

TITLE 3: TAXATION
CHAPTER 1: TAX ADMINISTRATION
PART 1: GENERAL PROVISIONS

3.1.1.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.
[10/31/96; 3.1.1.1 NMAC - Rn, 3 NMAC 1.1.1, 12/29/00]

3.1.1.2 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.
[10/31/96; 3.1.1.2 NMAC - Rn, 3 NMAC 1.1.2, 12/29/00]

3.1.1.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[10/31/96; 3.1.1.3 NMAC - Rn, 3 NMAC 1.1.3, 12/29/00]

3.1.1.4 DURATION: Permanent.
[10/31/96; 3.1.1.4 NMAC - Rn, 3 NMAC 1.1.4, 12/29/00]

3.1.1.5 EFFECTIVE DATE: 10/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[10/31/96; 3.1.1.5 NMAC - Rn & A, 3 NMAC 1.1.5, 12/29/00]

3.1.1.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Tax Administration Act.
10/31/96; 3.1.1.6 NMAC - Rn, 3 NMAC 1.1.6, 12/29/00]

3.1.1.7 DEFINITIONS: "SIGN" DEFINED: As used in Section 7-1-71.1 NMSA 1978 and Section 3.1.1.18 NMAC the term "sign" means to affix a name or cause it to be attached using one of the following methods:

- A. handwritten;
- B. rubber stamp;
- C. mechanical device (such as a mechanical pen);
- D. computer software program; or
- E. any other method of signature acceptable under the Internal Revenue Code.

[10/31/96; 3.1.1.7 NMAC - Rn, 3 NMAC 1.1.7, 12/29/00; A, 4/28/06]

3.1.1.8 CITATIONS OF STATUTES: All statutory references in Chapter 3.1 NMAC are to the New Mexico Statutes Annotated 1978 (NMSA 1978) unless otherwise specified.
[10/31/96; 3.1.1.8 NMAC - Rn & A, 3 NMAC 1.1.8, 12/29/00]

3.1.1.9 INTERPRETATION, ENFORCEMENT AND COLLECTION OF CERTAIN MUNICIPAL AND COUNTY TAXES:

A. The municipal and county tax acts listed below, as they now exist or may hereafter be amended, shall be interpreted, administered and enforced by the secretary under the provisions of the Tax Administration Act.

B. All directives of the secretary shall apply to the administration and enforcement of municipal and county tax acts to the extent that such directives do not conflict with the provisions of the listed municipal and county tax acts:

- (1) Supplemental Gross Receipts Tax Act [7-19-10 to 7-19-18 NMSA 1978]
- (2) Special Municipal Gross Receipts Tax Act [repealed]
- (3) Municipal Local Option Gross Receipts Taxes Act [Chapter 7, Article 19D NMSA 1978]
- (4) Local Hospital Gross Receipts Tax Act [Chapter 7, Article 20C NMSA 1978]
- (5) County Local Option Gross Receipts Taxes Act [Chapter 7, Article 20E NMSA 1978]

(6) County Correctional Facility Gross Receipts Tax Act [Chapter 7, Article 20F NMSA 1978]

(7) Local Liquor Excise Tax Act [7-24-8 to 7-24-16 NMSA 1978]

C. In addition to the tax acts enumerated in Subsection 3.1.1.9B NMAC, repealed local option gross receipts tax acts whose administration and enforcement were charged to the department are also interpreted, administered and enforced by the department insofar as payments, claims for refunds, assessments, other liabilities, litigation and other actions are received or initiated after, or are outstanding on, the effective date of the repeal of the tax act.

D. Section 3.1.1.9 NMAC applies to interpretation, enforcement or administration on or after July 1, 1993.

[7/19/67, 11/5/85, 8/15/90, 2/6/91, 10/28/94, 10/31/96; 3.1.1.9 NMAC - Rn & A, 3 NMAC 1.1.9, 12/29/00]

3.1.1.10 DELEGATION OF AUTHORITY - GENERAL:

A. The secretary may delegate authority only when specifically authorized to do so in the Tax Administration Act. Where the words “or secretary's delegate” or “or delegate” do not appear in any section, only the secretary may act.

B. Example: As provided in Subsection 7-1-4B NMSA 1978, the secretary alone is invested with the power to issue subpoenas and summonses. The secretary may not delegate the authority to issue subpoenas and summonses.

[7/19/67, 6/15/85, 11/5/85, 8/15/90, 10/31/96; 3.1.1.10 NMAC - Rn & A, 3 NMAC 1.1.10, 12/29/00]

3.1.1.11 DELEGATION OF AUTHORITY - NOT REQUIRED TO BE IN WRITING: A delegation of authority by the secretary to an “employee of the division” or “an employee of the department” as that term is defined in Section 7-1-3 NMSA 1978 is not required to be in writing.

[11/5/85, 8/15/90, 10/31/96; 3.1.1.11 NMAC - Rn & A, 3 NMAC 1.1.11, 12/29/00]

3.1.1.12 EMPLOYEE OF THE DEPARTMENT: The following persons shall, for purposes of the Tax Administration Act, be considered to be “employees of the department” when acting as agents or authorized to represent or perform services for the department:

A. the secretary of the department or an employee of the department authorized by the secretary;

B. the New Mexico attorney general, the attorney general's deputies and assistants, district attorneys and the district attorneys' deputies and assistants;

C. persons employed by the multistate tax commission and performing duties under the Multistate Tax Compact, Sections 7-5-1 through 7-5-7 NMSA 1978; and

D. persons acting under professional service contracts with the department.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.1.12 NMAC - Rn & A, 3 NMAC 1.1.12, 12/29/00]

3.1.1.13 UNIDENTIFIED TAXPAYER: A person who fits the definition of “taxpayer” under the provisions of Section 7-1-3 NMSA 1978 but who has not registered or been identified under provisions of Section 7-1-12 NMSA 1978 is nonetheless a “taxpayer” subject to the provisions of the Tax Administration Act.

[11/5/85, 8/15/90, 10/31/96; 3.1.1.13 NMAC - Rn & A, 3 NMAC 1.1.13, 12/29/00]

3.1.1.14 INFORMATION FROM PERSONS OTHER THAN TAXPAYER: To establish or determine the liability of any taxpayer, to collect any tax or to enforce any statute administered by the department under the Tax Administration Act, the secretary or delegate is authorized to examine and require the production of any pertinent records, books, information or evidence by persons other than taxpayers. Such persons shall include but not be restricted to accountants, banks and financial corporations, lessors, vendors, buyers, corporate officers, corporate stockholders and general and limited partners.

[11/5/85, 8/15/90, 10/31/96; 3.1.1.14 NMAC - Rn, 3 NMAC 1.1.14, 12/29/00]

3.1.1.15 TAXPAYER REGISTRATION:

A. TAXPAYER IDENTIFICATION:

(1) The secretary shall cause to be developed and maintained multiple systems for the registration and identification of taxpayers who are subject to taxes or tax acts listed in Section 7-1-2 NMSA 1978 and

taxpayers shall comply therewith. The systems shall include application forms combining tax programs whenever feasible. The systems shall include an identification number for each individual taxpayer using a state assigned number, federal social security number, federal employer identification number or a combination of these numbers for cross-reference purposes. The systems shall be devised to facilitate the exchange of information with other states and the United States, and to aid in statistical computations. Nothing contained in Section 7-1-12 NMSA 1978 precludes the secretary from utilizing electronic data processing programs to manage registration and identification systems.

(2) The secretary shall include in registration and identification systems a dimension enabling the department to identify purchasers or lessees who, by reason of their status or the nature of their use of property or service purchased or leased, may be entitled to make nontaxable transactions and shall include a procedure for providing nontaxable transaction certificates (NTTCs) to persons not otherwise required to be registered but who, because of the nature of their transactions with New Mexico businesses, must provide NTTCs pursuant to the provisions of the Gross Receipts and Compensating Tax Act.

B. REGISTRATION OF PERSONS FILING INCOME TAX AND ESTATE TAX: Persons who file income or estate tax returns for the purpose of declaring tax payable or refunds or rebates due are not required to preregister with the department by application to secure an identification number. The filing of a tax return containing a federal social security number shall constitute registration for the purposes of Section 7-1-12 NMSA 1978 and Subsection 7-1-8Q NMSA 1978.

C. AMENDMENT OF REGISTRATION BY SECRETARY:

(1) When the secretary determines that a taxpayer registration incorrectly identifies the ownership or the type of ownership of a business by either omission or misinformation, the secretary shall amend the registration to show the correct information.

(2) Notice of such amendment shall be made by mail to the registered taxpayer, and in those cases where the secretary amends the ownership to add new parties, notice shall also be mailed to those new parties which have been registered pursuant to department action.

(3) Notice of such action shall contain information with respect to remedies available under Section 7-1-24 NMSA 1978.

D. TAX IDENTIFICATION NUMBER ISSUED BY INTERNAL REVENUE SERVICE: A tax identification number issued by the internal revenue service to individuals not qualified to be issued a social security number will be accepted by the department in lieu of the social security number in all cases in which reporting a social security number is required under the Tax Administration Act or any tax or tax act administered by the department in accordance with the Tax Administration Act.

[7/19/67, 11/5/85, 8/15/90, 10/31/96, 3/31/98; 3.1.1.15 NMAC - Rn & A, 3 NMAC 1.1.15, 12/29/00]

3.1.1.16 TAX DEFINED FOR PURPOSES OF SECTION 7-1-18 NMSA 1978:

A. The term "tax" as it is used in Section 7-1-18 NMSA 1978 means the amount of any tax imposed and required to be paid or collected and paid over by any tax act made subject to administration and enforcement under the Tax Administration Act pursuant to the provisions of Section 7-1-2 NMSA 1978 and includes the amount of any interest or civil penalty relating thereto.

B. If the return of a taxpayer includes reporting for two or more taxes imposed by separate tax programs, and if any of the separate taxes is understated by more than 25% of the amount of liability for the separate tax for the period to which the return relates, the secretary or secretary's delegate may make assessments for taxes imposed by any of the separate tax programs the liability for which was so understated at any time within six years from the end of the calendar year in which payment of the separate tax was due.

[7/19/67, 11/5/85, 1/4/88, 8/15/90, 10/31/96; 3.1.1.16 NMAC - Rn & A, 3 NMAC 1.1.16, 12/29/00]

3.1.1.17 "ACTION OR PROCEEDING" DEFINED FOR PURPOSES OF SECTION 7-1-19 NMSA

1978: As used in Section 7-1-19 NMSA 1978, the term "action or proceeding" means any effort initiated by the secretary or secretary's delegate under the provisions of the Tax Administration Act and shall include the filing of a lien, seizure of property through service of a warrant of levy, demand for security to cover the liability, sale of security which has previously been posted, demand for payment, civil action in district court, injunction to enjoin the taxpayer from engaging in business or foreclosure of a lien. "Action or proceeding" does not include processing any payment made by a taxpayer when no other act has been initiated by the secretary or secretary's delegate after

ten years from the date.

[8/22/88, 8/15/90, 10/31/96; 3.1.1.17 NMAC - Rn & A, 3 NMAC 1.1.17, 12/29/00]

3.1.1.18 REQUIREMENTS FOR TAX RETURN PREPARERS: Every tax return preparer, as that term is defined in Section 7-1-3 NMSA 1978, shall furnish that preparer's identification number with, and sign, each income tax return or claim of refund with respect to income tax that the preparer completes. For the purposes of 3.1.1.18 NMAC, a tax return preparer's identification number is one of the following: the preparer's department-issued CRS identification number, the preparer's social security number or the preparer's internal revenue service-issued practitioner's tax identification number (PTIN).

[11/5/85, 8/15/90, 10/31/96; 3.1.1.18 NMAC - Rn & A, 3 NMAC 1.1.18, 12/29/00; A, 5/15/01]

HISTORY OF 3.1.1 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, 7/19/67, filed 7/28/67.

R.D./OGAD Rule No. 1985, Regulations Pertaining to the Tax Administration Act, filed 11/5/85.

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

History of Repealed Material: [RESERVED]

NMAC History:

3 NMAC 1.1, Tax Administration - General Provisions, filed 10/17/96.

3.1.1 NMAC, Tax Administration - General Provisions, filed 12/15/2000.