

TITLE 3: TAXATION
CHAPTER 1: TAX ADMINISTRATION
PART 4: FILING

3.1.4.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.
[3.1.4.1 NMAC - Rp, 3.1.4.1 NMAC, 7/7/2021]

3.1.4.2 SCOPE: This part applies to all taxpayers, their agents and representatives and all persons required to submit a return or information to the taxation and revenue department under any tax, tax act or other law administered and enforced pursuant to the Tax Administration Act.
[3.1.4.2 NMAC - Rp, 3.1.4.2 NMAC, 7/7/2021]

3.1.4.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[3.1.4.3 NMAC - Rp, 3.1.4.3 NMAC, 7/7/2021]

3.1.4.4 DURATION: Permanent.
[3.1.4.4 NMAC - Rp, 3.1.4.4 NMAC, 7/7/2021]

3.1.4.5 EFFECTIVE DATE: July 7, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[3.1.4.5 NMAC - Rp, 3.1.4.5 NMAC, 7/7/2021]

3.1.4.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Tax Administration Act.
[3.1.4.6 NMAC - Rp, 3.1.4.6 NMAC, 7/7/2021]

3.1.4.7 DEFINITIONS: As used in 3.1.4 NMAC, “CRS liability” means the total of state gross receipts tax due for a period plus the amounts due for the same period for all other taxes collected with the state gross receipts tax, such as local option gross receipts taxes, governmental gross receipts tax, leased vehicle gross receipts tax, leased vehicle surcharge, compensating tax and withholding tax.
[3.1.4.7 NMAC - Rp, 3.1.4.7 NMAC, 7/7/2021]

3.1.4.8 FILING RETURNS - FORMS:

A. Information concerning the method of completing and filing a return, the filing date and the due date for paying taxes administered by the department may be found under the specific tax statutes, the secretary's regulations thereunder, on the prescribed forms and on the instructions accompanying the forms. Returns are considered complete and timely filed when the requirements of these documents, including requirements on obtaining extensions of time to file, are complied with by taxpayers.

B. Copies of return forms and instructions will be furnished by the department to taxpayers and to those persons filing returns for the purpose of securing refunds and rebates. The failure to receive a return form, however, does not relieve taxpayers from their duty to report and pay taxes. The forms and instructions may be obtained from the department and from district offices.
[3.1.4.8 NMAC - Rp, 3.1.4.8 NMAC, 7/7/2021]

3.1.4.9 THE REQUIREMENT OF A CORRECT MAILING ADDRESS:

A. All notices, returns or applications required to be made by the taxpayer must include the correct mailing address of the taxpayer and the taxpayer must promptly advise the department in writing of any change in mailing address. If the department has prescribed a form or format for reporting a change of address, the form or format must be followed provided that, if the required information is contained in a change of address form or notice of the United States postal service, the United States postal service change of address form or notice may be used in lieu of the department form.

B. If a taxpayer notifies the United States postal service of a change in the taxpayer's mailing address and this information is given by the United States postal service to the department either voluntarily or upon the department's request, the taxpayer shall have fulfilled the taxpayer's obligation to notify the department of a change in mailing address. Unless the taxpayer specifically notifies the department that the change of mailing address does

not apply to mailings from the department to the taxpayer, the notice by the taxpayer to the United States postal service of a change in the taxpayer's mailing address and given by the United States postal service to the department applies to mailings from the department.

[3.1.4.9 NMAC - Rp, 3.1.4.9 NMAC, 7/7/2021]

3.1.4.10 DUE DATES AND TIMELINESS:

A. Filing returns - due date: A taxpayer becomes liable for tax as soon as the taxable event occurs; payment is not due, however, until on and after the date established by tax acts for the payment of tax. The statutory words "and after" used in the preceding sentence mean that taxes remain due until paid. A taxpayer becomes liable for interest if the tax is not paid when it becomes due. If the tax is not paid when it becomes due or if a report is not filed when due because of negligence of the taxpayer or taxpayer's representative, the taxpayer will also become liable for penalty. The fact that a taxpayer has not registered as a taxpayer is not material to the taxpayer's liability for payment of tax.

B. Timeliness of electronic transmissions:

(1) Notices, returns and applications authorized or required to be made or given by electronic transmission, are timely if the notice, return or application is electronically transmitted to the department and accepted on or before the last date prescribed for filing the notice, return or application. Accordingly, the sender who relies upon the applicability of Section 7-1-13 NMSA 1978 assumes the responsibility to provide the department proof that the electronic transmission to the department was initiated on or before the last date prescribed for filing the notice, return or application.

(2) Returns required by regulation or statute to be filed electronically shall not be considered filed until filed electronically if filed by any means other than as specified in that regulation or statute unless the taxpayer receives an exception or waiver to electronic filing in writing from the department, and taxpayer will be subject to penalties under Section 7-1-69 NMSA 1978 for a late filed return until an electronic return is filed.

C. Determination of timeliness:

(1) Notices, returns, applications and payments, other than payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by mail are timely if the postmark on the envelope made by the United States postal service bears the date on or before the last date prescribed for filing the notice, return or application or for making the payment. The date affixed on an envelope by a postage meter stamp will be considered the postmark date if it is not superseded by a postmark made by the United States postal service. If the postmark does not bear a date on or before the last date prescribed for filing the notice, return or application, or for making the payment, the notice, return, application or payment will be presumed to be late. Accordingly, the sender who relies upon the applicability of Section 7-1-9 NMSA 1978 assumes the responsibility that the postmark will bear a date on or before the last date prescribed for filing the notice, return or application, or for making the payment.

(2) If a mailing is not received by the department, the contents of the mailing are not timely. If an envelope is improperly addressed and is returned to the sender by the post office, there has been no timely mailing within the meaning of the statute. The postmark date on the improperly addressed envelope will not be deemed the date of receipt by the department.

(3) A facsimile transmittal of a notice, return or application will be considered a timely filing of the notice, return or application only if:

(a) the facsimile is received by the due date for filing the notice, return or application; and

(b) the original is delivered by the due date or, if mailed, postmarked on or before the due date.

D. Illegible postmark:

(1) If the postmark on the envelope is not legible and the contents are received by the department by the second business day following the due date, filing of the return, payment or other action will be deemed timely. If the contents are received by the department after the second business day following the due date, the person who is required to file notices, returns or applications, or make payments, has the burden of proving the time when the postmark was made.

(2) The provisions of Subsection D of 3.1.4.10 NMAC apply only to actions required or permitted to be performed by mail.

(3) If the notice, return, application or payment other than payments specified by Section 7-1-13.1 NMSA 1978 is sent or delivered to the department by any means other than by mailing with the United States postal service, it must be received by the department on or before the due date for filing the notice, return or

application or making the payment.

E. Saturday, Sunday or holiday due date:

(1) If the last date for filing notices, returns or applications or for making payment of taxes falls on Saturday, Sunday or a state of New Mexico or national holiday, the filing of notices, returns and applications or the making of the payment of taxes, other than payments specified by Section 7-1-13.1 NMSA 1978, shall be considered timely if postmarked on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

(2) Example: The due date for taxpayers to file gross receipts tax returns for April receipts is May 25. If May 25th is a Saturday and the following Monday is Memorial Day, a legal holiday designated in Section 12-5-2 NMSA 1978, the due date for filing the gross receipts tax returns is Tuesday, May 28th. The first banking day preceding Tuesday, May 28th is Friday, May 24th.

F. State observance of state holiday on day other than that designated for public observance:

(1) Whenever the New Mexico state government and its employees are directed by competent authority to observe a state legal public holiday on a day other than that specified in Section 12-5-2 NMSA 1978 for that holiday, the day upon which the holiday is observed by the New Mexico state government is deemed to be a "legal state holiday" for the purposes of the Tax Administration Act.

(2) Example: Section 12-5-2 NMSA 1978 designates the third Monday in February as a legal holiday, President's day. Traditionally, state offices are open on the third Monday in February and the holiday is observed by state government on the Friday following Thanksgiving. Accordingly, when state government is closed on the Friday after Thanksgiving in a delayed observance of President's day, the due date for any notices, returns, applications or payments to be made by taxpayers on the Friday after Thanksgiving is the following Monday. For purposes of making payment of tax in accordance with Section 7-1-13.1 NMSA 1978 in this situation, the first banking day preceding the due date is the Friday after Thanksgiving. Because the third Monday in February is observed by the United States postal service and by the national banks, any notices, returns, applications or payments to be made by taxpayers on that date are due the following day, even though state offices are open on President's day.

G. "Received by the department" defined:

(1) Unless the secretary by instruction or other directive permits or requires otherwise, "received by the department" for the purposes of Section 7-1-13.1 NMSA 1978 means received at the Santa Fe headquarters of the department during the department's normal business hours.

(2) The secretary through instruction or other directive may permit or require payment by check of taxes subject to the provisions of Section 7-1-13.1 NMSA 1978 at any other location of the department or at the location of the state fiscal agent or other agent of the department or during times other than normal business hours of the department. When the secretary has so permitted or required payment by check at such locations or times, "received by the department" for the purposes of Section 7-1-13.1 NMSA 1978 includes such locations or times.

H. "Banking day" defined:

(1) A banking day is a day which is not a Saturday, Sunday, national bank holiday or a day deemed by regulation of the secretary to be a state legal holiday for purposes of making payment under Subsection 7-1-13.1B NMSA 1978.

(2) Examples:

(a) When Memorial day falls on Monday, May 27th, the preceding banking day is Friday, May 24th.

(b) The Wednesday immediately prior to Thanksgiving is the first banking day preceding Thanksgiving.

I. Timeliness of electronic payments:

(1) Payments, other than payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by electronic payment, are timely if the payment is electronically transmitted to the department and accepted, on or before the last date prescribed for making the payment. Accordingly, the sender who relies upon the applicability of Section 7-1-13.4 NMSA 1978 assumes the responsibility to provide the department proof that the electronic transmission to the department was initiated on or before the last date prescribed for making the payment.

(2) Payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by electronic payment, are timely if the result of the electronic payment is that the funds are available to the state of New Mexico on or before the last date prescribed for making the payment. The date that an electronic payment was transmitted to the department is not an indicator of whether the payment was timely. The sender who

relies upon the applicability of Section 7-1-13.4 NMSA 1978 assumes the responsibility that the funds were available to the department on or before the last date prescribed for making the payment.
[3.1.4.10 NMAC - Rp, 3.1.4.10 NMAC, 7/7/2021]

3.1.4.11 SEMIANNUAL OR QUARTERLY FILING

A. Semiannual or quarterly reporting - resources excise and severance taxes:

(1) Persons who are liable for reporting taxes under the Resources Excise Tax Act (Sections 7-25-1 to 7-25-9 NMSA 1978) or the Severance Tax Act (Sections 7-26-1 to 7-26-8 NMSA 1978) and whose anticipated aggregate tax liability for both of these taxes is less than \$200 a month may report and pay these taxes at quarterly or semiannual intervals if the taxpayer applies for and obtains the prior approval of the secretary or secretary's delegate. The semiannual reporting and payment intervals shall be only for the periods of January through June and July through December of any calendar year and the quarterly intervals shall be only for the three-month periods ending March 31, June 30, September 30 and December 31 of any calendar year.

(2) The taxpayer may not change from one reporting interval to another without the prior written approval of the secretary or secretary's delegate.

(3) As a condition of approving semiannual or quarterly reporting, the secretary may require the posting of a surety bond or other acceptable security in an appropriate amount payable to the state of New Mexico guaranteeing payment to the state of New Mexico of the taxpayer's tax liability under the Resources Excise Tax Act or Severance Tax Act.

B. Semiannual or quarterly reporting - CRS liability:

(1) Any taxpayer with an anticipated CRS liability of less than \$200 per month may report and pay these taxes at quarterly or semiannual intervals if the taxpayer applies for and obtains the prior approval of the secretary or secretary's delegate. Prior approval is also required when a taxpayer, having received permission to file on a quarterly or semiannual basis, wishes to change from quarterly to semiannual or semiannual to quarterly. Quarterly reporting and payment intervals shall be only the three-month periods ending March 31, June 30, September 30 and December 31. Semiannual reporting and payment intervals shall be only for the reporting periods of January through June and July through December. Approval, once granted, applies only so long as the taxpayer's actual average liability for the reporting periods does not exceed \$200 per month.

(2) Any taxpayer who is registered to report and pay on a quarterly or semiannual basis and who subsequently has an average CRS liability over any one-year period of two hundred dollars or more per month must report and pay on a monthly basis, beginning with the first month following the close of the last quarterly or semi-annual reporting period within that year. In addition, when the department, upon examination of its records, discovers a taxpayer who is registered to report and pay on a quarterly or semiannual basis but who has an average monthly CRS liability of two hundred dollars or more over a one-year period may withdraw its approval and require the taxpayer to report and pay on a monthly basis, beginning with a month selected by the department.

(3) The secretary shall furnish the necessary forms to apply for filing tax returns at semiannual or quarterly intervals and to change the reporting interval. A taxpayer may change from quarterly or semiannual intervals to monthly without prior approval of the secretary or the secretary's delegate if the taxpayer begins monthly reporting with the first month following the end of a quarter or semiannual period.

(4) Except as otherwise provided in Paragraphs (2) and (3) of Subsection B of 3.1.4.11 NMAC, the taxpayer may not change from one reporting interval to another without the prior written approval of the secretary or secretary's delegate.

(5) As a condition of approving semiannual or quarterly reporting, the secretary may require the posting of a surety bond or other acceptable security in an appropriate amount payable to the state of New Mexico guaranteeing payment to the state of New Mexico of the taxpayer's CRS liability.

C. Quarterly or semiannual reporting - Water conservation fee:

(1) Persons who are liable for reporting the water conservation fee under Section 74-1-13 NMSA 1978 and whose anticipated aggregate liability for the fee is less than \$200 a month may report and pay this fee at quarterly or semiannual intervals if the taxpayer applies for and obtains the prior approval of the secretary or the secretary's delegate. The semiannual reporting and payment intervals shall be only for the periods of January through June and July through December of any calendar year. The quarterly reporting and payment intervals shall be only for the three-month periods ending March 31, June 30, September 30 and December 31 of any calendar year.

(2) Persons who are liable for reporting the water conservation fee may not change from one reporting interval to another without the prior written approval of the secretary or the secretary's delegate except that the person may change without prior approval from quarterly or semiannual reporting to monthly if the person

begins the monthly reporting with either the January or July reporting period.

(3) As a condition of approving quarterly or semiannual reporting, the secretary or the secretary's delegate may require the posting of a security bond or other acceptable security in an appropriate amount payable to the state of New Mexico guaranteeing payment to the state of New Mexico of the person's water conservation fee liability.

D. Filing periods for alternative fuel tax distributors:

(1) In anticipation that distributors who are required to file and pay the alternative fuel excise tax will have a tax liability of less than \$200 per month, distributors are authorized to report and pay this tax on a quarterly basis without advance approval of the secretary. The quarterly reporting and payment intervals shall only be for the three-month periods ending March 31, June 30, September 30 and December 31.

(2) After December 31, 1996, any distributor reporting and paying on a quarterly basis whose alternative fuel excise tax liability averages more than \$200 per month during a calendar quarter will be required to report and pay alternative fuel excise tax on a monthly basis. After December 31, 1996, any distributor reporting on a monthly basis but whose alternative fuel tax liability is less than \$200 per month may report and pay the alternative fuel excise tax on a quarterly basis if the distributor obtains the prior approval of the secretary or the secretary's delegate.

(3) This regulation is retroactively applicable to tax periods beginning on or after January 1, 1996.

E. Quarterly reporting - Withholding by federal agencies: Agencies of the federal government responsible for withholding and paying over state taxes pursuant to federal law, the Withholding Tax Act or any voluntary agreement between the agency and federal employees or retired federal employees may report and pay on a quarterly basis, regardless of the dollar limitation set in Section 7-1-15 NMSA 1978 because of the provisions of the Constitution of the United States.

[3.1.4.11 NMAC - Rp, 3.1.4.11 NMAC, 7/7/2021]

3.1.4.12 EXTENSIONS:

A. Good cause for extensions:

(1) "Good cause" for which the secretary or secretary's delegate may grant extensions is construed strictly. Such extensions for no more than a total of 12 months will be granted only in situations in which the taxpayer shows a good faith effort to comply with the statute.

(2) Example 1: If the taxpayer operates a multistate business and the filing of returns for New Mexico taxes at the statutory due date would cause the taxpayer unreasonable bookwork and recordkeeping, an extension will be given favorable consideration by the secretary or secretary's delegate.

(3) Example 2: If the taxpayer is temporarily disabled because of injury or prolonged illness and the taxpayer can show that the taxpayer is unable to procure the services of a person to complete the taxpayer's return, an extension will be given favorable consideration.

(4) Example 3: If the conduct of the taxpayer's business has been substantially impaired due to the disability of a principal officer of the taxpayer, physical damage to the taxpayer's business or other similar impairments to the conduct of the taxpayer's business causing the taxpayer an inability to compute taxes before the due date, an extension of time will be given favorable consideration.

(5) Example 4: If the taxpayer's accountant has suddenly died or has become disabled and unable to perform services for the taxpayer and the taxpayer can show that the taxpayer is unable either to complete the return or to procure the services of a person to complete the return before the due date, an extension will be given favorable consideration.

(6) Example 5: If the taxpayer is awaiting the outcome of a court or administrative proceeding or the action of the internal revenue service on a federal tax claim, an extension will be given favorable consideration provided that the extension does not contravene the time limits established by this statute or other New Mexico or federal statute.

B. Procedure for obtaining extensions - Period of extension:

(1) The procedures in Subsection B of 3.1.4.12 NMAC apply only to extensions which the applicant must request; these procedures do not apply to automatic extensions under Subsection E of 3.1.4.12 NMAC.

(2) Any taxpayer may request an extension of time in which to file a tax return. Such a request must be in writing and must be received by the department on or before the date that the tax is due. The application for extension must clearly set forth:

(a) the tax or tax return to which the extension, if granted, will apply;

- (b) a clear statement of the reasons for the requested extension; and
 - (c) the signature of the taxpayer or the taxpayer's authorized representative.
- (3) The extension will not be granted unless a reason satisfactory to the secretary or secretary's delegate appears in the request.
- (4) An approved extension will ordinarily be granted for a period of 30 days. A request for longer extensions must state the reason why the 30 days is insufficient. Additional 30-day extensions or a longer extension may be granted by the secretary or secretary's delegate for up to a maximum aggregate extension of 12 months.
- (5) Example 1: P is in the business of preparing tax returns. P realizes that, because of the great volume of business, P will be unable to complete all of P's customers' tax returns before the due date. P submits to the secretary a request for an extension of time on behalf of each customer whose return P is unable to complete. The request will be denied. It is irrelevant to consider whether or not P's request states a good cause because an extension will not be granted unless the taxpayer's personal necessity is the basis of the request. In this case, each of the taxpayers must request an extension and give "good cause" for this privilege.
- (6) Example 2: On April 20, 20XX, T is granted a 30-day extension for payment of March, 20XX, taxes due April 25, 20XX. On May 20, 20XX, T, showing good cause, requests a further extension of the March taxes for 12 months. A 12-month extension will not be granted because the payment or filing date for any tax liability may not be extended for more than 12 months after the date on which the taxes were due and no series of extensions exceeding 12 months when aggregated will be granted to any taxpayer. The maximum extension that could be granted to T is until April 25 of the year following 20XX.

C. Extensions granted when no liability has arisen:

- (1) An extension may be granted even though the tax liability has not yet arisen. The following examples illustrate the application of Subsection E of Section 7-1-13 NMSA 1978.
- (2) Example 1: B's business is destroyed by flood on June 1, 20XX. B, a cash-basis taxpayer, is expecting to receive payment in July for items sold in May. In June B requests a six-month extension for those taxes for which B will be liable in July and which will become due August 25, 20XX. Upon a showing of good cause, the request may be granted notwithstanding that the liability for the tax has not yet arisen.
- (3) Example 2: Under the same facts as in Example 1, in January of the following year, B, showing good cause, requests a further extension of the July, 20XX taxes for a period of nine months to September 25 of the year following 20XX. The nine-month extension will not be granted because the reporting period for any tax liability may not be extended for an aggregate period of more than 12 months after the date the taxes were due. The maximum extension which could have been granted was until August 25 of the year following 20XX.

D. Automatic extension for report of Federal Form 990-T Income: A taxpayer who is required to file a New Mexico corporate income and franchise tax return to report taxable income from unrelated activities included in a federal Form 990-T is hereby granted an automatic extension to the 15th day of the fifth month following the close of the taxable year to file a return reporting that income. Interest will accrue during the period of the automatic extension.

E. Automatic Federal income tax extensions - General:

- (1) An automatic extension of time to file a federal income tax return as provided in the Internal Revenue Code shall be considered to be an approved federal extension of time and shall be sufficient to extend the time for filing the New Mexico income tax return. If it is necessary to submit a form to the internal revenue service to claim an automatic extension for filing the federal income tax return, then a copy of the federal form claiming the automatic extension for federal tax purposes shall be attached to the taxpayer's New Mexico income tax return and shall serve as the basis for extending the time for filing the New Mexico return to the date of filing the federal return under the automatic extension provided by the Internal Revenue Code. If it is not necessary to submit a form to the internal revenue service to claim an automatic extension for filing the federal income tax return, then the due date for filing the New Mexico income tax return shall be extended automatically to the same date as the extension for the federal return unless the federal extended date is more than six months from the original due date, in which case the extended due date for the New Mexico return shall be six months after the original due date.
- (2) If the taxpayer desires additional time beyond the automatic extension for filing the New Mexico income tax return, a written request for the additional time must be made by the taxpayer prior to the expiration of the extended federal date. If it is necessary to submit a form to the internal revenue service to claim an automatic extension for filing the federal return, then a copy of the federal form requesting the automatic extension for filing the federal return must accompany the taxpayer's request for additional time to file the New Mexico income tax return beyond the extended federal date. The total combined extension for filing the New Mexico return

shall not exceed 12 months beyond the actual due date for that return.

F. Invalidation of Federal extension: If an extension of time to file a federal income tax return is invalidated for any reason for federal income tax purposes, it is also invalidated for New Mexico income tax purposes.

G. Failure to file, pay or protest by extended due date:

(1) The term “extended due date” means:

(a) for income tax returns, the latest date to which the due date for filing the New Mexico income tax return has been extended by either an extension granted by the internal revenue service with respect to the taxpayer's federal income tax return or by an extension granted by the department; and

(b) for all other tax returns, the latest date to which the due date for filing the tax return has been extended by the department.

(2) A taxpayer becomes a delinquent taxpayer if the taxpayer fails by the extended due date either to file the required return and, if a tax is due, to pay the tax due or to protest in accordance with Section 7-1-24 NMSA 1978 the payment or filing requirement.

H. Automatic extension for certain information returns: The due date for Form 1099-MISC or *pro forma* 1099-MISC information returns that are required to be electronically filed pursuant to 3.3.5.19 NMAC is automatically extended to the first day of April of the year following the year for which the statement is made. This extended due date conforms to the federal due date for electronic filings of Form 1099-MISC. [3.1.4.12 NMAC - Rp, 3.1.4.12 NMAC, 7/7/2021]

3.1.4.13 REPORTING ACCORDING TO BUSINESS LOCATION (Applicable to periods beginning July 1, 2021):

A. Definitions: As used in 3.1.4.13 NMAC, these terms have the following definitions:

(1) **"Gross receipts."** Under Section 7-1-14 NMSA 1978, “gross receipts” is defined as that term is used in the Gross Receipts and Compensating Tax Act, the Leased Vehicle Gross Receipts Tax Act, or the Interstate Telecommunications Gross Receipts Tax Act, as applicable. As used in 3.1.4.13 NMAC, the term “gross receipts from” or similar terms indicates that under the applicable tax acts, the gross receipts would be treated as derived from a particular source or characterized as relating to a particular activity such as the lease or property or the sale of services.

(2) **"In-person service."** Under Section 7-1-14 NMSA 1978 “professional service,” as defined, “does not include an in-person service.” The term “in-person service” means a service physically provided in person by the service provider, where the customer or the customer's real or tangible personal property upon which the service is performed is in the same location as the service provider at the time the service is performed. If the service is not generally provided, or does not generally need to be provided, physically in the presence of or upon the customer or upon the customer’s property, it is not an “in-person service” simply because it may be or sometimes is performed in the presence of the customer or at the location of the customer’s property.

(a) Examples of services that will generally be treated as in-person services include, but are not limited to:

(i) Services provided by healthcare workers that are generally performed or required to be performed on or in the presence of the patient.

(ii) Mental health services, unless the provider generally provides the particular service either only in-person, or with limited exceptions.

(iii) Services provided by athletic trainers or physical therapists for clients.

(iv) Services provided by barbers and cosmetologists.

(v) Home healthcare services.

(b) Examples of services that will generally not be treated as in-person services include, but are not limited to:

(i) Architectural and engineering services. Note, however, that when performed as part of or billed to a construction project, these services are considered “construction-related services” rather than professional services pursuant to Subsection C of Section 7-9-3.4 NMSA 1978, and the reporting location for gross receipts from these services is the construction site per Paragraph (2) of Subsection F of Section 7-1-14 NMSA 1978.

(ii) Legal services.

(iii) Accounting, auditing, and tax preparation services.

(iv) Real estate appraisal services.

(3) **"Professional service."** The term “professional service” as defined in Section 7-1-14

NMSA 1978 means a service, other than an in-person service or construction-related service, that requires either an advanced degree from an accredited post-secondary educational institution or a license from the state to perform. As provided in Paragraph (2) of Subsection A of 3.1.4.13 NMAC, just because a service is provided in person by the service provider does not make it an “in-person” service if the service is not generally provided, or does not generally need to be provided, physically in the presence of or upon the customer or upon the customer’s property.

(4) “Reporting location.” 3.1.4.13 NMAC uses the term “reporting location” in place of the term “business location,” the term that is used in Sections 7-1-3 and 7-1-14 NMSA 1978 as well as local option taxes to refer to the location code designated by the department and required to be used to report the gross receipts and related deductions subject to gross receipts tax or the value of items whose taxable use is subject to the compensating tax. Like the term “business location,” the term “reporting location” refers to the location code and applicable tax rate for reporting gross receipts tax and compensating tax, as designated by the department.

(5) “Seller’s location” or “place of performance.” This regulation may use the terms “seller’s location” or “place of performance” or similar terms to refer to the general facts that may be essential for determining the reporting location. In general, a seller’s location may include a particular building, including a store or office, or other physical location maintained or operated by or for the seller, or used by the seller, where some designated activity giving rise to gross receipts takes place. If the seller uses no such physical location in New Mexico, and if the seller’s domicile is not in New Mexico, then the “seller’s location” as used in this regulation is deemed to be outside the state.

B. Reporting according to reporting location - General:

(1) Reporting location and rate of tax for gross receipts and taxable use. Section 7-1-14 NMSA 1978, amended effective July 1, 2021, determines the proper reporting jurisdiction and rate of tax that apply under the Gross Receipts and Compensating Tax Act, Interstate Telecommunications Gross Receipts Tax Act, Leased Vehicle Gross Receipts Tax Act and any act authorizing the imposition of a local option gross receipts or compensating tax.

(2) Effect of the substantive tax provisions on the rules for reporting location. Unless otherwise indicated, the provisions of 3.1.4.13 NMAC should be read consistently with the provisions of the Gross receipts and Compensating Tax Act, Interstate Telecommunications Gross Receipts Tax Act, Leased Vehicle Gross Receipts Tax Act, as appropriate, and any acts authorizing imposition of local option gross receipts or compensating tax, and any regulations issued under these acts. No provisions of 3.1.4.13 NMAC should be read as subjecting to tax items that are not subject to tax, or excluding from tax items that are subject to tax, under these substantive tax provisions.

(3) State reporting location and application of the state rate. In some cases, taxable gross receipts or the value of items whose taxable use is subject to the compensating tax may not be required to be reported to a particular reporting location in this state. In those cases, the reporting location is the state reporting location and only the state tax rate will apply.

(a) Example: Gross receipts from a professional service performed outside New Mexico, the product of which is delivered to a New Mexico customer for initial use in the state, are taxable in the state. Because Paragraph (9) of Subsection C of 3.1.4.13 NMAC provides that the reporting location of gross receipts from professional services is the location where the services are performed or sold, the gross receipts would be reported to the reporting location for the state and taxed at the state rate.

(b) Example: A nonresident individual with no regular place of business in the state is hired by an out-of-state seller to represent the seller. In order to perform this service, the individual obtains tangible personal property in a tax-free transaction outside the state, which would have been subject to the gross receipts tax had it been acquired inside the state. After acquiring the property, the individual brings that property into New Mexico, using the property in the service performed at various locations throughout the state. The compensating tax on the value of this property would be reported to the reporting location for the state and taxed at the state rate. See Item (ii) of Subparagraph (e) of Paragraph (5) of Subsection C, and Subsection E of 3.1.4.13 NMAC.

(c) Example: Under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, a seller that does not have access to sufficient information for reporting sales of tangible personal property to the location where the customer receives that property may report to the gross receipts from those sales to the seller’s location. So an out-of-state seller may have certain sales that would be reported to the reporting location for the state and taxed at the state rate. As explained under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, however, sellers who have access to reliable information from which they can determine an estimate of receipts by reporting location must use that information.

(4) Gross receipts tax not required to be charged or collected. Nothing in Section 7-1-14

NMSA 1978 or 3.1.4.13 NMAC requires the person that engages in activity or transactions resulting in taxable gross receipts to charge or collect the tax from purchasers. The gross receipts tax is a tax on the seller and under Section 7-9-6 NMSA 1978, the taxpayer need only affirmatively state on the billing to its purchaser whether gross receipts tax is included in the amount billed. Furthermore, 3.2.6.8 NMAC provides that the amount of gross receipts tax owed may be “backed out” of the total charged to the customer.

(5) Gross receipts of commissioned sales agents versus consignors/consignees and marketplace sellers/providers.

(a) Commissioned sales agents. Under Subparagraph (a) of Paragraph (2) of Subsection A of Section 7-9-3.5 NMSA 1978 and applicable regulations, commissioned sales agents report only their commission or fee when the property or services which they promote for sale are those of a third party. Under Section 7-1-14 NMSA 1978, the commission is gross receipts from the performance of a service by the sales agent and the reporting location of those receipts is determined in accordance with Paragraph (9) of Subsection C of 3.1.4.13 NMAC.

(b) Gross receipts of consignors/consignees and marketplace sellers/providers. Under Subparagraphs (b) and (g) of Paragraph (2) of Subsection A of Section 7-9-3.5 NMSA 1978 and applicable regulations, the gross receipts and related deductions for sales on consignment and for sales facilitated by marketplace providers are generally defined as all amounts paid or collected from the sale, lease, or licensing of property or services even where a third party consignor or marketplace seller also has gross receipts from selling the related property or service provided. The reporting location of gross receipts and related deductions of the consignor/consignee or the marketplace seller/provider is determined under 3.1.4.13 NMAC as follows:

(i) By looking to the nature of the transaction or activity from which the gross receipts are derived, as though the consignor and consignee, or the marketplace seller and marketplace provider, is each the seller or provider of that transaction or activity to the customer; and, except as provided in Items (ii) and (iii) of this Subparagraph (b), imputing to both parties information known by either party that may be relevant in properly determining the reporting location of the gross receipts.

(ii) In a case where the consignor or marketplace seller may properly claim a deduction under the Gross Receipts and Compensating Tax Act and applicable regulations on account of the transaction with the consignee or marketplace provider, respectively, the consignor or marketplace seller may report these deductions and related gross receipts to the reporting location based on information available to them, without imputing of information known by the consignee or marketplace provider.

(iii) In a case where the marketplace provider, in determining the reporting location of gross receipts reasonably relies on erroneous information provided by the marketplace seller as provided in Subsection C of Section 7-9-5 NMSA 1978, the correct information that may be known to the marketplace seller will not be imputed to the marketplace provider.

(c) Examples:

(i) Commissioned sales agent X works for business y to sell tangible personal property owned by y to customers in New Mexico. Agent X receives a commission based on the amount of the sale made on behalf of business Y to a customer. Business Y will have gross receipts from selling tangible personal property. The reporting location of Y’s gross receipts from the sale of the property is the location of Y’s customer, determined under the provisions of Paragraph (5) of Subsection C of 3.1.4.13 NMAC. Agent X is performing a service sourced under Subparagraph (e) of Paragraph (9) of Subsection C of 3.1.4.13 NMAC. The product of the service performed by agent X is the completion of the order and sale to a customer of Y’s products. Therefore, the reporting location of agent X’s gross receipts from commissions paid by Y for services performed is also the location of Y’s customer and this location should be determined consistent with the provisions of Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(ii) Same facts as Item (i) of Subparagraph (c) of Paragraph (5) of Subsection B of 3.1.4.13 NMAC, except that, rather than a commissioned sales agent, X is a consignee and Y is a consignor. Under the consignment arrangement, X receives receipts from customers for Y’s tangible personal property and agrees to pay Y a portion of those receipts. Under the Gross Receipts and Compensating Tax Act and applicable regulations, both X and Y have gross receipts from selling tangible personal property. The reporting location for the gross receipts and any related deductions of both X and Y is the location of the customer determined under the provisions of Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(iii) Same facts as Item (ii) of Subparagraph (c) of Paragraph (5) of Subsection B of 3.1.4.13 NMAC, except that rather than the consignee/consignor relationship described, X is a marketplace provider and y is a marketplace seller. Under the Gross Receipts and Compensating Tax Act and applicable regulations, both X and Y have gross receipts from selling or facilitating the sale of tangible personal

property. The reporting location for the gross receipts and any related deductions of both X and Y is the location of the customer determined under the provisions of Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(iv) Same facts generally as Items (ii) and (iii) of Subparagraph (c) of Paragraph (5) of Subsection B of 3.1.4.13 NMAC. In addition, while the consignee or marketplace provider offers the tangible personal property for sale to the customer and collects the payment, it is the consignor or marketplace seller that ships the tangible personal property to the customer. Information as to the customer's location is imputed to the consignee or marketplace provider when determining reporting location of its gross receipts, but the marketplace provider is also allowed to reasonably rely on information provided by the marketplace seller, even if erroneous, in determining the reporting location.

(v) Same facts generally as Items (ii) and (iii) of Subparagraph (c) of Paragraph (5) of Subsection B of 3.1.4.13 NMAC. In addition, the consignee or marketplace provider offers the tangible personal property for sale to the customer, collects the payment, and also ships the tangible personal property to the customer. The consignor or marketplace seller may report gross receipts for which a proper deduction can be taken on account of the sale by the consignee or marketplace seller based on information known by the consignor or marketplace seller, without imputing information known by the consignee or marketplace provider.

C. General rules for determining reporting location:

(1) Meaning of certain terms. Unless otherwise defined in Subsection A of 3.1.4.13 NMAC, Section A or otherwise indicated by the context, the terms used in these rules have the same meaning as under the Gross Receipts and Compensating Tax Act.

(2) Effect of the reporting location. A person that has gross receipts and a person making taxable use of property or services in New Mexico subject to the compensating tax shall report the gross receipts or compensating tax to the proper reporting location as provided in this section. The gross receipts and compensating taxes imposed by the Gross Receipts and Compensating Tax Act may include both a state rate of tax as well as applicable local option rates authorized by state law and imposed by county and municipal governments. The reporting location, as that term is used in 3.1.4.13 NMAC, determines the local jurisdiction to which the tax will be reported as well as the gross receipts or compensating tax rate that applies.

(3) Reporting to multiple locations. Any person that must report gross receipts or taxable use of items to more than one reporting location under one identification number is required to report gross receipts, deductions, and the value of items used for each location on the tax return and in accordance with the reporting location codes as designated by the Secretary under Section 7-1-14 NMSA 1978 and 3.1.4.13 NMAC.

(4) Gross receipts from transactions involving real property. If the gross receipts are from the sale, lease or granting of a license to use real property located in New Mexico, then the reporting location for those gross receipts and any related deductions is the location of the real property.

(5) Gross receipts from sale or license of tangible personal property and from certain licenses and other services. If the gross receipts are from the sale or license of tangible personal property, or if the receipts are from activity described in Subparagraph (e) of Paragraph (9) or Paragraph (6) of Subsection C, of 3.1.4.13 NMAC the reporting location for the gross receipts and related deductions is determined as follows:

(a) If the gross receipts are from the property or the product of a service that is delivered by the seller and received by the purchaser from the seller at the seller's location, then the reporting location of the gross receipts and any related deductions, is the seller's location.

(b) If the gross receipts are from property or the product of a service that is not delivered by the seller and received by the purchaser at the seller's location as described in Subparagraph (a) of Paragraph (5) of Section C of 3.1.4.13 NMAC, the reporting location is the location indicated by instructions for delivery to the purchaser, or the purchaser's donee, when known to the seller.

(c) If Subparagraphs (a) and (b) do not apply, the reporting location is the location indicated by an address for the purchaser available from the business records of the seller that are maintained in the ordinary course of business; provided that use of the address does not constitute bad faith.

(d) If Subparagraphs (a) through (c) do not apply, the reporting location is the location for the purchaser obtained during consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available; provided that use of this address does not constitute bad faith.

(e) If Subparagraphs (a) through (d) do not apply, including a circumstance in which the seller is without sufficient information to apply those provisions, then the reporting location for the gross receipts and related deductions is the location from which the property or product of the service was shipped or transmitted to the purchaser.

(i) Except as provided in provision in Item (ii) of Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC below, the seller is not considered to be without sufficient

information to apply provisions of Subparagraphs (a) through (d) if it obtains or has access to sufficient information at the time of the sale, or subsequently, but simply fails to maintain that information in its records; or it has access to sufficient information from other reliable sources to make a reasonable estimate of the reporting location under Subsection F of this regulation at the time the gross receipts are required to be reported. Examples of information from other reliable sources includes population or market-penetration information that may be used to develop a reasonable estimate of the location of consumers of certain products.

(ii) If gross receipts are derived from a single sale or transaction where the property or the product of a service provided is determined to be delivered simultaneously at multiple locations throughout the state, the seller is deemed not to have sufficient information to determine the reporting location under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(iii) Example: Company X provides an advertising service to Customer Y that will be distributed or displayed to persons in New Mexico through general access to particular media. The product of the advertising service is delivered to the location of the person accessing or viewing the advertising. Under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, the reporting location of the gross receipts and related deductions from this service is the location of Company X as determined by the location from which the advertising service was primarily provided.

(iv) Example: Company x provides customer Y with a license to use digital goods by customer Y at various locations throughout the state. The license is delivered to customer Y throughout the state. Under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, the reporting location of the gross receipts and related deductions of company X from providing the license to use digital goods is the location of company X as determined by the location from which the digital goods were primarily provided. A person may report different gross receipts and deductions to different reporting locations under the rules of this Paragraph (5) of Subsection C of 3.1.4.13 NMAC, as applicable.

(v) Example: Company X provides a digital advertising service to customer Y that can be viewed in New Mexico, and is intended to be viewed only in New Mexico, through access to company X's digital platform, as that term is defined in Subsection D of 3.2.213.13 NMAC. The product of the digital advertising service is delivered to the locations of all persons in New Mexico viewing or accessing the advertising. Under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, the reporting location of the gross receipts and related deductions from this service is the location of company X as being the location from which the product of the digital advertising service was transmitted to the purchaser.

(6) If the gross receipts are from the sale of a license of digital goods, or any other sale of a license not otherwise specifically addressed in these regulations, the reporting location of the gross receipts and related deductions is determined consistent with Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(7) If the gross receipts are from the lease of tangible personal property, including vehicles, other transportation equipment, and other mobile tangible personal property, then the reporting location for the gross receipts any related deductions is the location of primary use of the property, as indicated by the address for the property provided by the lessee that is available to the lessor from the lessor's records maintained in the ordinary course of business; provided that use of this address does not constitute bad faith. The primary reporting location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(8) If the gross receipts are from the sale, lease or license of franchises, then the reporting location for the gross receipts and any related deductions is where the franchise is used. The location where the franchise is used may be determined from the franchise agreement or from other facts and circumstances related to the exercise of the franchise.

(9) The reporting location of gross receipts and related deductions from the sale of services is determined as follows:

(a) If the gross receipts are from professional services, whether performed in New Mexico or performed outside the state where the product of the service is initially used in New Mexico, the reporting location of the gross receipts and related deductions is the location of the performance of the service. Gross receipts from a service performed outside the state that are taxable in New Mexico because the buyer makes initial use of the product of the service in this state are reported to the state reporting location and taxed at the state rate.

(b) If the gross receipts are from construction services and construction-related services, as those terms are defined under the Gross Receipts and Compensating Tax Act and applicable regulations, performed for a construction project in New Mexico, the reporting location of the gross receipts and related deductions is the location of the construction site.

(c) If the gross receipts are from the service of selling of real estate located in New Mexico, the reporting location of the gross receipts and related deductions is the location of the real estate.

(d) If the gross receipts are from transportation of persons or property in, into or from New Mexico, the reporting location of the gross receipts and related deductions is the location of where the person or property enters the vehicle.

(e) If the gross receipts are from services other than those described in Subparagraphs (a) through (d) of Paragraph (9) of Section C of 3.1.4.13 NMAC, including in-person services, the reporting location of those gross receipts and related deductions is the location where the product of the service is delivered. In general, the location of delivery of the product of the service is determined under rules consistent with Paragraph (5) of Subsection C of 3.1.4.13 NMAC. The “product of the service” is determined under applicable provisions of the Gross Receipts and Compensating Tax Act and related regulations.

(i) Advertising services. An advertising service involves an agreement with a client to communicate or to place advertisements before an intended audience, on behalf of the client. The product of an advertising service is the ad which is capable of being heard or viewed by the intended audience. The reporting location for gross receipts from an advertising service is determined under Paragraph (5) of Subsection C of 3.1.4.13 NMAC based on delivery of the product of the service, which is the location where the ad may be heard or seen by the intended audience.

(ii) Services ancillary to advertising. Services ancillary to advertising include design of the advertisement, creation of data processing or information technology to capture of customer related information, etc., which the seller may treat as a separate service under Section D of 3.1.4.13 NMAC and which are provided to a client. The reporting location of gross receipts from a service ancillary to advertising under Paragraph (5) of Subsection C of 3.1.4.13 NMAC depends on the product of the service and where it is delivered, but will generally be the location of delivery of that product of the service to the client.

(f) The reporting location of gross receipts from in-person services is the location of the performance of the service, which is also the location of the customer or the customer’s property on which the service is performed.

D. Mixed transactions: Where a single transaction gives rise to gross receipts that would have different reporting locations under Paragraphs (4) through (9) of Subsection C of 3.1.4.13 NMAC if they were provided to the customer in the form of separate transactions, the reporting location for those gross receipts shall be determined as follows:

(1) If the billing to the customer does not break out the charges for the separate items, then the reporting location will be determined based on how the gross receipts for the transaction would be treated under the Gross Receipts and Compensating Tax Act and applicable regulations and applying Paragraphs (4) through (9) of Subsection C of 3.1.4.13 NMAC.

(2) If the billing to the customer breaks out the separate charges for the items and one or more items would be treated as incidental charge or an element of the sales price of other items under the Gross Receipts and Compensating Tax Act and applicable regulations, then the reporting location of those incidental receipts will be the reporting location as determined for the gross receipts from the remaining related item or items.

(3) If the billing to the customer breaks out the separate charges for the items and one or more items would not be treated as an incidental charge or an element of the sales price of other items under the Gross Receipts and Compensating Tax Act, and if the reporting location for the gross receipts from two or more such items would be different under Paragraphs (4) through (9) of Subsection C of 3.1.4.13 NMAC, then the gross receipts and related deductions reported to each reporting location will be determined as follows:

(a) the separate gross receipts for each item will be reported to the separate reporting locations, based on the separate charges in the bill to the customer; or

(b) all of the gross receipts may be reported to the single reporting location properly determined for the item or items from which the majority of the gross receipts result as properly determined under Subsection C of 3.1.4.13 NMAC.

(4) Example: Taxpayer sells a professional service along with tangible personal property delivered to the buyer. The billing to the buyer includes a separate charge of \$100 for the service, \$100 for the tangible personal property, and \$5 for shipping. Assume that under the Gross Receipts and Compensating Tax Act and applicable regulations, the taxpayer would be treated as having \$100 of gross receipts from the sale of a service and \$105 (the charge for the property and the incidental charge for shipping) from the sale of tangible personal property. Assume also that the reporting location of the gross receipts from the sale of the service under 3.1.4.13 NMAC is the location where the service is performed but the reporting location for the gross receipts from the sale of the tangible personal property is the location of the delivery to the customer. The taxpayer may report the gross

receipts from the service to the reporting location as properly determined under Subparagraph (a) of Paragraph (9) of Subsection C of 3.1.4.13 NMAC and the gross receipts from the sale of property to the reporting location as properly determined under Subparagraphs (b) through (d) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC. Alternatively, the taxpayer may report all of the gross receipts to the reporting location as determined for the sale of the property.

E. Reporting location for compensating tax:

(1) Except as provided in Paragraphs (2) and (3) of Subsection E of 3.1.4.13 NMAC, the value of an item that is subject to compensating tax under Section 7-9-7 NMSA 1978 is generally reported to the same reporting location to which gross receipts from the transaction in which the item was acquired would have been reported under Subsections C or D of 3.1.4.13 NMAC, had the transaction been subject to gross receipts tax. In applying Subsections C or D to determine the reporting location to report the value of items for compensating tax, the taxpayer should assume that the person providing those items would have had information on the taxpayer's location at the time of the transaction.

(2) In the case of an individual who owes compensating tax for non-business use of items acquired in a transaction with a person that did not have nexus in New Mexico, the reporting location for reporting that compensating tax is the individual's residence or primary place of abode in the state at the time of the transaction.

(3) In the following cases, the reporting location for reporting compensating tax on purchases, other than professional services, is the location of first use in the state:

(a) purchases made by a business that were not subject to the gross receipts tax solely because they were made outside the state, where the later use inside New Mexico is subject to the compensating tax; or

(b) where the taxpayer has information that can show that first use upon which compensating tax is imposed occurred at a different time and place than would be determined under Paragraphs (1) or (2) of Subsection G of 3.1.4.13 NMAC.

(4) Examples:

(a) A business acquires tangible personal property in a transaction with a person that lacks nexus in New Mexico. The business uses the property in a manner that would have rendered the transaction subject to the gross receipts tax, had the person had nexus. The reporting location for purposes of reporting the compensating tax is the reporting location to which the gross receipts would have been reported by the person if the person had had nexus and assuming, for this purpose, that the person would have had information on the location of the business that acquired the property.

(b) A business with offices both inside and outside New Mexico purchases tangible personal property at its office outside the state and later ships that property to its New Mexico office for use. The use of the property in New Mexico was such that the property would have been subject to the gross receipts tax had it been acquired in New Mexico. The reporting location for purposes of reporting the compensating tax is the office in New Mexico at which the property is first used.

(c) A business purchases tangible personal property for resale from a New Mexico seller and takes delivery of that property at the seller's place of business in Location X, using a nontaxable transaction certificate to purchase the property tax-free. Subsequent to the purchase, the business uses the property, rather than reselling it, at its own place of business in location Y. The reporting location for purposes of reporting the compensating tax is location Y.

(d) A business with offices both inside and outside New Mexico obtains a license to use digital goods which will be used at its offices inside and outside the state. In the transaction with the provider of the license, the provider knows only the purchaser's out-of-state office and conducts the transaction with that office. The reporting location for the portion of the value of the license used in New Mexico is the location of the office in New Mexico.

(e) A business purchases a service from an out-of-state person who lacks nexus in New Mexico. The product of the service is initially used in New Mexico. The reporting location of the value of the service for purpose of compensating tax is the location of the initial use by the business in New Mexico.

(f) A nonresident individual with a place of abode in New Mexico purchases tangible personal property for use in New Mexico from a seller who lacks nexus in New Mexico. The transaction would not otherwise be exempt or deductible from gross receipts tax had it occurred in New Mexico. The reporting location of the compensating tax owed by the individual is that individual's place of abode.

F. Use of reasonable estimates:

(1) Use of reasonable estimates allowed. Where a person subject to the gross receipts or

compensating tax maintains records or has access to other reliable information that would allow that person to determine or estimate the reporting location for those gross receipts or the compensating tax under the rules of Subsections C and D of 3.1.4.13 NMAC, those records or other information may be used to establish reasonable estimates of the amounts reported to be reported by reporting location. Provided that the taxpayer's reporting of gross receipts or compensating tax otherwise complies with provisions of the Gross Receipts and Compensating Tax Act and applicable regulations, the department will not assess the taxpayer for additional tax if the taxpayer uses reasonable estimates, applied consistently and in good faith to determine the reporting location, so long as there is no obvious distortion. Obvious distortion shall be presumed whenever the method used to estimate the reporting location treats similar transactions inconsistently. Any method which intentionally credits sales to a location with a lower combined tax rate primarily for the purpose of reducing the taxpayer's total tax liability shall be presumed to contain obvious distortion.

(2) Use of reasonable estimates required. Where a person has gross receipts that would generally be sourced under the rules of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, and where the person has records or information that would allow a reasonable estimate of the reporting location of those receipts applying Subparagraphs (a) through (d) of Paragraph (5) of Section C of 3.1.4.13 NMAC, the taxpayer shall use a reasonable estimate before applying Subparagraph (e) of Paragraph (5) of Section C of 3.1.4.13 NMAC.

G. Reporting location - Receipts subject to the interstate telecommunications gross receipts tax: Notwithstanding anything in Section 7-1-14 NMSA 1978, or provisions of 3.1.4.13 NMAC, the reporting location for gross receipts subject to the interstate telecommunications gross receipts tax is the state location and rate. The following telecommunications services are subject to the tax:

(1) interstate telecommunications services (other than mobile telecommunications services) that originate or terminate in New Mexico and are charged to a telephone number or account in New Mexico; and

(2) mobile telecommunications services that originate in one state and terminate in any location outside it, to a customer with a place of primary use in New Mexico as defined under Subsection E of Section 7-9C-2 NMSA 1978.

H. Transactions on tribal territory: A person selling or delivering goods or performing services on the tribal land of a tribe or pueblo that has entered into a gross receipts tax cooperative agreement with the state of New Mexico pursuant to Section 9-11-12.1 NMSA 1978 is required to report those receipts based on the tribal location of the sale or delivery of the goods or performance of the service.
[3.1.4.13 NMAC - Rp, 3.1.4.13 NMAC, 7/7/2021; A, 12/19/2023]

3.1.4.14 PRESCRIBED FORMAT OF NON-PAPER RETURNS MUST BE FOLLOWED:

Whenever the secretary permits or requires returns to be filed electronically or in electromagnetic media, such as tapes or disks, the return information must be in the format prescribed by the department. Failure to follow the prescribed format may result in non-acceptance of an attempted filing. If a return is not accepted because of formatting errors and re-submission of the return occurs after the due date, the return has not been timely filed.
[3.1.4.14 NMAC - Rp, 3.1.4.14 NMAC, 7/7/2021]

3.1.4.15 REPORTING PERIOD - PERMISSION REQUIRED FOR USE OF NON-STANDARD

“MONTH”: For purposes of reporting taxes due on a monthly basis, the reporting period is a calendar month unless the taxpayer has obtained the secretary's permission to use another period, such as reporting based on standardized calendar quarters of 4 weeks, 4 weeks and 5 weeks or thirteen months of 4 weeks. Because of complications introduced by deviations from the calendar month reporting, the secretary may require substantial justification before approving any significant departure from the calendar month reporting cycle.
[3.1.4.15 NMAC - Rp, 3.1.4.15 NMAC, 7/7/2021]

3.1.4.16 PRIVATE DELIVERY SERVICE POSTMARKS: Delivery to a private delivery service designated by the secretary of the treasury under 26 USCA 7502 during the time the designation is in effect will be considered a timely mailing for purposes of the Tax Administration Act if the date recorded or marked by the private delivery service is on or before the date by which mailing is required. Section 3.1.4.16 NMAC applies to deliveries to a designated private delivery service after June 30, 1999.
[3.1.4.16 NMAC - Rp, 3.1.4.16 NMAC, 7/7/2021]

3.1.4.17 APPROVED ELECTRONIC MEDIA: Department approved electronic media includes an electronic transmission of the personal income tax return data submitted in an approved format using a computer language designated by the department.

[3.1.4.17 NMAC - Rp, 3.1.4.17 NMAC, 7/7/2021]

3.1.4.18 ELECTRONIC FILING:

- A.** This regulation is adopted pursuant to the secretary's authority in Section 9-11-6.4 NMSA 1978.
- B.** The secretary or secretary delegate will publish on the department's public website a full list of all tax programs that have an electronic filing or payment mandate. This website will also include information on how to obtain an electronic filing or payment exception or waiver.
- C.** Once a taxpayer is required to file returns or make payments electronically pursuant to this regulation, the taxpayer may not file future returns or make future payments by mail or any method other than electronically unless they receive an exception or waiver. An exception or a waiver may be granted if the taxpayer has shown a good faith attempt to comply with the electronic filing and payment requirements but is unable to do so due to a reason listed in Subsections D or E below. If a taxpayer is granted an exception or, the taxpayer must file a paper return and make a payment by the due date unless an extension pursuant to 3.1.4.12 NMAC has been granted. If a return is not filed and a payment is not made timely, interest will be due, and penalty may be due.
- D.** A taxpayer may request in writing an exception to the requirement of electronic filing or making electronic payments for a year at a time. The request must be on the form prescribed by the department and must be received by the department at least 30 days before the taxpayer's electronic return or payment is due. An exception may be granted for the following reasons:
- (1) if the taxpayer shows a hardship including but not limited to no reasonable access to internet in the taxpayer's community;
 - (2) if the taxpayer does not have reasonable access to a computer or technology required to electronically file;
 - (3) if the taxpayer does not have the knowledge or expertise to file a return electronically;
 - (4) if the taxpayer is unable to utilize technology or the internet for religious reasons.
- E.** A taxpayer may request in writing a waiver to the requirement of electronic filing for a single tax return or for a single payment. The request for a waiver must be on a form prescribed by the department and received by the department on or before the date that the tax return is due. A waiver may be granted for the following reasons:
- (1) if the taxpayer is temporarily disabled because of injury or prolonged illness and the taxpayer can show that the taxpayer is unable to procure the services of a person to complete and file the taxpayer's return electronically or make the necessary payment electronically.
 - (2) if the conduct of the taxpayer's business has been substantially impaired due to the disability of a principal officer of the taxpayer, physical damage to the taxpayer's business or other similar impairments to the conduct of the taxpayer's business causing the taxpayer an inability to electronically file or pay;
 - (3) if the taxpayer's accountant, agent, or employee who routinely electronically files for taxpayer has suddenly died, has become disabled, or sick and is unable to perform services for the taxpayer and the taxpayer can show that the taxpayer is unable either to electronically file the return, electronically pay the tax due or to procure the services of a person to electronically file the return or make the electronic payment before the due date; or
 - (4) if the taxpayer's accountant, agent, or employee who routinely electronically files for taxpayer is no longer employed with the taxpayer and the taxpayer has been unable to gain access to their method of electronically filing and making payment of tax due in time to file electronically before the due date.
- [3.1.4.18 NMAC - Rp, 3.1.4.18 NMAC, 7/7/2021, A, 05/24/2022]

3.1.4.19 [RESERVED]

[3.1.4.19 NMAC - Rp, 3.1.4.19 NMAC, 7/7/2021; Repealed, 05/24/2022]

HISTORY OF 3.1.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: BOR 67-1, Tax Administration Act, 7/19/1967, filed 7/28/1967.

R.D./OGAD Rule No. 1985, Regulations Pertaining to the Tax Administration Act, filed 11/5/1985.

TRD Rule TA-90, Regulations Pertaining to the Tax Administration Act, Sections 7-1-1 to 7-1-82 NMSA 1978, filed 8/15/1990.

History of Repealed Material: 3.1.4 NMAC, Tax Administration - Filing, filed 12/15/2000, Repealed effective 7/7/2021.

Other History:

3 NMAC 1.4, Tax Administration - Filing, filed 6/3/1996.

3.1.4 NMAC, Tax Administration - Filing, filed 12/15/2000.

3.1.4 NMAC, Tax Administration - Filing, filed 12/15/2000 was replaced by 3.1.4 NMAC, Tax Administration - Filing, effective 7/7/2021.