

**TITLE 3: TAXATION**  
**CHAPTER 1: TAX ADMINISTRATION**  
**PART 2: PROMULGATION OF REGULATIONS**

**3.1.2.1 ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630  
[4/15/97; 3.1.2.1 NMAC - Rn, 3 NMAC 1.2.1, 12/29/00]

**3.1.2.2 SCOPE:** This part applies to the taxation and revenue department and to every person subject to any statute the administration or enforcement of which is charged to the taxation and revenue department.  
[4/15/97; 3.1.2.2 NMAC - Rn, 3 NMAC 1.2.2, 12/29/00]

**3.1.2.3 STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[4/15/97; 3.1.2.3 NMAC - Rn, 3 NMAC 1.2.3, 12/29/00]

**3.1.2.4 DURATION:** Permanent.  
[4/15/97; 3.1.2.4 NMAC - Rn, 3 NMAC 1.2.4, 12/29/00]

**3.1.2.5 EFFECTIVE DATE:** 4/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.  
[4/15/97; 3.1.2.5 NMAC - Rn & A, 3 NMAC 1.2.5, 12/29/00]

**3.1.2.6 OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Taxation and Revenue Department Act.  
[4/15/97; 3.1.2.6 NMAC - Rn, 3 NMAC 1.2.6, 12/29/00]

**3.1.2.7 DEFINITIONS:** [Reserved.]  
[4/15/97; 3.1.2.7 NMAC - Rn, 3 NMAC 1.2.7, 12/29/00]

**3.1.2.8 RULINGS - GENERAL:**

A. Persons may request a ruling from the secretary for clarification of the consequences of a specified set of circumstances or interpretation of any statute the administration or enforcement of which is charged to the taxation and revenue department. The request must be in writing. The department may require the requester to state whether the requester is under audit by the department, has an outstanding assessment related to the subject matter of the request or is involved in a protest or litigation with the department over the subject matter of the request. The secretary's ruling will be in writing addressed to the requesting party with an assigned ruling number, signed by the secretary and by counsel to show that it has been reviewed by the attorney general or other legal counsel of the department.

B. In a proceeding pursuant to the Tax Administration Act, the department shall be estopped pursuant to Section 7-1-60 NMSA 1978 from obtaining or withholding the relief requested if it is shown by the party adverse to the department that the party's action or inaction subject to dispute was in accordance with any ruling addressed to the party by the secretary, unless the ruling had been rendered invalid or had been superseded by regulation or by another ruling addressed to the party at the time the asserted liability for tax arose.

C. A person or persons requesting a ruling from the secretary must be subject to the statute for which an interpretation is requested or to which the set of circumstances relate. In particular the requester must be a taxpayer as defined in Section 7-1-3 NMSA 1978 for taxes and tax acts covered by the Tax Administration Act. A representative, such as an accountant or attorney, of the requester may request the ruling on behalf of the requester but must disclose the name of the requester. The secretary will not issue a ruling addressed to the requester's representative, whether or not the name of the requester is disclosed. A copy of a ruling addressed to the requester will be sent to a requester's representative when requested.

D. The secretary may modify or withdraw any previously issued ruling and shall withdraw or modify any ruling when subsequent legislation, regulations, final court decision or other rulings have invalidated a ruling or portions of a ruling.

E. Although the secretary is not required by statute to issue a ruling even if the request is in proper form, every ruling request shall be given careful and diligent consideration.

[11/17/95, 4/15/97, 3/31/99; 3.1.2.8 NMAC - Rn & A, 3 NMAC 1.2.8, 12/29/00]

#### **3.1.2.9 HEARING FOR PROPOSED REGULATIONS:**

A. For the purpose of obtaining comments of interested persons regarding issuance of regulations, the secretary shall schedule a public hearing on a date approximately 45 days from the day of issuing and filing a proposed regulation in the office of the secretary for public inspection. The hearing date shall be publicized in a manner so that individuals, professionals and industry groups who have an interest in the promulgation of proposed regulations will have an opportunity to attend the meeting and express their comments. The secretary or a designated hearing officer shall hear and weigh all comments and suggestions on the proposed regulation. The secretary may incorporate revisions into the proposed regulations including those derived from written or verbal comments of interested persons. The decision of the secretary on the substance and form of the regulation is final.

B. Revisions to a proposed regulation may be incorporated by the secretary at any time during the 60-day waiting period, and the modified regulation need not be reissued as proposed before becoming final.  
[11/17/95, 4/15/97; 3.1.2.9 NMAC - Rn, 3 NMAC 1.2.9, 12/29/00]

#### **3.1.2.10 COOPERATIVE AGREEMENT EFFECTIVE DATE:**

A. A cooperative agreement or an amended cooperative agreement entered into pursuant to Section 9-11-12.1 NMSA 1978 or Section 9-11-12.2 NMSA 1978, shall become effective on July 1 or January 1, whichever date occurs first after the expiration of at least three months from the date the cooperative agreement or amended cooperative agreement is signed by both the pueblo or tribe and the secretary.

B. To be effective as of January 1, cooperative agreements or amendments to cooperative agreements must be executed by both the pueblo or tribe and the secretary on or before September 30 of the previous year. To be effective as of July 1, cooperative agreements or amendments to cooperative agreements must be executed by both the pueblo or tribe and the secretary on or before March 30 of the same year.  
[3.1.2.10 NMAC - N, 6/15/04; A, 1/17/06]

**3.1.2.11 SECRETARY MAY DESIGNATE REPORTING REQUIREMENTS OF SOME RECEIPTS:** The secretary may require receipts from sales that occur on the tribal land of a pueblo or tribe 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 to be reported as located on tribal land regardless of where the taxpayer's place of business is maintained.  
[3.1.2.11 NMAC - N, 1/17/06]

#### **HISTORY OF 3.1.2 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: TRD Regulations TRD 6.2:1 & 2, Regulations Pertaining to the Taxation and Revenue Department Act Section 9-11-6.2 NMSA 1978, filed 11/17/95.

History of Repealed Material: [RESERVED]

NMAC History:

3 NMAC 1.2, Tax Administration - Promulgation of Regulations, filed 4/1/97.

3.1.2 NMAC, Tax Administration - Promulgation of Regulations, filed 12/15/2000.