

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 213: DEDUCTION - GROSS RECEIPTS TAX - TRANSACTION IN INTERSTATE COMMERCE

3.2.213.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[3.2.213.1 NMAC, Rp 3.2.213.1 NMAC, 11/29/2022]

3.2.213.2 SCOPE: This part applies to all persons transmitting messages or conversations by radio, selling radio or television broadcast time, advertising or otherwise engaging in interstate commerce.
[3.2.213.2 NMAC, Rp 3.2.213.2 NMAC, 11/29/2022]

3.2.213.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[3.2.213.3 NMAC, Rp 3.2.213.3 NMAC, 11/29/2022]

3.2.213.4 DURATION: Permanent.
[3.2.213.4 NMAC, Rp 3.2.213.4 NMAC, 11/29/2022]

3.2.213.5 EFFECTIVE DATE: November 29, 2022, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[3.2.213.5 NMAC, Rp 3.2.213.5 NMAC, 11/29/2022]

3.2.213.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
[3.2.213.6 NMAC, Rp 3.2.213.6 NMAC, 11/29/2022]

3.2.213.7 DEFINITIONS:

A. “Regional” defined: As used in Section 7-9-55 NMSA 1978, a “regional” seller or advertiser is a person who sells from locations in more than one state or who purchases advertising services intended to be heard or viewed in more than one state. A person is deemed to sell from locations in more than one state if that person either maintains a physical retail establishment in more than one state, or if that person regularly stores, warehouses, or otherwise maintains stocks of tangible personal property for the fulfillment of purchases in more than one state. A person does not advertise in more than one state if the advertisement is intended to be viewed only in one state, but some incidental views occur outside of that state.

B. “Seller or advertiser” defined: As used in Section 7-9-55 NMSA 1978, “seller or advertiser” means a person whose identity, business, service, product or products are the primary subject of the advertising message.

C. “Principal place of business” defined: As used in Section 7-9-55 NMSA 1978, “principal place of business” means the place in which a business:

- (1) earns the largest percentage of its revenues; and
- (2) owns the largest percentage of its capital assets; and
- (3) employs the largest percentage of its full-time equivalent employees. A business can

have only one principal place of business.

[3.2.213.7 NMAC, Rp 3.2.213.7 NMAC, 11/29/2022]

3.2.213.8 ADVERTISING RECEIPTS OF PUBLICATION FROM OUT-OF-STATE CUSTOMERS:

Receipts of a newspaper or magazine which is published within New Mexico and circulated to subscribers within and without New Mexico from the sale of advertising space to advertisers within and without New Mexico are subject to the gross receipts tax. The gross receipts tax levied on advertising receipts does not impose an unconstitutional burden on interstate commerce.

[3.2.213.8 NMAC, Rp 3.2.213.8 NMAC, 11/29/2022]

3.2.213.9 BROADCASTING AND RELATED ADVERTISING:

A. Microwave carriers: The receipts of a microwave carrier from relaying television signals for another party for a fee from a point of origin outside this state to a point of destination within this state may be

deducted from gross receipts even though a portion of those receipts is derived from relaying the signals between towers located within New Mexico.

B. Deduction available to broadcaster and advertising agency: A New Mexico radio or television broadcaster may deduct from its gross receipts the receipts derived from the sale of broadcast time which is sold either directly to a national or regional seller or advertiser not having its principal place of business in or being incorporated under the laws of New Mexico, or to an advertising agency which purchases the broadcast time on behalf of, or for subsequent sale to, such national or regional seller or advertiser. No nontaxable transaction certificate is required. If the advertising agency subsequently sells the broadcast time to a New Mexico seller or advertiser, however, compensating tax will be due on the value of the broadcast time.

C. Sales of broadcast time: Receipts from sales of broadcast time by New Mexico radio and television broadcasters to advertising agencies are subject to gross receipts tax, but may be deductible under Section 7-9-48 NMSA 1978 or Section 7-9-55 NMSA 1978.

D. Cable television systems: Cable television systems are eligible for the deduction provided by Section 7-9-55 NMSA 1978 for receipts from the sale of broadcast time to a national or regional advertiser.

E. Digital advertising services: Providers of digital advertising services are eligible for the deduction provided by Section 7-9-55 NMSA 1978. Receipts of a provider of digital advertising services are deductible when the receipts:

(1) are from a national or regional advertiser not having its principal place of business in New Mexico, or that is not incorporated under the laws of New Mexico, or

(2) are from an advertising agency which purchases the display of advertisements on the platform on behalf of, or for subsequent sale to, a seller defined in Paragraph (1) of Subsection E of 3.2.213.9NMAC. However, the commissions of advertising agencies from performing services in this state may not be deducted.

[3.2.213.9 NMAC, Rp 3.2.213.9 NMAC, 11/29/2022]

3.2.213.10 INTERSTATE TRANSPORTATION:

A. Transporting forest fire fighting materials: The receipts from transporting forest firefighting materials, such as slurry, in airplanes from a point inside New Mexico to a point outside New Mexico are deductible from gross receipts.

B. Star route contractors:

(1) A person holding a contract for the transportation of United States mail as a “star route contractor” from points within New Mexico to other points outside New Mexico may deduct the portion of gross receipts which were derived from transactions in interstate commerce.

(2) In order to determine the portion of the receipts from the contract which is subject to the gross receipts tax, the total receipts from the contract are to be multiplied by a fraction, the numerator of which is the total number of delivery points in New Mexico and the denominator of which is the total number of delivery points. A delivery point is any point at which mail is required, by contract, to be delivered.

C. Hauling livestock or produce: Receipts from hauling livestock or agricultural products in a single shipment from points within New Mexico to points outside New Mexico, or from points outside New Mexico to points within New Mexico, are deductible from gross receipts as transactions in interstate commerce.

D. Transportation by aircraft:

(1) Receipts from transporting persons by aircraft from one point to another are deductible as receipts from transactions in interstate commerce.

(2) Receipts from transporting property by aircraft in a single flight from points within New Mexico to points outside New Mexico, or from points outside New Mexico to points within New Mexico are deductible from gross receipts as receipts from transactions in interstate commerce.

(3) Receipts from transporting property by aircraft from one point in New Mexico to another point in New Mexico are not deductible as transactions in interstate commerce.

E. Federal preemption - transportation by motor carrier: 49 USC 14505 prohibits New Mexico and its political subdivisions from imposing tax on receipts from transporting passengers by motor carrier in interstate commerce. Such receipts, therefore, are deductible under Section 7-9-55 NMSA 1978.

[3.2.213.10 NMAC, Rp 3.2.213.10 NMAC, 11/29/2022]

3.2.213.11 PRINTED REPORTS: Receipts from the sale of a printed report of oil and gas leasing activities, which is not a “newspaper” as that term is used in Section 7-9-64 NMSA 1978, to nonresidents of New Mexico where delivery is made out-of-state by the seller's vehicle, U.S. mail or common carrier are receipts from

transactions in interstate commerce and such receipts may be deducted from the gross receipts of the seller.
[3/9/1972, 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;
[3.2.213.11 NMAC, Rp 3.2.213.11 NMAC, 11/29/2022]

3.2.213.12 TRANSACTIONS NOT QUALIFIED AS INTERSTATE COMMERCE:

A. Receipts of New Mexico sellers from sales of property to New Mexico residents who request that delivery be made out of state are not receipts from transactions in interstate commerce and are not deductible under Section 7-9-55 NMSA 1978.

B. Receipts of New Mexico sellers from sales of property to nonresidents of New Mexico who accept delivery of the property in New Mexico or where transfer of title or risk of loss passes to the nonresident buyer in New Mexico are not receipts from transactions in interstate commerce and are not deductible under Section 7-9-55 NMSA 1978.

[3.2.213.12 NMAC, Rp 3.2.213.12 NMAC, 11/29/2022]

3.2.213.13 RECEIPTS OF A DIGITAL PLATFORM THAT DISPLAYS DIGITAL ADVERTISING:

A. Receipts of a provider of a digital platform that displays digital advertising services, whose digital platform may be accessed or viewed within New Mexico, from the sale of advertising services to advertisers within and without New Mexico are subject to the gross receipts tax.

B. “Device” means any medium through which a digital platform may be accessed or viewed, including stationary or portable computing devices, tablets, phones, and smart devices, or similar equipment capable of accessing the internet and displaying a digital platform.

C. “Digital advertising services” means advertisement services on digital platforms, including advertisements in the form of banner advertising, search engine advertising, interstitial advertising, and other comparable advertising services.

D. “Digital platform” means any type of website, including part of a website, or applications, that a user is able to access or view.

E. “User” means any person who accesses or views a digital platform with a device.

[3.2.213.13 NMAC - N, 12/19/2023]

HISTORY OF 3.2.213 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: BOR 67-2, NM Gross Receipts and Compensating Tax Regulations, filed 9/29/1967.

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

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

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

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:

3.2.213 NMAC, Deduction - Gross Receipts Tax - Transaction in Interstate Commerce, filed 5/17/2001 repealed effective 11/29/2022.

NMAC History:

3 NMAC 2.55, Deduction - Gross Receipts Tax - Transaction in Interstate Commerce, filed 11/4/1996.

3.2.213 NMAC, Deduction - Gross Receipts Tax - Transaction in Interstate Commerce, filed 5/17/2001 replaced

3.2.213 NMAC, Deduction - Gross Receipts Tax - Transaction in Interstate Commerce, effective 11/29/2022.