale is not subject to gross receipts tax upon completion of the construction project.

F. Example 5: Same facts as example 4. When S sells the completed construction project to home owner H, S may deduct the materials and installation costs of the solar energy system pursuant to Section 7-9-112 NMSA 1978, with sufficient documentation to include the written statement pursuant to 3.2.247.8 NMAC, or other evidence acceptable to the department that the service or equipment is sold for the sole use of the sale and installation of a qualified energy system.

[3.2.247.9 NMAC – N, 3/14/08]

****** REPEALED EFFECTIVE JULY 1, 2014 ******

7-9-113. DEDUCTION--GROSS RECEIPTS--SPECIAL FUEL, DYED DIESEL.--Receipts from selling special fuel consisting of at least ninety-nine percent vegetable oil or animal fat may be deducted from gross receipts if the deduction from the special fuel excise tax pursuant to Section 7-16A-10 NMSA 1978 is claimed.

(Laws 2009, Chapter 99 Section 1 - July 1, 2014 Delayed Repeal)

7-9-114. ADVANCED ENERGY DEDUCTION--GROSS RECEIPTS AND COMPENSATING TAXES.--

A. Receipts from selling or leasing tangible personal property or services that are eligible generation plant costs to a person that holds an interest in a qualified generating facility may be deducted from gross receipts if the holder of the interest delivers an appropriate nontaxable transaction certificate to the seller or lessor. The department shall issue nontaxable transaction certificates to a person that holds an interest in a qualified generating facility upon presentation to the department of a certificate of eligibility obtained from the department of environment pursuant to Subsection G of this section for the deduction created in this section or a certificate of eligibility pursuant to Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978. The deduction created in this section may be referred to as the "advanced energy deduction".

B. The purpose of the advanced energy deduction is to encourage the construction and development of qualified generating facilities in New Mexico and to sequester or control carbon dioxide emissions.

C. The value of eligible generation plant costs from the sale or lease of tangible personal property to a person that holds an interest in a qualified generating facility for which the department of environment has issued a certificate of eligibility pursuant to Subsection G of this section may be deducted in computing the compensating tax due.

D. The maximum tax benefit allowed for all eligible generation plant costs from a qualified generating facility shall be sixty million dollars ($60,000,000) total for eligible generation plant costs deducted or claimed pursuant to this section or Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978.

E. Deductions taken pursuant to this section shall be reported separately on a form approved by the department. The nontaxable transaction certificates used to obtain tax deductible tangible personal property or services shall display clearly a notice to the taxpayer that the deduction shall be reported separately from any other deductions claimed from gross receipts. A taxpayer deducting eligible generation plant costs from the costs on which compensating tax is imposed shall report those eligible generation plant costs that are being deducted.

F. The deductions allowed for a qualified generating facility pursuant to this section shall be available for a ten-year period for purchases and a twenty-five-year period for leases from the year development of the qualified generating facility begins and expenditures are made for which nontaxable transaction certificates authorized pursuant to this section are submitted to sellers or lessors for eligible generation plant costs or deductions from the costs on which compensating tax are calculated are first taken for eligible generation plant costs.

G. An entity that holds an interest in a qualified generating facility may request a certificate of eligibility from the department of environment to enable the requester to obtain a nontaxable transaction certificate for the advanced energy deduction. The department of environment shall:

(1) determine if the facility is a qualified generating facility;

(2) require that the requester provide the department of environment with the information necessary to assess whether the requester's facility meets the criteria to be a qualified generating facility;

(3) issue a certificate from sequentially numbered certificates to the requester stating that the facility is or is not a qualified generating facility within one hundred eighty days after receiving all information necessary to make a determination;

(4) issue:

(a) rules governing the procedures for administering the provisions of this subsection; and

(b) a schedule of fees in which no fee exceeds one hundred fifty thousand dollars ($150,000);

(5) deposit fees collected pursuant to this subsection in the state air quality permit fund created pursuant to Section 74-2-15 NMSA 1978; and

(6) report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the advanced energy deduction, including the identity of qualified generating facilities, the energy production means used, the amount of emissions identified in this section reduced and removed by those qualified generating facilities and whether any requests for certificates of eligibility could not be approved due to program limits.

H. The economic development department shall keep a record of temporary and permanent jobs at all qualified generating facilities in New Mexico. The economic development department and the taxation and revenue department shall measure the amount of state revenue that is attributable to activity at each qualified generating facility in New Mexico. The economic development department shall coordinate with the department of environment to report annually to the appropriate interim legislative committee on the effectiveness of the advanced energy deduction. A taxpayer who claims an advanced energy deduction shall provide the economic development department, the department of environment and the taxation and revenue department with the information required to compile the report required by this section. Notwithstanding any other section of law to the contrary, the economic development department, the department of environment and the taxation and revenue department may disclose the number of applicants for the advanced energy deduction, the amount of the deduction approved, the number of employees of the taxpayer and any other information required by the legislature or the taxation and revenue department to aid in evaluating the effectiveness of that deduction.

I. If the department of environment issues a certificate of eligibility to a taxpayer stating that the taxpayer holds an interest in a qualified generating facility and the taxpayer does not sequester or control carbon dioxide emissions to the extent required by this section by the later of January 1, 2017 or eighteen months after the commercial operation date of the qualified generating facility, the taxpayer's certification as a qualified

generating facility shall be revoked by the department of environment and the taxpayer shall repay to the state tax deductions granted pursuant to this section; provided that, if the taxpayer demonstrates to the department of environment that the taxpayer made every effort to sequester or control carbon dioxide emissions to the extent feasible and the facility's inability to meet the sequestration requirements of a qualified generating facility was beyond the facility's control, the department of environment shall determine, after a public hearing, the amount of tax deduction that should be repaid to the state. The department of environment, in its determination, shall consider the environmental performance of the facility and the extent to which the inability to meet the sequestration requirements of a qualified generating facility was in the control of the taxpayer. The repayment as determined by the department of environment shall be paid within one hundred eighty days following a final order by the department of environment.

J. The advanced energy deduction allowed pursuant to this section shall not be claimed for the same qualified expenses for which a taxpayer claims a credit pursuant to Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978 or a deduction pursuant to Section 7-9-54.3 NMSA 1978.

K. An appropriate legislative committee shall review the effectiveness of the advanced energy deduction every four years beginning in 2015.

L. As used in this section:

(1) "coal-based electric generating facility" means a new or repowered generating facility and an associated coal gasification facility, if any, that uses coal to generate electricity and that meets the following specifications:

(a) emits the lesser of: 1) what is achievable with the best available control technology; or 2)thirty-five thousandths pound per million British thermal units of sulfur dioxide, twenty-five thousandths pound per million British thermal units of oxides of nitrogen and one hundredth pound per million British thermal units of total particulate in the flue gas;

(b) removes the greater of: 1) what is achievable with the best available control technology; or 2) ninety percent of the mercury from the input fuel;

(c) captures and sequesters or controls carbon dioxide emissions so that by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility, no more than one thousand one hundred pounds per megawatt-hour of carbon dioxide is emitted into the atmosphere;

(d) all infrastructure required for sequestration is in place by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility;

(e) includes methods and procedures to monitor the disposition of the carbon dioxide captured and sequestered from the coal-based electric generating facility; and

(f) does not exceed a name-plate capacity of seven hundred net megawatts;

(2) "eligible generation plant costs" means expenditures for the development and construction of a qualified generating facility, including permitting; lease payments; site characterization and assessment; engineering; design; carbon dioxide capture, treatment, compression, transportation and sequestration; site and equipment acquisition; and fuel supply development used directly and exclusively in a qualified generating facility;

(3) "entity" means an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other association or a gas, water or electric utility owned or operated by a county or municipality;

(4) "geothermal electric generating facility" means a facility with a name-plate capacity of one megawatt or more that uses geothermal energy to generate electricity, including a facility that captures and provides geothermal energy to a preexisting electric generating facility using other fuels in part;

(5) "interest in a qualified generating facility" means title to a qualified generating facility; a lessee's interest in a qualified generating facility; and a county or municipality's interest in a qualified generating facility when the county or municipality issues an industrial revenue bond for construction of the qualified generating facility;

(6) "name-plate capacity" means the maximum rated output of the facility measured as alternating current or the equivalent direct current measurement;

(7) "qualified generating facility" means a facility that begins construction not later than December 31, 2015 and is:

(a) a solar thermal electric generating facility that begins construction on or after July 1, 2010 and that may include an associated renewable energy storage facility;

(b) a solar photovoltaic electric generating facility that begins construction on or after July 1, 2010 and that may include an associated renewable energy storage facility;

(c) a geothermal electric generating facility that begins construction on or after July 1, 2010;

(d) a recycled energy project if that facility begins construction on or after July 1, 2010; or

(e) a new or repowered coal-based electric generating facility and an associated coal gasification facility;

(8) "recycled energy" means energy produced by a generation unit with a name-plate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the exhaust stacks or pipes to electricity without combustion of additional fossil fuel;

(9) "sequester" means to store, or chemically convert, carbon dioxide in a manner that prevents its release into the atmosphere and may include the use of geologic formations and enhanced oil, coaled methane or natural gas recovery techniques;

(10) "solar photovoltaic electric generating facility" means an electric generating facility with a nameplate capacity of one megawatt or more that uses solar photovoltaic energy to generate electricity; and

(11) "solar thermal electric generating facility" means an electric generating facility with a nameplate capacity of one megawatt or more that uses solar thermal energy to generate electricity, including a facility that captures and provides solar thermal energy to a preexisting electric generating facility using other fuels in part.

(Laws 2011, Chapter 115, Section 1)

7-9-115.-- DEDUCTION--GROSS RECEIPTS TAX--GOODS AND SERVICES FOR THE DEPARTMENT OF DEFENSE RELATED TO DIRECTED ENERGY AND SATELLITES.--

A. Prior to January 1, 2021, receipts from the sale by a qualified contractor of qualified research and development services and qualified directed energy and satellite-related inputs may be deducted from gross receipts when sold pursuant to a contract with the United States department of defense.

B. The purposes of the deduction allowed in this section are to promote new and sophisticated technology, enhance the viability of directed energy and satellite projects, attract new projects and employers to New Mexico and increase high-technology employment opportunities in New Mexico.

C. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

D. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deduction. Beginning in 2017 and each year thereafter that the deduction is in effect, the department and the economic development department shall present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction and whether the deduction is performing the purpose for which it was created.

E. As used in this section:

(1) "directed energy" means a system, including related services, that enables the use of the frequency spectrum, including radio waves, light and x-rays;

(2) "inputs" means systems, subsystems, components, prototypes and demonstrators or products and services involving optics, photonics, electronics, advanced materials, nanoelectromechanical and microelectromechanical systems, fabrication materials and test evaluation and computer control systems related to directed energy or satellites;

(3) "qualified contractor" means a person other than an organization designated as a national laboratory by act of congress or an operator of national laboratory facilities in New Mexico; provided that the operator may be a qualified contractor with respect to the operator's receipts not connected with operating the national laboratory;

(4) "qualified directed energy and satellite-related inputs" means inputs supplied to the department of defense pursuant to a contract with that department entered into on or after January 1, 2016;

(5) "qualified research and development services" means research and development services related to directed energy or satellites

provided to the department of defense pursuant to a contract with that department entered into on or after January 1, 2016; and

(6) "satellite" means composite systems assembled and packaged for use in space, including launch vehicles and related products and services.

(Laws 2015 S.S., Chapter 2, Section 9)

7-9-116.--DEDUCTION--GROSS RECEIPTS TAX--RETAIL SALES BY CERTAIN BUSINESSES.--

A. Prior to July 1, 2020, receipts from the sale at retail of the following types of tangible personal property may be deducted if the sales price of the property is less than five hundred dollars ($500) and:

(1) the sale occurs during the period beginning at 12:01 a.m. on the first Saturday after Thanksgiving and ending at midnight on the same Saturday;

(2) the sale is for:

(a) an article of clothing or footwear designed to be worn on or about the human body;

(b) accessories, including jewelry, handbags, book bags, backpacks, luggage, wallets, watches and similar items worn or carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing;

(c) sporting goods and camping equipment;

(d) tools used for home improvement, gardening and automotive maintenance and repair;

(e) books, journals, paper, writing instruments, art supplies, greeting cards and postcards;

(f) works of art, including any painting, drawing, print, photograph, sculpture, pottery or ceramics, carving, textile, basketry, artifact, natural specimen, rare book, authors' papers, objects of historical or technical interest or other article of intrinsic cultural value;

(g) floral arrangements and indoor plants;

(h) cosmetics and personal grooming items;

(i) musical instruments;

(j) cookware and small home appliances for residential use;

(k) bedding, towels and bath accessories;

(l) furniture;

(m) a toy or game that is a physical item, product or object clearly intended and designed to be used by children or families in play;

(n) a video game or video game console and any associated accessories for the video game console; or

(o) home electronics such as computers, phones, tablets, stereo equipment and related electronics accessories; and

(3) the sale is made by a seller that carries on a trade or business in New Mexico, maintains its primary place of business in New Mexico, as determined by the department, and employed no more than ten employees at any one time during the previous fiscal year.

B. Receipts for sales made by a business that operates under a franchise agreement may not be deducted pursuant to this section.

C. The purpose of the deduction provided by this section is to increase sales at small local businesses.

D. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

E. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deduction. The department shall present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction and whether the deduction is performing the purpose for which it was created.

(Laws 2018, Chapter 46, Section 1)