

TITLE 3: TAXATION
CHAPTER 1: TAX ADMINISTRATION
PART 5: RECORDS

3.1.5.1 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; 3.1.5.1 NMAC - Rn, 3 NMAC 1.5.1, 12/29/00]

3.1.5.2 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; 3.1.5.2 NMAC - Rn, 3 NMAC 1.5.2, 12/29/00]

3.1.5.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[10/31/96; 3.1.5.3 NMAC - Rn, 3 NMAC 1.5.3, 12/29/00]

3.1.5.4 DURATION: Permanent.
[10/31/96; 3.1.5.4 NMAC - Rn, 3 NMAC 1.5.4, 12/29/00]

3.1.5.5 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; 3.1.5.5 NMAC - Rn & A, 3 NMAC 1.5.5, 12/29/00]

3.1.5.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Tax Administration Act.
[10/31/96; 3.1.5.6 NMAC - Rn, 3 NMAC 1.5.6, 12/29/00]

3.1.5.7 DEFINITIONS: Reserved.
[10/31/96; 3.1.5.7 NMAC - Rn, 3 NMAC 1.5.7, 12/29/00]

3.1.5.8 SUFFICIENCY OF RECORDS:

A. Books of account, documents and other records shall be kept and maintained by a taxpayer in a manner that will permit the accurate computation of state taxes and provide information required by the statutes under which the taxpayer is required to keep records. The Tax Administration Act sets no time requirement for taxpayer retention of books of account or other records but Section 7-1-18 NMSA 1978 sets the statute of limitations for the assessing of tax asserted to be due. If state taxes cannot be accurately or readily computed by the secretary or secretary's delegate from the records, the records are not sufficient or adequate for the purpose of Section 7-1-10 NMSA 1978. The adequacy or inadequacy of taxpayer records is a matter of fact to be determined by the secretary or secretary's delegate. Taxpayers have a duty to provide the secretary or secretary's delegate, upon request, with books of account and other records upon which to establish a basis for taxation.

B. Failure of a taxpayer to keep adequate books of account or other records will cause the department to use alternative methods to determine or estimate taxes due.

C. Alternative methods which may be used by the department include, but are not limited to:

- (1) bank deposit method;
- (2) documents and records of persons other than the taxpayer;
- (3) federal returns and other government reports;
- (4) cost of sales markup -- weighted percentage;
- (5) net worth analysis;
- (6) industry comparison; and
- (7) provisional assessment of taxes based on best available information and allowing for any increase

which may have occurred due to inflation, increased economic activity or other reasons.

D. Any one, or a combination, of the methods listed above or other methods may be used for taxpayer records reconstruction or verification.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.5.8 NMAC - Rn & A, 3 NMAC 1.5.8, 12/29/00]

3.1.5.9 RECORDS RECONSTRUCTION:

A. The secretary or secretary's delegate is authorized to reconstruct records of a person to establish or determine the extent of tax liability. The nonexistence or inadequacy of the records, for whatever reason, is the pertinent fact permitting reconstruction.

B. Example: A taxpayer's records for one audit year were destroyed accidentally. The department auditor is permitted to use the bank deposit method to reconstruct sales and income for that year.

[11/5/85, 8/15/90, 10/31/96; 3.1.5.9 NMAC - Rn, 3 NMAC 1.5.9, 12/29/00]

3.1.5.10 CONSISTENCY IN METHOD OF ACCOUNTING: The method of accounting used by taxpayers for state tax computation or for accumulating information required by state tax statutes shall be consistent for the same business. There is no requirement that the method of accounting for one type of state tax be the same method of accounting for another type of state tax. For example, a taxpayer may account for and report the taxpayer's gross receipts tax on the cash basis, while accounting for and reporting the taxpayer's income tax on an accrual basis. But a taxpayer may not account for and report January's gross receipts on the cash accounting method, and then account for and report February's gross receipts on the accrual accounting method without first securing the consent of the secretary or secretary's delegate.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.5.10 NMAC - Rn, 3 NMAC 1.5.10, 12/29/00]

3.1.5.11 ACCOUNTING FOR GOVERNMENTAL GROSS RECEIPTS TAX: Agencies, institutions, instrumentalities and political subdivisions of the state of New Mexico which are subject to the governmental gross receipts tax may treat different taxable activities as different lines of business. Accordingly, one or more activities may be accounted for and reported on a cash basis and one or more other activities may be accounted for and reported on an accrual or modified accrual basis. Once the cash basis, accrual or modified accrual basis has been selected as the method of accounting for and reporting receipts from a particular activity, the activity must continue to be accounted for and reported on the same basis in subsequent periods unless prior permission is received from the department to change the method of accounting or reporting.

[9/17/91, 10/31/96; 3.1.5.11 NMAC - Rn, 3 NMAC 1.5.11, 12/29/00]

3.1.5.12 RECORDS INCLUDE GOVERNMENTAL RETURNS, DOCUMENTS, REPORTS AND OTHER ATTACHMENTS: For the purpose of inspection or audit of taxpayers' records and books of account by the secretary or secretary's delegate, "records" shall include, but not be restricted to, all copies of returns or reports filed by taxpayers with agencies of the federal government, agencies of the state of New Mexico and agencies of any sovereign state or Indian nation, tribe or pueblo located nationally or worldwide. Records shall include all returns, documents and reports, as well as any attachments thereto, to any political subdivision of any state.

[11/5/85, 8/15/90, 10/31/96; 3.1.5.12 NMAC - Rn, 3 NMAC 1.5.12, 12/29/00]

3.1.5.13 ENFORCEMENT BY SUBPOENA: The secretary may serve or cause to be served a subpoena duces tecum upon a taxpayer or other person having custody of the taxpayer's records and books of account.

[11/5/85, 8/15/90, 10/31/96; 3.1.5.13 NMAC - Rn, 3 NMAC 1.5.13, 12/29/00]

3.1.5.14 REASONABLE HOURS: Reasonable hours for taxpayers to make their records and books of account available for inspection means any time during taxpayer's business hours but not less than between the hours of 8:00 a.m. and 5:00 p.m. of any day except Saturday, Sunday and state and federal holidays.

[11/5/85, 8/15/90, 10/31/96; 3.1.5.14 NMAC - Rn, 3 NMAC 1.5.14, 12/29/00]

3.1.5.15 RECORDKEEPING AND RETENTION REQUIREMENTS

A. **RECORDKEEPING REQUIREMENTS - DEFINITIONS:** For purposes of Section 3.1.5.15 NMAC, these terms shall be defined as follows:

(1) "Database management system" means a software system that controls, relates, retrieves and provides accessibility to data stored in a database.

(2) "Electronic data interchange" or "EDI technology" means the computer to computer exchange of

business transactions in a standardized structured electronic format.

(3) “Hardcopy” means any documents, records, reports or other data printed on paper.

(4) “Machine-sensible record” means a collection of related information in an electronic format.

Machine-sensible records do not include hardcopy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche or storage-only imaging systems.

(5) “Storage-only imaging system” means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hardcopy or as an optical image.

B. RECORDKEEPING REQUIREMENTS - GENERAL:

(1) A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability under the taxes and tax acts the administration and enforcement of which is governed by the Tax Administration Act. All required records must be made available on request by the department or its authorized representatives as provided for in Section 7-1-11 NMSA 1978. Such records shall include, but not be necessarily limited to the records required under Section 7-1-10 NMSA 1978.

(2) If a taxpayer retains records required to be retained under Section 3.1.5.15 NMAC in both machine-sensible and hardcopy formats, the taxpayer shall make the records available to the department in machine-sensible format upon request of the department.

(3) Nothing in Section 3.1.5.15 NMAC shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hardcopy documents or reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with Section 3.1.5.15 NMAC. However, this paragraph shall not relieve the taxpayer of the obligation to comply with Paragraph 3.1.5.15B(2) NMAC.

C. RECORDKEEPING REQUIREMENTS - MACHINE SENSIBLE RECORDS:

(1) General Requirements.

(a) Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the department upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under Section 3.1.5.15 NMAC are met.

(b) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

(c) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document or store the information in machine-sensible records in the ordinary course of business is not required to construct a machine-sensible record for tax purposes.

(2) Electronic Data Interchange Requirements.

(a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the department to interpret the coded information.

(b) The taxpayer may capture the information necessary to satisfy Paragraph 3.1.5.15C(1) NMAC at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the department. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(3) Electronic Data Processing Systems Requirements. The requirements for an electronic data

processing accounting system are similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of Section 3.1.5.15 NMAC.

(4) **Business Process Information.**

(a) Upon the request of the department, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(b) The taxpayer shall be capable of demonstrating:

- (i) the functions being performed as they relate to the flow of data through the system;
- (ii) the internal controls used to ensure accurate and reliable processing, and;
- (iii) the internal controls used to prevent unauthorized addition, alteration or deletion of

retained records.

(c) The following specific documentation is required for machine sensible records retained pursuant to Section 3.1.5.15 NMAC:

- (i) record formats or layouts;
- (ii) field definitions (including the meaning of all codes used to represent information);
- (iii) file descriptions (e.g., data set name); and
- (iv) detailed charts of accounts and account descriptions.

D. RECORDKEEPING REQUIREMENTS - RECORDS MAINTENANCE REQUIREMENTS:

(1) The department recommends but does not require that taxpayers refer to the national archives and record administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 Code of Federal Regulations, Part 1234.

(2) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

E. RECORDKEEPING REQUIREMENTS - ACCESS TO MACHINE-SENSIBLE RECORDS:

(1) The manner in which the department is provided access to machine-sensible records as required in Paragraph 3.1.5.15C(2) NMAC may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following manners:

- (a) the taxpayer may arrange to provide the department with the hardware, software and personnel resources to access the machine sensible records;
- (b) the taxpayer may arrange for a third party to provide the hardware, software and personnel resources necessary to access the machine sensible records;
- (c) the taxpayer may convert the machine sensible records to a standard record format specified by the department, including copies of files, on a magnetic medium that is agreed to by the department;
- (d) the taxpayer and the department may agree on other means of providing access to the machine sensible records.

F. RECORDKEEPING REQUIREMENTS - TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY:

(1) In conjunction with meeting the requirements of Subsection 3.1.5.15C NMAC, a taxpayer may create files solely for the use of the department. For example, if a database management system is used, it is consistent with Section 3.1.5.15 NMAC for the taxpayer to create and retain a file that contains the transaction-level detail from the database management system and that meets the requirements of Subsection 3.1.5.15C NMAC. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under Section 3.1.5.15 NMAC.

G. RECORDKEEPING REQUIREMENTS - ALTERNATIVE STORAGE MEDIA:

(1) For purposes of storage and retention, taxpayers may convert hardcopy documents received or

produced in the normal course of business and required to be retained under Section 3.1.5.15 NMAC to microfilm, microfiche or other storage-only imaging systems and may discard the original hardcopy documents, provided the conditions of Section 3.1.5.15 NMAC are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers and supporting records of details, such as sales invoices, purchase invoices, exemption certificates and credit memoranda.

(2) Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements.

(a) Documentation establishing the procedures for converting the hardcopy documents to microfilm, microfiche or other storage only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(b) Procedures must be established for the effective identification, processing, storage and preservation of the stored documents and for making them available for the period they are required to be retained under Subsection 3.1.5.15I NMAC.

(c) Upon request by the department, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche or other storage-only imaging system.

(d) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(e) All data stored on microfilm, microfiche or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

(f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

H. RECORDKEEPING REQUIREMENTS - EFFECT ON HARDCOPY RECORDKEEPING REQUIREMENTS:

(1) Except as otherwise provided in Subsection 3.1.5.15H NMAC, the provisions of Section 3.1.5.15 NMAC do not relieve taxpayers of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a recordkeeping medium as provided in Subsection 3.1.5.15G NMAC.

(2) If hardcopy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with Section 3.1.5.15 NMAC. Such details include those listed in Subparagraph 3.1.5.15C(2)(a) NMAC.

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(5) Nothing in Section 3.1.5.15 NMAC shall prevent the department from requesting hardcopy printouts in lieu of retained machine-sensible records at the time of examination.

I. RECORDKEEPING REQUIREMENTS - RECORDS RETENTION PERIOD: All records required to be retained under Section 3.1.5.15 NMAC shall be preserved pursuant to Section 7-1-10 NMSA 1978 unless the department has provided in writing that the records are no longer required.
[4/30/97; 3.1.5.15 NMAC - Rn & A, 3 NMAC 1.5.15, 12/29/00]

3.1.5.16 TAXPAYER'S RECORDS IN POSSESSION OF ANOTHER: Section 7-1-11 NMSA 1978 applies to records of a taxpayer in the possession, whether permanent or temporary, of another person. Except for possessors who are banks, savings and loan associations, credit unions or similar financial institutions, the possessor is required to allow the inspection or audit by the department of the records upon written request of the department just as if the records were in the possession of the taxpayer. Failure of the possessor to allow inspection or audit of

the records by the department upon a reasonable request of the department is a violation of Section 7-1-74 NMSA 1978. Requests by the department to inspect or audit records of a taxpayer in the possession of a bank, savings and loan association, credit union or similar financial institution will be made in accordance with Sections 14-7-1 and 14-7-2 NMSA 1978.

[3.1.5.16 NMAC - N, 12/29/00]

HISTORY OF 3.1.5 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 1.5, Tax Administration - Records, filed 10/17/96.

3.1.5 NMAC, Tax Administration - Records, filed 12/15/2000.