

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 11: PRESUMPTION OF TAXABILITY AND VALUE

3.2.11.1 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; 3.2.11.1 NMAC - Rn, 3 NMAC 2.8.1, 4/30/01]

3.2.11.2 SCOPE: This part applies to each person using property in New Mexico.
[11/15/96; 3.2.11.2 NMAC - Rn, 3 NMAC 2.8.2, 4/30/01]

3.2.11.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/96; 3.2.11.3 NMAC - Rn, 3 NMAC 2.8.3, 4/30/01]

3.2.11.4 DURATION: Permanent.
[11/15/96; 3.2.11.4 NMAC - Rn, 3 NMAC 2.8.4, 4/30/01]

3.2.11.5 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; 3.2.11.5 NMAC - Rn & A, 3 NMAC 2.8.5, 4/30/01]

3.2.11.6 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; 3.2.11.6 NMAC - Rn, 3 NMAC 2.8.6, 4/30/01]

3.2.11.7 DEFINITIONS: [Reserved.]
[11/15/96; 3.2.11.7 NMAC - Rn, 3 NMAC 2.8.7, 4/30/01]

3.2.11.8 VALUE - FREIGHT CHARGES:

- A. Transportation costs that are paid by the seller to the carrier are an element of the sales price of the property.
- B. Transportation costs that are paid to the carrier by the buyer are not an element of the sales price of the property.
- C. If the buyer transports the property in equipment owned or leased by the buyer, the cost of the transportation does not increase the value of the property.
- D. If the seller transports the property in equipment owned or leased by the seller, the cost of the transportation is already included in the price of the property and it is considered an element of the sales price of the property.
- E. If the seller, acting as an agent for the buyer, pays the transportation charges, the cost of the transportation is not an element of the sales price.
- F. Note: Section 3.2.11.8 NMAC also applies to the treatment of freight charges for purposes of computing gross receipts tax.

[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, 10/17/84, 4/2/86, 11/26/90, 11/15/96; 3.2.11.8 NMAC - Rn & A, 3 NMAC 2.8.8, 4/30/01]

3.2.11.9 VALUE OF DRUG SAMPLES: The compensating tax on drug samples manufactured outside New Mexico and distributed to New Mexico physicians free of charge is assessed on the value of the finished product in the hands of the manufacturer. This value is the full price which would have been charged by the manufacturer if the samples had been sold, not just the cost of materials and packaging supplies. As of January 1, 1999, the compensating tax does not apply to the use of drugs which are "prescription drugs".
[7/26/76, 6/18/79, 4/7/82, 5/4/84, 10/17/84, 4/2/86, 11/26/90, 11/15/96, 10/29/99; 3.2.11.9 NMAC - Rn, 3 NMAC 2.8.9, 4/30/01]

3.2.11.10 RESTAURANT FOOD FOR EMPLOYEES:

- A. Restaurant owners are liable for compensating tax on the value of food served to employees where

no amount includable in the owner's gross receipts is received from the employees for the food served to them, if such food was purchased by the owner subject to the deduction from gross receipts for sales of tangible personal property for subsequent sale and no compensating tax was paid.

B. For convenience in accounting and auditing, two dollars per day per employee shall be used as the value of the food served to employees in computing the compensating tax due.

[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, 10/17/84, 2/15/85, 4/2/86, 11/26/90, 11/15/96; 3.2.11.10 NMAC - Rn, 3 NMAC 2.8.10, 4/30/01]

HISTORY OF 3.2.11 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 2.8, Presumption of Taxability and Value, filed 11/4/96.

3.2.11 NMAC Presumption of Taxability and Value, filed 4/17/2001.