

**TITLE 3: TAXATION**  
**CHAPTER 1: TAX ADMINISTRATION**  
**PART 12: MISCELLANEOUS PROVISIONS**

**3.1.12.1 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; 3.1.12.1 NMAC - Rn, 3 NMAC 1.12.1, 1/15/01]

**3.1.12.2 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; 3.1.12.2 NMAC - Rn, 3 NMAC 1.12.2, 1/15/01]

**3.1.12.3 STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[10/31/96; 3.1.12.3 NMAC - Rn, 3 NMAC 1.12.3, 1/15/01]

**3.1.12.4 DURATION:** Permanent.  
[10/31/96; 3.1.12.4 NMAC - Rn, 3 NMAC 1.12.4, 1/15/01]

**3.1.12.5 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; 3.1.12.5 NMAC - Rn & A, 3 NMAC 1.12.5, 1/15/01]

**3.1.12.6 OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Tax Administration Act.  
[10/31/96; 3.1.12.6 NMAC - Rn, 3 NMAC 1.12.6, 1/15/01]

**3.1.12.7 DEFINITIONS:** Reserved.  
[10/31/96; 3.1.12.7 NMAC - Rn, 3 NMAC 1.12.7, 1/15/01]

**3.1.12.8 REPORTING SALE OR USE OF FUEL FOR TURBOPROP OR JET-TYPE ENGINES:**

A. Each month, the department shall distribute to the state aviation fund a percentage of the gross receipts or value attributable to the sale or use of fuel specially prepared and sold for use in turboprop or jet-type engines as specified in Section 7-1-6.7 NMSA 1978.

B. In order for the department to be able to determine the correct amount to be distributed to the aviation fund, the department requires, pursuant to Subsection 7-1-10E NMSA 1978, taxpayers who are in the business of selling fuel for use in turboprop and jet engines, users who are direct purchasers of such fuel from out-of-state sources and users who purchase such fuel through the use of nontaxable transaction certificates are required to report the dollar amount of such sales or purchases to the department on forms to be supplied by the department. This information shall be submitted to the department as an attachment to the taxpayer's monthly CRS-1 report and is due by the 25th day of the month following the end of the period covered by the CRS-1 report.  
[7/2/82, 11/5/85, 8/15/90, 10/31/96; 3.1.12.8 NMAC - Rn & A, 3 NMAC 1.12.8, 1/15/01; A, 12/15/11]

**3.1.12.9 ETHANOL PRODUCERS' REPORTING REQUIREMENTS:** Any person doing business in the state of New Mexico as an ethanol producer (manufacturer) shall file monthly reports, providing information necessary to the administration of the Gasoline Tax Act, in form and content as prescribed by the department.  
[2/19/86, 8/15/90, 10/31/96; 3.1.12.9 NMAC - Rn, 3 NMAC 1.12.9, 1/15/01]

**3.1.12.10 TAX IDENTIFICATION ON VENDING MACHINES:** All coin-operated vending machine owners shall prominently display on the front of each machine a plaque or sticker which bears the owner's name, complete address and combined reporting system (CRS) taxpayer identification number.  
[10/12/71, 11/5/85, 8/15/90, 10/31/96; 3.1.12.10 NMAC - Rn, 3 NMAC 1.12.10, 1/15/01]

**3.1.12.11 SECURITY POSTED BY GASOLINE DISTRIBUTORS:** Registered gasoline distributors shall post security as required by the secretary or secretary's delegate pursuant to 3.16.7.10 NMAC. [2/19/86, 8/15/90, 10/31/96; 3.1.12.11 NMAC - Rn & A, 3 NMAC 1.12.11, 1/15/01]

**3.1.12.12 LIQUOR WHOLESALE REPORTING REQUIREMENTS:** Any person doing business in the state of New Mexico as a liquor wholesaler shall file monthly reports, providing sales information necessary to the administration of the Gross Receipts and Compensating Tax Act, in form and content as prescribed by the department. The monthly report is due by the 25<sup>th</sup> day of the month following the close of the calendar month in which the alcoholic beverages are sold. [3.1.12.12 NMAC - N, 4/28/06]

**3.1.12.13 COLLECTION OF COMMUNITY DEBT AGAINST A SPOUSE OR FORMER SPOUSE:** The secretary or secretary's delegate may decline to bring an action or proceeding to collect community debt against a spouse or former spouse when bringing an action or proceeding would be inequitable.

A. In the case of community tax debt arising from a jointly-filed income tax return, the secretary or the secretary's delegate may decline to bring an action or proceeding to collect such taxes against the spouse or former spouse of a taxpayer who is granted relief by the internal revenue service (IRS) pursuant to 26 U.S.C. Section 6015. Where relief is granted in writing by the IRS, the spouse who received such relief may provide a copy of the IRS's determination and request that the secretary cease any collection activity against that spouse or former spouse to the extent such relief was allowed by the IRS. The secretary or the secretary's delegate may decline to pursue collection activity against a spouse or former spouse for community debt while an application for such relief is pending before the IRS, but the failure to seek or obtain such relief shall not preclude the secretary or secretary's delegate from declining to bring an action or proceeding against a spouse or former spouse for collection of a community debt when bringing an action or proceeding would be inequitable. The secretary or the secretary's delegate shall consider the following facts and circumstances when determining whether to bring an action or proceeding to collect community debt:

- (1) Did the spouse or former spouse have knowledge of the tax liability at the time that liability arose?
- (2) Did the spouse or former spouse have a meaningful opportunity to contest the assessment of tax at the time the assessment was made?
- (3) Has the spouse or former spouse cooperated with the department in collection and compliance efforts?
- (4) Can the state protect its interests without pursuing active collection efforts against the spouse or former spouse, including collection efforts against the other spouse or former spouse?
- (5) Has the spouse or former spouse benefited from the transfer of significant amounts of property from the other spouse or former spouse?
- (6) Was the spouse or former spouse given an opportunity to participate in the business decisions of the household during the periods when the debt arose?

B. In addition to the facts and circumstances listed in Subsection A above, in the case of a community debt arising from the conduct of a business within the state, including taxes collected under the combined reporting system, the secretary or the secretary's delegate shall also consider the following facts and circumstances when determining whether to bring an action or proceeding to collect community debt:

- (1) Did the spouse or former spouse participate in the conduct of the business, including responsibility for payment of taxes and other debts?
- (2) Has the spouse or former spouse benefited from the conduct of the business?
- (3) Did the spouse or former spouse know that the other spouse or former spouse had a business?

C. The secretary or the secretary's delegate shall weigh all applicable factors when determining whether to decline to bring an action or proceeding. No one factor shall be considered determinative. Each of these factors may be given different relative weight, depending on the facts and circumstances of each case, therefore the presence of a majority of said factors tending to indicate "innocent spouse" in a particular case may not necessarily indicate that the taxpayer in question qualifies as an "innocent spouse" for New Mexico tax purposes.

D. Nothing in this regulation shall be construed to apply to offsets of refunds or credits to collect on community debts.

E. The secretary and the secretary's delegate has discretion to allow relief under this section. A spouse or former spouse who believes he or she is entitled to relief under this section may petition for such relief to the secretary in writing. The spouse or former spouse has the burden of proof in establishing his or her entitlement to the relief requested. A spouse or former spouse who believes that the request for relief under this section has been improperly denied may protest that decision under Section 7-1-24 NMSA 1978.  
[3.1.12.13 NMAC - N, 10/31/07]

**HISTORY OF 3.1.12 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 1.12, Tax Administration - Miscellaneous Provisions, filed 10/17/96.

3.1.12 NMAC, Tax Administration - Miscellaneous Provisions, filed 1/4/2001.