

TITLE 3: TAXATION
CHAPTER 1: TAX ADMINISTRATION
PART 9: REFUND

3.1.9.1 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; 3.1.9.1 NMAC - Rn, 3 NMAC 1.9.1, 1/15/01]

3.1.9.2 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; 3.1.9.2 NMAC - Rn, 3 NMAC 1.9.2, 1/15/01]

3.1.9.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[10/31/96; 3.1.9.3 NMAC - Rn, 3 NMAC 1.9.3, 1/15/01]

3.1.9.4 DURATION: Permanent.
[10/31/96; 3.1.9.4 NMAC - Rn, 3 NMAC 1.9.4, 1/15/01]

3.1.9.5 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; 3.1.9.5 NMAC - Rn & A, 3 NMAC 1.9.5, 1/15/01]

3.1.9.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Tax Administration Act.
[10/31/96; 3.1.9.6 NMAC - Rn, 3 NMAC 1.9.6, 1/15/01]

3.1.9.7 DEFINITIONS: [Reserved.]
[10/31/96; 3.1.9.7 NMAC - Rn, 3 NMAC 1.9.7, 1/15/01]

3.1.9.8 CLAIM FOR REFUND - GENERAL:

A. Any person may submit a written claim for refund to the department when the person believes the person: 1) has made payment of or had withheld from that person any tax in excess of that for which the person was liable; 2) has been denied any credit or rebate claimed; or 3) has a claim of prior right to property possessed by the department pursuant to a levy. The secretary has not been given statutory authority to initiate action in the circumstances specified in numbers 1), 2) and 3) above. The person affected must initiate the claim for refund. The filing of a fully completed income, corporate income and franchise, estate or special fuel excise tax return or a fully completed amended income, corporate income and franchise, estate or special fuel excise tax return showing an overpayment of tax, a credit or rebate claimed will constitute the filing of a claim for refund and no separate claim for refund is required.

B. "Fully completed" means a return which complies with all the instructions for the return and contains all attachments required by those instructions.

C. A written claim for refund is timely if it meets the requirements for validity of 3.1.9.8 NMAC and is transmitted, delivered or mailed to the department prior to the expiration of the statutory time limits in Section 7-1-26 NMSA 1978.

D. A claim for refund is valid if it states the nature of the complaint and affirmative relief requested and if it contains information sufficient to allow the processing of the claim.

- E. Information sufficient to allow processing of a claim includes:
- (1) taxpayer's name, address and identification number;
 - (2) the type or types of tax for which the refund is being claimed;
 - (3) the sum of money being claimed;
 - (4) the period for which the overpayment was made;
 - (5) the basis for the refund; and

(6) a copy of the appropriate, fully completed amended return for each period for which a refund is claimed.

F. A claim that does not include the information required by Subsections D and E of 3.1.9.8 NMAC is invalid. The department may return any invalid claim to the taxpayer. Alternatively the department may advise the taxpayer of the missing information and that the claim is invalid without submission of the missing information. If the taxpayer re-submits the claim with the required information or, when the return is not returned, submits all required information, the claim becomes valid only at the time the claim is re-submitted or the required information is supplied.

G. Example: A taxpayer submits an income tax return showing an amount due the taxpayer. The taxpayer either omits entering a social security account number or enters an obviously incorrect number. In either case, the income tax return is not fully completed and the taxpayer has failed to provide a proper identification number. The return is not a valid claim for refund.

H. Effective January 1, 2012, an information return is not a claim for refund.
[7/19/67, 11/5/85, 8/15/90, 10/28/94, 10/31/96, 1/15/99; 3.1.9.8 NMAC - Rn & A, 3 NMAC 1.9.8, 1/15/01; A, 12/15/10]

3.1.9.9 REMEDIES OF CLAIMANT:

A. A person who has been denied a claim for refund or who has submitted a valid claim for refund upon which the department has taken no action within 120 days may submit to the secretary a written protest against the denial of, or failure to either allow or deny, the claim pursuant to Section 7-1-26 NMSA 1978. The protest must be received by the department either:

(1) on or before 90 days after the date that the department has mailed to the claimant a written denial of the claim for refund; or

(2) within 90 days after the expiration of 120 days after the mailing of a claim to the department on which no action has been taken by the department.

B. A person who has been denied a claim for refund or who has submitted a valid claim for refund upon which the department has taken no action within 120 days may commence a civil action against the secretary pursuant to Paragraph 7-1-26C(2) NMSA 1978. The civil action must be commenced within 90 days of the denial by the department or within 90 days after the expiration of 120 days after the mailing of the claim to the department upon which no action has been taken by the department.

C. A claimant may not refile a claim which has been denied in whole or in part. If the claimant wishes to challenge the department's denial, the claimant must pursue one of the two remedies specified above. A claimant may, however, refile a claim within the statutory period if the department has not denied the claim in whole or in part and has taken no action on that claim within 120 days from the filing of the claim.

D. For the purposes of Section 3.1.9.9 NMAC, a request for additional information by the department does not constitute "action".

E. This version of Section 3.1.9.9 NMAC is retroactively applicable to protests on refund claims denied by the department or upon which the department has taken no action within 120 days on or after July 1, 1993.

[7/19/67, 11/5/85, 8/15/90, 10/28/94, 10/31/96; 3.1.9.9 NMAC - Rn & A, 3 NMAC 1.9.9, 1/15/01]

3.1.9.10 CLAIM FOR REFUND OF CORPORATE INCOME TAX BASED ON ADJUSTMENT TO FEDERAL INCOME TAX:

A. The department may require that a claim for refund of state corporate income tax resulting from an adjustment to or claim for refund of federal income tax include proof of the approval and/or payment of such claim by the United States treasury department as a prerequisite to approval and payment of such claim by the state of New Mexico.

B. The supporting documentation requested may include copies of the internal revenue service revenue agent report (RAR); IRS form 1139, corporation application for tentative refund; and IRS form 1120X, amended u.s. corporation income tax return.

[5/8/87, 8/15/90, 10/31/96; 3.1.9.10 NMAC - Rn, 3 NMAC 1.9.10, 1/15/01]

3.1.9.11 CLAIM FOR REFUND OF INCOME TAXES OR BANKING AND FINANCIAL CORPORATIONS TAXES BASED ON A NET OPERATING LOSS CARRYBACK OR

CARRYFORWARD - 1990 AND PRIOR INCOME TAX YEARS:

A. For the 1990 and prior income tax years, New Mexico tax law had no provision for net operating loss carrybacks or carryforwards. The only way the federal Internal Revenue Code provisions concerning net operating loss carrybacks and carryforwards can affect New Mexico taxes for the 1990 and prior income tax years is through the fact that New Mexico taxes are based on federal tax computations and federal net operating loss carryback or carryforward provisions change those federal tax computations.

B. The New Mexico individual income tax, corporate income tax and banking and financial corporations taxes are based on either adjusted gross income of individuals or federal taxable income of corporations, subject to various modifications. Application of federal law concerning net operating loss carrybacks may thus result in a reduction of adjusted gross income or federal taxable income for a past tax year. This reduction in federal adjusted gross income or taxable income for that past year will then result in a reduction of the New Mexico tax owed under one of those tax acts. In such case, a taxpayer may claim a refund on those taxes within one year of the date on which the adjustment of federal tax became fixed or within the period limited by Subsection 7-1-26D NMSA 1978, whichever expires later. No other provision for a net operating loss carryback exists under New Mexico tax law for the 1990 and prior income tax years.

C. Example: X Bank is permitted under federal law to carryback a net operating loss for ten years. In 1986 X has a net operating loss of \$10,000. In 1976 X had federal taxable income reflecting a net loss. Under federal law, the net operating loss cannot be carried back to a previous loss year. Thus, even though the add-back provision under Subsection 7-6-2F NMSA 1978 of the New Mexico Banking and Financial Corporation Tax Act produced net income resulting in state tax liability in 1976, no modification is permitted to the state tax in the 1976 tax year. If X had federal taxable income of \$10,000 in 1977, federal tax law does allow X to carry back the 1986 net operating loss to 1977, thereby reducing the 1977 federal taxable income to \$0. X could then recompute its 1977 state tax under the Banking and Financial Corporations Tax Act by starting with a federal taxable income of \$0 instead of \$10,000 and completing its computation using the appropriate add backs for that year. The result would be a lessened state tax liability for 1977. X would then have one year from the adjustment in the federal tax to file a claim for refund of the excess New Mexico bank tax paid in 1977.

[5/8/87, 8/15/90, 10/31/96; 3.1.9.11 NMAC - Rn & A, 3 NMAC 1.9.11, 1/15/01]

3.1.9.12 PERIODS FOR WHICH CERTAIN REFUNDS MAY BE CLAIMED:

A. When the department has assessed tax for any part of a period covered by a waiver signed on or after July 1, 1993, by the taxpayer pursuant to Subsection 7-1-18F NMSA 1978, the taxpayer may submit a claim for refund for any part of the waiver period with respect to the taxes covered by the waiver, regardless of whether tax is assessed for that part of the waiver period. Any such claim for refund must be submitted within one year of the date of the assessment.

B. When the department has assessed tax for periods specified in Subsections 7-1-18 B, C or D NMSA 1978 and the assessment applies to a period ending at least three years prior to the beginning of the year in which the assessment is made, the taxpayer may submit a claim for refund with respect to those periods for which an assessment is made. Any such claim for refund must be submitted within one year of the date of the assessment.

C. Example: Taxpayer, a monthly filer, underreported by more than 25% gross receipts taxes due in the period November 1988 through December 1991. The department audits Taxpayer in 1993. On May 1, 1993, the department assessed Taxpayer with respect to underreported taxes for the entire period. In May 1993, the November 1988 through December 1989 portion of the period is beyond the time described in Subsection 7-1-18A NMSA 1978. The taxpayer may claim a refund at any time until April 30, 1994 with respect to gross receipts taxes paid in the period November 1988 through December 1989.

[6/3/94, 10/31/96; 3.1.9.12 NMAC - Rn & A, 3 NMAC 1.9.12, 1/15/01]

3.1.9.13 CONDITIONS FOR REFUND OR CREDIT:

A. A refund or credit of tax may be granted to a taxpayer by the secretary or secretary's delegate only if all the following conditions are satisfied:

- (1) the tax has been erroneously paid and payment has been verified from the department's or taxpayer's records;
- (2) the taxpayer has submitted a proper claim for refund pursuant to Section 7-1-26 NMSA 1978 and the regulations thereunder; and
- (3) the secretary has secured the prior approval of the attorney general for any refund of tax and

interest erroneously paid when such approval is required in Subsection A of Section 7-1-29 NMSA 1978.

B. The secretary or secretary's delegate, in response to a claim for refund for one type of tax, may credit the amount to be refunded against the amount of any other tax due from the taxpayer. The secretary or secretary's delegate shall give a full accounting of the crediting transaction to the claimant.

C. A taxpayer may not create a credit for a discovered overpayment of tax by understating the amount due on current tax returns to offset amounts paid on prior returns.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.9.13 NMAC - Rn, 3 NMAC 1.9.13, 1/15/01; A, 12/15/11]

3.1.9.14 INTEREST ON REFUNDS OF TAXES SELF-ASSESSED BY THE TAXPAYER:

A. When an overpayment results from a self-assessment of taxes based on a return filed by the taxpayer, interest on a refund of that overpayment of taxes shall be computed from the date of filing of the claim for refund when the refund is not paid within the appropriate 60, 75 or 120 day limit specified in Subsection 7-1-68D NMSA 1978 and when the overpayment results from a self-assessment of taxes based on a return filed by the taxpayer. The fact that a subsequent notice of assessment is issued by the department due to failure of the taxpayer to accompany the return with full payment does not change the date from which interest is computed.

B. The determinative factor in deciding whether an overpayment is an "overpayment arising from an assessment by the department" - requiring interest on a refund to be computed from the date of overpayment rather than the date of a claim for refund - is whether the action establishing the amount of liability for taxes was initiated by the taxpayer or by the department. Actions initiated by the taxpayer include, but are not limited to, the filing of a tax return reporting a tax liability, whether or not payment accompanies the return. Actions initiated by the department include, but are not limited to, an audit of the taxpayers books and records or the issuance of a provisional assessment as a result of a taxpayer's failure to file any return or returns.

[7/19/67, 11/5/85, 1/14/86, 8/15/90, 10/28/94, 10/31/96; 3.1.9.14 NMAC - Rn & A, 3 NMAC 1.9.14, 1/15/01]

3.1.9.15 INTEREST ON REFUNDS BASED ON ADJUSTMENT TO FEDERAL INCOME TAX:

Interest on refunds based on an adjustment to federal tax pursuant to Subsection 7-1-26F NMSA 1978 shall be allowed from the date 120 days after the claim is filed until the date the final authorizing signature approves the claim.

[5/20/94, 10/31/96; 3.1.9.15 NMAC - Rn & A, 3 NMAC 1.9.15, 1/15/01]

3.1.9.16 REFUND OF CERTAIN INTEREST OR PENALTY PAID:

A. When a taxpayer has paid interest with respect to an amount of tax that is paid after the time it is due to be paid and the taxpayer subsequently becomes entitled to a refund of part or all of the tax, the taxpayer is also entitled to a refund of a proportionate amount of the interest paid by the taxpayer whether or not the taxpayer specifically requests refund of the interest.

B. When a taxpayer has paid penalty pursuant to Section 7-1-69 NMSA 1978 with respect to an amount of tax that is paid after the time it is due to be paid and the taxpayer subsequently becomes entitled to a refund of part or all of the tax, the taxpayer is also entitled to a proportionate refund of the penalty paid by the taxpayer whether or not the taxpayer specifically requests refund of the penalty.

[3.1.9.16 NMAC - N, 1/15/01]

HISTORY OF 3.1.9 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 1.9, Tax Administration - Refund, filed 10/17/96.

3.1.9 NMAC, Tax Administration - Refund, filed 1/4/2001.