

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 106: EXEMPTION - GROSS RECEIPTS TAX - AGRICULTURAL PRODUCTS

3.2.106.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.
[11/15/1996; 3.2.106.1 NMAC - Rn, 3 NMAC 2.18.1.1, 5/15/2001]

3.2.106.2 SCOPE: This part applies to each person engaging in business in New Mexico and selling or dealing in livestock or agricultural products.
[11/15/1996; 3.2.106.2 NMAC - Rn, 3 NMAC 2.18.1.2, 5/15/2001]

3.2.106.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/1996; 3.2.106.3 NMAC - Rn, 3 NMAC 2.18.1.3, 5/15/2001]

3.2.106.4 DURATION: Permanent.
[11/15/1996; 3.2.106.4 NMAC - Rn, 3 NMAC 2.18.1.4, 5/15/2001]

3.2.106.5 EFFECTIVE DATE: 11/15/1996, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[11/15/1996; 3.2.106.5 NMAC - Rn, 3 NMAC 2.18.1.5 & A, 5/15/2001]

3.2.106.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
[11/15/1996; 3.2.106.6 NMAC - Rn, 3 NMAC 2.18.1.6, 5/15/2001]

3.2.106.7 DEFINITIONS

- A. AGRICULTURAL PRODUCTS:**
- (1)** 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.
 - (2)** Cannabis is not an agricultural product.
- 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.
[12/5/1969, 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, 12/23/92, 11/15/1996; 3.2.106.7 NMAC – Rn, 3 NMAC 2.18.1.7, 5/15/2001; A, 8/15/12; A 11/29/2022]

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.
[3/9/1972, 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; 3.2.106.8 NMAC - Rn, 3 NMAC 2.18.1.8 & A, 5/15/2001]

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, in as much 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.
[3/9/1972, 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; 3.2.106.9 NMAC - Rn, 3 NMAC 2.18.1.9 & A, 5/15/2001]

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.

[3/9/1972, 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; 3.2.106.10 NMAC - Rn, 3 NMAC 2.18.1.10, 5/15/2001]

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.

[3/9/1972, 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; 3.2.106.11 NMAC - Rn, 3 NMAC 2.18.1.11, 5/15/2001]

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.

[12/5/1969, 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; 3.2.106.12 NMAC - Rn, 3 NMAC 2.18.1.12, 5/15/2001]

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, 12/5/1969, 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; 3.2.106.13 NMAC - Rn, 3 NMAC 2.18.1.13 & A, 5/15/2001]

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.

[6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.106.14 NMAC - Rn, 3 NMAC 2.18.1.14, 5/15/2001]

3.2.106.15 CANNABIS: Receipts of a licensed cannabis retailer from the sale of cannabis products, including without limitation cannabis flowers as defined in Section 26-2C-2 NMSA 1978, are subject to the gross receipts tax. The receipts from the sale of cannabis products, including cannabis flowers as defined in Section 26-2C-2 NMSA 1978, are not receipts from the sale of unprocessed agricultural products.

[3.2.106.15 NMAC - N, 11/29/2022]

HISTORY OF 3.2.106 NMAC:

Pre-NMAC History:

BOR 67-2, NM Gross Receipts and Compensating Tax Regulations, September 1967, filed 9/29/1967.

BOR 69-4, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 12-5-69, filed 12/5/1969.

BOR 72-4, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 3/9/1972, filed 3/9/1972.

BOR 74-2, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 12/15/1973, filed 3/20/1974.

BOR 76-1, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 7/26/1976, filed 7/26/1976.

R.D.79-1, Gross Receipts and Compensating Tax Act Regulations, filed 6/18/1979.

R.D. Rule No. 82, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 4/7/1982.

R.D. Rule No. 84, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 5/4/1984.

TRD Rule No. 9-86, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 4/2/1986.

TRD Rule GR-90, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 11/26/1990.

History of Repealed Material: [RESERVED]

NMAC History:

3 NMAC 2.18.1, Exemption - Gross Receipts Tax - Agricultural Products, filed 11/4/1996.

3.2.106 NMAC, Exemption - Gross Receipts Tax - Agricultural Products, filed 4/30/2001.