

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 5: PRESUMPTION OF TAXABILITY

3.2.5.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[11/15/96; 3.2.5.1 NMAC - Rn, 3 NMAC 2.5.1, 4/30/01]

3.2.5.2 SCOPE: This part applies to all persons engaging in business in New Mexico.
[11/15/96; 3.2.5.2 NMAC - Rn, 3 NMAC 2.5.2, 4/30/01]

3.2.5.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/96; 3.2.5.3 NMAC - Rn, 3 NMAC 2.5.3, 4/30/01]

3.2.5.4 DURATION: Permanent.
[11/15/96; 3.2.5.4 NMAC - Rn, 3 NMAC 2.5.4, 4/30/01]

3.2.5.5 EFFECTIVE DATE: 11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[11/15/96; 3.2.5.5 NMAC - Rn & A, 3 NMAC 2.5.5, 4/30/01]

3.2.5.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
[11/15/96; 3.2.5.6 NMAC - Rn, 3 NMAC 2.5.6, 4/30/01]

3.2.5.7 DEFINITIONS: [Reserved.]
[11/15/96; 3.2.5.7 NMAC - Rn, 3 NMAC 2.5.7, 4/30/01]

3.2.5.8 PERSONS NOT REQUIRED TO REGISTER WITH THE DEPARTMENT:

A. A person engaging in business must register with the department to report gross receipts unless that person is clearly engaged solely in an activity the receipts from which are exempt as provided in Sections 7-9-13 through 7-9-42 NMSA 1978 or other law. Even though a person's receipts may be entirely deductible under provisions of the Gross Receipts and Compensating Tax Act, the person must register, report those receipts, and claim the applicable deduction or deductions.

B. The following examples illustrate the application of Section 7-9-5 NMSA 1978:

(1) Example 1: A is engaged in the business of farming. A's sole activity is raising cotton which is then sold through a broker to a cotton mill. Because this sale activity is specifically exempted in Section 7-9-18 NMSA 1978, A does not have to register under the Gross Receipts and Compensating Tax Act or file a return.

(2) Example 2: B is a farmer. B raises cotton that is sold through a broker to a mill. B also owns a retail grocery store. B contends that there is no need to register with the taxation and revenue department since B is engaged in a specifically exempted activity. B must register with the department since B is also engaged in selling groceries, an activity that is not specifically exempt from the Gross Receipts and Compensating Tax Act. However, B does not have to report the receipts derived from the sale of cotton, because these receipts are specifically exempt.

(3) Example 3: V Company employs five persons and is engaged solely in the business of buying wool from farmers and selling it to yarn factories. Because V's receipts are exempt from taxation under Section 7-9-18 NMSA 1978, it is not required to register for gross receipts taxation with the department. However, V is required to register and file the necessary returns under the Withholding Tax Act, Sections 7-3-1 through 7-3-12 NMSA 1978, and comply with any other tax laws that pertain to its business.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90 11/15/96, 4/30/99; 3.2.5.8 NMAC - Rn & A, 3 NMAC 2.5.8, 4/30/01]

HISTORY OF 3.2.5 NMAC:

Pre-NMAC History:

BOR 67-2, NM Gross Receipts and Compensating Tax Regulations, September 1967, filed 9/29/67.

BOR 69-4, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 12-5-69, filed 12/5/69.

BOR 72-4, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 3/9/72, filed 3/9/72.

BOR 74-2, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 12/15/73, filed 3/20/74.

BOR 76-1, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 7/26/76, filed 7/26/76.

R.D.79-1, Gross Receipts and Compensating Tax Act Regulations, filed 6/18/79.

R.D. Rule No. 82, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 4/7/82.

R.D. Rule No. 84, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 5/4/84.

TRD Rule No. 9-86, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 4/2/86.

TRD Rule GR-90, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 11/26/90.

History of Repealed Material: [RESERVED]

NMAC History:

3 NMAC 2.5, Presumption of Taxability, filed 11/4/96.

3.2.5 NMAC, Presumption of Taxability, filed 4/17/2001.