

This is an amendment to 3.2.218 NMAC, Sections 9, 11, 13 and 14, effective 12/27/2018.

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 ~~[fully taxable. Such receipts are]~~ not deductible pursuant to Section 7-9-60 NMSA 1978. ~~[Only receipts from selling tangible personal property to a 501(c)(3) organization are deductible.]~~

B. ~~[Receipts]~~ Except as provided in Subsection C, receipts from ~~[performing a construction project for]~~ selling construction, including construction material to a 501(c)(3) organization, ~~[including the construction services and the value of all property used in the construction project,]~~ are receipts derived from performing a service and are ~~[fully taxable.]~~ 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, 6/14/01; A, 12/27/2018]

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 ~~[note with]~~ 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]

3.2.218.13 - 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 ~~[note]~~ 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 ~~[note]~~ non-taxable transaction certificate or alternative evidence employs the tangible personal property in the conduct of an unrelated trade or business, the ~~[compensating tax is due.]~~ 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]