

TITLE 3: TAXATION
CHAPTER 1: TAX ADMINISTRATION
PART 6: ASSESSMENT

3.1.6.1 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; 3.1.6.1 NMAC - Rn, 3 NMAC 1.6.1, 1/15/01]

3.1.6.2 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; 3.1.6.2 NMAC - Rn, 3 NMAC 1.6.2, 1/15/01]

3.1.6.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[10/31/96; 3.1.6.3 NMAC - Rn, 3 NMAC 1.6.3, 1/15/01]

3.1.6.4 DURATION: Permanent.
[10/31/96; 3.1.6.4 NMAC - Rn, 3 NMAC 1.6.4, 1/15/01]

3.1.6.5 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; 3.1.6.5 NMAC - Rn & A, 3 NMAC 1.6.5, 1/15/01]

3.1.6.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Tax Administration Act.
[10/31/96; 3.1.6.6 NMAC - Rn, 3 NMAC 1.6.6, 1/15/01]

3.1.6.7 DEFINITIONS: [Reserved.]
[10/31/96; 3.1.6.7 NMAC - Rn, 3 NMAC 1.6.7, 1/15/01]

3.1.6.8 PAYMENT OF UNPROTESTED AMOUNTS: Any taxpayer who protests under the provisions of Section 7-1-24 NMSA 1978 only a portion of an assessment and either does not pay the portion of the assessment not protested within 30 days after the date of assessment or does not post security covering the unprotested amount pursuant to Section 7-1-54 NMSA 1978 shall be a delinquent taxpayer until the unprotested amount has been paid or security covering the unprotested amount has been posted.
[7/19/67, 11/5/85, 8/22/88, 8/15/90, 10/31/96; 3.1.6.8 NMAC - Rn & A, 3 NMAC 1.6.8, 1/15/01]

3.1.6.9 [Reserved]
[11/5/85, 8/15/90, 10/31/96; 3.1.6.1 NMAC - Rn & A, 3 NMAC 1.6.1, 1/15/01; Repealed, 12/30/10]

3.1.6.10 SELF-ASSESSMENT: When a tax return has been submitted by a taxpayer and received by the department, this self-assessment constitutes an effective assessment under Section 7-1-17 NMSA 1978. Self-assessments by taxpayers are not, however, presumed to be correct under Subsection 7-1-17C NMSA 1978.
[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.6.10 NMAC - Rn & A, 3 NMAC 1.6.10, 1/15/01]

3.1.6.11 TAXPAYER'S REMEDIES: The remedies available to taxpayers upon the delivery of notice of assessment of taxes shall be included with the document entitled "Notice of Assessment of Taxes".
[11/5/85, 8/15/90, 10/31/96; 3.1.6.11 NMAC - Rn, 3 NMAC 1.6.11, 1/15/01]

3.1.6.12 PRESUMPTION OF CORRECTNESS OF ASSESSMENT:
A. Once a "Notice of Assessment of Taxes" has been mailed or personally delivered to a taxpayer, the statutory presumption of the correctness of the assessment will apply. The effect of the presumption of correctness is that the taxpayer has the burden of coming forward with some countervailing evidence tending to

dispute the factual correctness of the assessment made by the secretary. Unsubstantiated statements that the assessment is incorrect cannot overcome the presumption of correctness.

B. The presumption exists even if the secretary has issued assessments using alternative methods of reconstruction of a tax or has estimated the tax.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.6.12 NMAC - Rn, 3 NMAC 1.6.12, 1/15/01]

3.1.6.13 PRESUMPTION OF CORRECTNESS OF INTEREST AND PENALTY: The presumption of correctness also applies to any interest imposed under Section 7-1-67 NMSA 1978 and any penalty imposed under Section 7-1-69 NMSA 1978.

[11/5/85, 8/15/90, 10/31/96; 3.1.6.13 NMAC - Rn & A, 3 NMAC 1.6.13, 1/15/01]

3.1.6.14 SECRETARY'S GOOD FAITH DOUBT OF LIABILITY:

A. The secretary may compromise the assessed liability of a taxpayer by entering into a written closing agreement only if and when there is a good faith doubt as to the liability. The written agreement must adequately protect the interests of the state and be approved by the attorney general. The secretary may not compromise a taxpayer's liability because of the taxpayer's inability to pay. The secretary may not compromise a taxpayer's liability solely because of the threat of litigation or as an expedient means of disposing of a controversy unless the secretary has a good faith doubt as to the liability.

B. Each written closing agreement entered into by the secretary must address the factual aspects of the liability that has created a good faith doubt in the mind of the secretary. The specific periods of assessed liabilities must be detailed in the written agreement.

C. The burden is upon the taxpayer to convince the secretary that a good faith doubt exists by presenting evidence sufficient to overcome the presumption of correctness of an assessed liability. A written closing agreement is conclusive only as to liability covered by the agreement.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.6.14 NMAC - Rn, 3 NMAC 1.6.14, 1/15/01]

3.1.6.15 CANCELLATION OF ASSESSMENT: Pursuant to Section 7-1-17 NMSA 1978, a document denominated "Notice of Assessment of Taxes" is not effective until mailed or delivered to the taxpayer. At any time before this action occurs, an assessment document can be cancelled by the secretary or secretary's delegate. A cancellation is an accounting process and is not an abatement of an assessment as defined by Section 7-1-28 NMSA 1978.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.6.15 NMAC - Rn & A, 3 NMAC 1.6.15, 1/15/01]

3.1.6.16 [Reserved]

[10/31/96; 3.1.6.16 NMAC - Rn and Repealed, 3 NMAC 1.6.16, 1/15/01]

HISTORY OF 3.1.6 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 1.6, Tax Administration - Assessment, filed 10/17/96.

3.1.6 NMAC, Tax Administration - Assessment, filed 1/4/2001.