

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 215: DEDUCTION - GROSS RECEIPTS TAX - SALE OF CERTAIN SERVICES TO AN OUT-OF-STATE BUYER

3.2.215.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1150 South St. Francis Drive, P.O. Box 630, Santa Fe NM 97504-0630.

[3.2.215.1 NMAC - Rp, 3.2.215.1 NMAC 10/13/2021]

3.2.215.2 SCOPE: This part applies to each person engaging in business in New Mexico.

[3.2.215.2 NMAC - Rp, 3.2.215.2 NMAC 10/13/2021]

3.2.215.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.

[3.2.215.3 NMAC - Rp, 3.2.215.3 NMAC 10/13/2021]

3.2.215.4 DURATION: Permanent.

[3.2.215.4 NMAC - Rp, 3.2.215.4 NMAC 10/13/2021]

3.2.215.5 EFFECTIVE DATE: October 13, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.215.5 NMAC - Rp, 3.2.215.5 NMAC 10/13/2021]

3.2.215.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.215.6 NMAC - Rp, 3.2.215.6 NMAC 10/13/2021]

3.2.215.7 DEFINITIONS: [RESERVED]

[3.2.215.7 NMAC - Rp, 3.2.215.7 NMAC 10/13/2021]

3.2.215.8 [RESERVED]

[3.2.215.8 NMAC - Rp, 3.2.215.8 NMAC 10/13/2021]

3.2.215.9 SERVICES PERFORMED ON FEDERAL AREAS: Federal areas located within the boundaries of New Mexico are not outside New Mexico for purposes of Section 7-9-57 NMSA 1978.

[3.2.215.9 NMAC - Rp, 3.2.215.9 NMAC 10/13/2021]

3.2.215.10 OTHER EVIDENCE:

A. As used in Section 7-9-57 NMSA 1978, “other evidence acceptable to the secretary” includes invoices, contracts, photostatic copies of checks and letters which show that the sale is to an out-of-state buyer and which indicate that the initial use of the product of the service did not occur in New Mexico.

B. Example 1: E drafts a manuscript about deer hunting in New Mexico and sends the manuscript to a sports magazine publisher in New York. The publisher accepts by letter the story for publication and encloses a check. E may deduct this payment from gross receipts if E preserves the letter or a photostatic copy of the check.

C. Example 2:

(1) W is a writer who performs some writing services in New Mexico. W's manuscripts and all rights thereto are sold by W's literary agent in New York City, exclusively to publishers, motion picture companies and other media located outside New Mexico. None of the rights to W's manuscripts or other literary works are sold to publishers, editors or media within the state of New Mexico. Funds are remitted to the literary agent in New York by the out-of-state purchaser of the rights to W's works. The agent then pays W. W's receipts may be deducted from gross receipts if:

(a) The buyers of W's works deliver nontaxable transaction certificates to W; or

(b) W's agent certifies in writing that all of W's work is published or otherwise initially used outside New Mexico; or

(c) W's agent accounts to W for each sale on a document or documents clearly indicating that the sales are to out-of-state buyers and that the initial use of the product of the service did not occur in New Mexico and W preserves the agent's detailed accounting.

(2) If the buyers rewrite, publish or otherwise initially use W's writing services inside New Mexico, the compensating tax imposed by Subsection B of Section 7-9-7 NMSA 1978 is due from the buyer on the value of the services at the time they were rendered.
[3.2.215.10 NMAC - Rp, 3.2.215.10 NMAC 10/13/2021]

3.2.215.11 [RESERVED]
[3.2.215.11 NMAC - Rp, 3.2.215.11 NMAC 10/13/2021]

3.2.215.12 [RESERVED]
[3.2.215.12 NMAC - Rp, 3.2.215.12 NMAC 10/13/2021]

HISTORY OF 3.2.215 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, 12-5-1969, 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 4/7/14982.
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:

3.2.215 NMAC, Deduction - Gross Receipts Tax - Sale of Certain Services to an Out-of-State Buyer, filed 5/17/2001, Repealed effective 10/13/2021.

NMAC History:

3 NMAC 2.57, Deduction - Gross Receipts Tax - Sale of Certain Services to an Out-of-State Buyer, filed 3/4/1996.
3.2.215 NMAC, Deduction - Gross Receipts Tax - Sale of Certain Services to an Out-of-State Buyer, filed 5/17/2001.
3.2.215 NMAC, Deduction - Gross Receipts Tax - Sale of Certain Services to an Out-of-State Buyer, filed 5/17/2001 Replaced 3.2.215 NMAC, Deduction - Gross Receipts Tax - Sale of Certain Services to and Out of State Buyer, effective 10/13/2021.