

This is an amendment to 3.2.209 NMAC, Sections 9, 11-15, 18, 22, 23 and adding 26, effective 12/27/2018.

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 ~~[is issued]~~ 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]

3.2.209.11 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 ~~[is]~~ 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. ~~[If, in the situation described in Subsection A of Section 3.2.209.12 NMAC, the person engaged in the construction business delivered an nttc to a supplier for the purchase of lumber and the buyer converts some to use as forms and if the supplier did not pay the gross receipts tax on those receipts, the person engaged in the construction business will be subject to the compensating tax.~~

~~—————C.]~~ 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 ~~[an]~~ 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 ~~[If]~~ and the buyer delivering the nttc ~~[does not use]~~ uses the welding electrodes in such a way that they become an ingredient or component part of the construction project ~~[or comply with other requirements of Section 7-9-51 NMSA 1978, compensating tax will be imposed upon the buyer].~~

[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. ~~[If the person engaged in the painting business does not use the items purchased with the nttcs as required by Paragraphs (1) and (2) of Subsection B of Section 7-9-51 NMSA 1978, the compensating tax is due.~~

~~—————C.]~~ 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]

3.2.209.18 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.** [If the person engaged in the construction business does not use the screens, screen doors and windows purchased with the nttc as required by Paragraphs (1) and (2) of Subsection B of Section 7-9-51 NMSA 1978, the compensating tax is due.~~

~~**C.** 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.~~

~~**D.** If the person engaged in the construction business does not use the items described in Subsection C of Section 3.2.209.18 NMAC and purchased with the nttc as required by Paragraphs (1) and (2) of Subsection B of Section 7-9-51 NMSA 1978, the compensating tax is due.]~~

[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]

3.2.209.22 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.** [Did the tangible personal property become "fixtures" as defined under Subsection I of Section 3.2.1.11 NMAC.~~

~~**B.** 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.~~

~~**C.**~~ **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 ~~[tangible personal property]~~ 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 ~~[tangible personal property]~~ 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.

~~**D.** This version of 3.2.209.23 NMAC applies retroactively to transactions occurring on or after March 7, 2000.]~~

[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]

3.2.209.26 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]