

**TITLE 3: TAXATION**  
**CHAPTER 2: GROSS RECEIPTS TAXES**  
**PART 20: GOVERNMENTAL GROSS RECEIPTS**

**3.2.20.1 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; 3.2.20.1 NMAC - Rn, 3 NMAC 2.100.1, 4/30/01]

**3.2.20.2 SCOPE:** This part applies to all governmental bodies of the state of New Mexico and its political subdivisions.  
[11/15/96; 3.2.20.2 NMAC - Rn, 3 NMAC 2.100.2, 4/30/01]

**3.2.20.3 STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[11/15/96; 3.2.20.3 NMAC - Rn, 3 NMAC 2.100.3, 4/30/01]

**3.2.20.4 DURATION:** Permanent.  
[11/15/96; 3.2.20.4 NMAC - Rn, 3 NMAC 2.100.4, 4/30/01]

**3.2.20.5 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; 3.2.20.5 NMAC - Rn, 3 NMAC 2.100.5 & A, 4/30/01]

**3.2.20.6 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; 3.2.20.6 NMAC - Rn, 3 NMAC 2.100.6, 4/30/01]

**3.2.20.7 DEFINITIONS:**

A. **Admission:** An “admission” to a recreational, athletic or entertainment event includes the granting of permission to observe or participate in a recreational, athletic or entertainment activity.

(1) Example 1: City C charges a “greens fee” for use of a public golf course maintained by the city. Receipts from the greens fee are admissions.

(2) Example 2: County Y charges a fee for use of a swimming pool and surrounding area maintained by the county. Receipts from this fee are admissions.

B. **Agency, institution or instrumentality:**

(1) An agency, institution or instrumentality includes all parts of the agency, institution or instrumentality. An entity which is administratively attached to an agency, institution or instrumentality is not thereby part of the agency, institution or instrumentality. An agency, institution or instrumentality which is subject to the supervisory or regulatory authority of another is not thereby part of the supervising or regulating entity.

(2) Example 1: The New Mexico museum of natural history is part of the museum division of the office of cultural affairs. The New Mexico museum of natural history is not an “agency” or “institution” for purposes of the governmental gross receipts tax but only a component of an agency. In contrast, the office of cultural affairs is administratively attached to the department of finance and administration. The office of cultural affairs is not part of the department of finance and administration, which merely provides the office with some administrative support. The office of cultural affairs is an “agency” for the purposes of the governmental gross receipts and is responsible for reporting for all of its components.

(3) Example 2: Under the Property Tax Code, the taxation and revenue department has general supervisory power over county assessors and the department of finance and administration has certain enforcement powers relating to county treasurers. The existence of these authorities does not make either county officer a part of the superintending state agency.

C. **Entertainment, athletic or recreational services or events:** The term “entertainment, athletic or recreational services or events” includes any recreational, athletic or entertainment activity.

D. **State of New Mexico and any agency, institution, instrumentality or political subdivision thereof:**

(1) For the purposes of the Gross Receipts and Compensating Tax Act, the term “state of New Mexico and any agency, institution, instrumentality or political subdivision thereof” includes:

(a) the legislature of the state of New Mexico and any committee or employee thereof; examples of committee: the legislative council, the legislative finance committee, the legislative education study committee and any interim committee; staff of such a committee are part of the committee;

(b) the supreme court, court of appeals, district courts, metropolitan courts, magistrate courts, probate courts and any agency thereof; examples of agency: the administrative office of the courts, the judicial standards commission and the compilation commission;

(c) the office of the governor and every state executive agency subject to the authority of the governor; examples of agency: every state cabinet agency, such as the taxation and revenue department, every agency not a cabinet agency whose head is directly responsible to the governor for the operations of the agency, such as the public defender department, whether or not the agency is administratively attached to a state cabinet agency, and every advisory committee established pursuant to Section 9-1-9 NMSA 1978;

(d) every other state executive agency, board, commission or authority whose governing body is a board or commission either elected by the people or appointed by the governor, with or without consent of the Senate, whose actions are not formally subject to the control or approval of the governor, whether or not such agency is administratively attached to a state cabinet agency; examples: the state public regulation commission, the state racing commission, the public service commission, the state personnel board, and the state game commission;

(e) a state officer other than the governor whose office is created by the state constitution, together with the agency or office such person heads, whether or not the officer is elected or appointed; examples: the secretary of state, the attorney general, the state treasurer, the state auditor, the commissioner of public lands and the state mine inspector;

(f) every executive agency created by the state constitution not included in items c through e above; examples: the state board of education, the state department of education and the department of agriculture;

(g) every health, educational, penal or other institution of the state; every entity controlled or operated by such an institution is part of that institution;

(i) examples of institutions: the entities enumerated in Article XII, Section 11 and Article XIV, Section 1 of the state constitution, community colleges, branch colleges, junior colleges, technical and vocational institutions, area vocational institutions and hospitals not enumerated in Article XIV, Section 11 of the state constitution;

(ii) examples of controlled entities: any newspaper published by a state university or college, whether or not operated as an educational function of the university, or any radio or television stations, the license to operate which is held by an entity or entities described in Section 3.2.20.1 NMAC;

(h) every instrumentality of the state which has the power to levy a tax or assessment, whether the instrumentality was created by the state constitution or by law, whether the governing power is vested in an officer or a board or commission or whether the officer or members of the board or commission are elected or appointed; examples: New Mexico beef council, economic advancement districts, irrigation districts, conservancy districts, soil and water conservation districts and flood control districts;

(i) every instrumentality of the state administering state retirement and other programs benefiting employees of the state: examples: the public employees retirement association and its governing board and the educational retirement board;

(j) every instrumentality of the state other than those described in Subparagraph (h) of Subsection D of Section 3.2.20.7 above, whether created by the state constitution or by law, whether the governing power is vested in an officer or a board or commission or whether the officer or members of the board or commission are elected or appointed; examples: the mortgage finance authority, the industrial and agricultural finance authority, the business development corporation and any corporation established under the Educational Assistance Act;

(k) every county of New Mexico, which includes all of its parts, instrumentalities and elected officials; example: a county hospital, regardless of whether operation of the hospital is conducted by another entity under contract, or any entity with power of taxation or assessment authorized to be established with the permission of the county commission or the voters of the county under Article 4 NMSA 1978, such as a county improvement district;

(l) every municipality of New Mexico, whether incorporated under special law or general law, which includes all of its parts, instrumentalities and elected officials; examples: any municipal housing authority,

any municipally-owned transit, water, sewer, electric or gas utility, any municipally-controlled organization operating a convention center, any regional planning commission or any entity with power of taxation or assessment authorized to be established with the permission of the governing body of the municipality or the voters of the municipality under Article 3 NMSA 1978, such as a municipal parking authority or community development agency;

- (m) every public school district of New Mexico;
- (n) community ditch or acequia associations;
- (o) community land grants, whether incorporated or not, which have statutory power of taxation or assessment; and
- (p) every other political subdivision of New Mexico, including every component or instrumentality of that political subdivision;

(2) the term “state of New Mexico and any agency, institution, instrumentality or political subdivision thereof” does not include:

- (a) organizations created by interstate compact; examples: Cumbres and Toltec scenic railroad commission, multistate tax commission, interstate agricultural grain marketing commission, western interstate commission for higher education and the council of state governments.

- (b) or any entity not created by the state constitution or by law or local ordinance, which has no power of taxation and in which membership is voluntary; examples: New Mexico association of counties, New Mexico municipal league, any union of government employees and any association advancing the professional interests of its members.

[6/28/91, 9/17/91, 10/2/92, 11/15/96; 3.2.20.7 NMAC - Rn, 3 NMAC 2.100.7 & A, 4/30/01; A, 10/31/05]

### **3.2.20.8           RESERVED.**

### **3.2.20.9           “RECEIPTS” AND “TAXABLE ACTIVITY” DEFINED:**

A.       “Receipts” means the total amount of money or the value of other consideration received by the state of New Mexico or any agency, institution, instrumentality or political subdivision thereof from another person.

B.       Example: City Y operates a zoo. Admissions are charged; annual passes are also sold. A nonprofit organization, called Zoo People, is established by concerned citizens to provide various services to or for the zoo. Zoo People collects donations to defray the costs of its activities on behalf of the zoo. The zoo agrees to provide a limited number of annual passes to the organization in exchange for certain services. Zoo People sells these passes through raffles and other means. Although Zoo People does not turn over the proceeds from these sales to the zoo, the money helps pay for services provided to or for the zoo. The value of the services supplied is other consideration. City Y has receipts equal to the value of the consideration, up to the value of the passes supplied. The zoo also occasionally exchanges animals with other zoos which are parts of the state of New Mexico. In an exchange, the value of the other consideration received (in this case the value of the animal received) must be included in receipts.

C.       Money or other consideration received in transactions among parts of an agency, institution, instrumentality or political subdivision are not receipts and therefore are not governmental gross receipts.

D.       Example: City A's water department is operated on an enterprise basis. It sells water to City A's recreation department which must pay monthly, just as all of the water department's outside customers do. This is a transaction entirely within City A. City A as a whole has no receipts and therefore no governmental gross receipts from the transaction; money merely moved from one department's account to another's.

E.       As used in Part 3.2.20 NMAC, the term “taxable activity” means:

- (1) the sale of tangible personal property other than water from facilities open to the general public;
- (2) the sale of water by a utility owned or operated by a political subdivision of New Mexico;
- (3) the performance of or admissions to recreational, athletic or entertainment services or events in facilities open to the general public; or
- (4) the performance of refuse collection, refuse disposal or sewage services.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.9 NMAC - Rn, 3 NMAC 2.100.9 & A, 4/30/01]

### **3.2.20.10          “FACILITY OPEN TO THE GENERAL PUBLIC” DEFINED:**

A.       The term “facility open to the general public” means a physical structure or location through

which a member of the general public may transact business with the governmental entity to purchase tangible personal property or a service. A “facility open to the general public” does not necessarily involve the personal physical access by the member of the general public to the physical structure or location so long as any member of the general public may arrange through the facility the purchase of tangible personal property or a service.

B. Example: State agency X publishes a magazine which it sells to the general public. The magazine is physically prepared and printed in State A. It is mailed to subscribers through delivery in State A to the United States postal service. A person may subscribe to the magazine only by contacting a subscription service located in State B. Although there is little, if any, direct contact between the agency publishing the magazine and its customers, nevertheless the agency is selling tangible personal property through a facility open to the general public. Its receipts from selling the magazine are governmental gross receipts.

[6/28/91, 11/15/96; 3.2.20.10 NMAC - Rn, 3 NMAC 2.100.10, 4/30/01]

### **3.2.20.11 INTANGIBLES - INDEBTEDNESS:**

A. Proceeds from the sale of indebtedness by any agency, institution, instrumentality or political subdivision of the state of New Mexico are not receipts from a taxable activity and are not governmental gross receipts.

B. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from repayment of indebtedness are not receipts from a taxable activity and are not governmental gross receipts.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.11 NMAC - Rn, 3 NMAC 2.100.11, 4/30/01]

### **3.2.20.12 INTANGIBLES - RECEIPTS FROM SALE OF LICENSES OR PERMITS:**

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from a transaction which is primarily the granting of a license or a permit other than admissions to recreational, athletic or entertainment services or events are not governmental gross receipts, even if tangible evidence of the license or permit is given to the licensee or permittee.

B. Example 1: Under the Motor Vehicle Code, the state of New Mexico requires resident drivers of motor vehicles to be licensed by the taxation and revenue department. Upon passing of certain tests and payment of a fee for the license, the driver is licensed and a card is issued to a qualifying driver containing the driver's picture and certain information about the driver. The card is merely the physical evidence that the driver to whom the card was issued is licensed with the department in accordance with law. Receipts from issuing such driver's licenses are not receipts from the sale of tangible personal property and are not governmental gross receipts.

C. Example 2: Several municipalities (under Section 3-38-1 NMSA 1978) and counties (under Section 4-37-1 NMSA 1978) require persons engaged in certain types of business to obtain a license prior to engaging or continuing to engage in that business. A certificate is issued documenting the granting of the license; sometimes the certificate is required to be displayed on the premises of the licensed business. Receipts from issuing such licenses are not receipts from the sale of tangible personal property and are not governmental gross receipts.

D. Example 3: Marriage licenses are required of persons desiring to marry in the state of New Mexico. Upon payment of the fee and other requirements, a document is issued. Receipts from issuing such licenses are not receipts from the sale of tangible personal property and are not governmental gross receipts.

[6/28/91, 11/15/96; 3.2.20.12 NMAC - Rn, 3 NMAC 2.100.12 & A, 4/30/01]

### **3.2.20.13 REPORTING, FILING OR REGISTRATION FEES:**

A. Whenever a person is required by law to report to or register with a governmental agency or to register possession or use of tangible personal property, receipts of an agency, institution, instrumentality or political subdivision of the state of New Mexico from such registrations are not governmental gross receipts, regardless of whether tangible personal property is given to the person registering as evidence of the registration.

B. Example 1: The owner or operator of a facility in which a hazardous chemical is present in certain quantities is required to file an inventory report on such chemicals. A fee is charged for each inventory form filed. Receipts from such fees are not governmental gross receipts.

C. Example 2: The New Mexico owner of a motor vehicle which is to be driven upon the public highways is obliged to register the vehicle with the taxation and revenue department. A metal plate, to be affixed to the motor vehicle, is given to the owner upon registration as evidence of the registration. The transaction is not primarily the sale of tangible personal property but the registration of the motor vehicle. Receipts from such

registrations are not governmental gross receipts.

D. Fees charged by any agency, institution, instrumentality or political subdivision of the state of New Mexico as a pre-condition for official action by that entity are not receipts from a taxable activity.

E. Example 1: Docketing fees are charged by New Mexico courts to defray the administrative costs of accepting a case. Cases will not be accepted in absence of payment of the fee. Such fees are not governmental gross receipts.

F. Example 2: The state public regulation commission charges fees for incorporating a corporation and will not recognize the corporation unless the fees are paid. Such fees are not governmental gross receipts.  
[6/28/91, 10/2/92, 11/15/96; 3.2.20.13 NMAC - Rn, 3 NMAC 2.100.13 & A, 4/30/01; A, 12/30/10]

### **3.2.20.14 RECEIPTS FROM GRANTING LICENSES TO USE REAL PROPERTY:**

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from granting licenses to use real property, other than admissions or the grantings of permission to participate in a recreational, athletic or entertainment activity, or to park vehicles, tie-down spaces or dock boats, are not receipts from a taxable activity. Such revenues are not governmental gross receipts.

B. Example 1: City X operates a parking garage open to the general public. It sells permits for use of designated parking spaces for an entire month. It also charges a fee for use of any undesignated spaces on a hourly basis. The revenues from the monthly permits and the hourly use charges are governmental gross receipts.

C. Example 2: The commissioner of public lands receives fees from granting ranchers the right to graze livestock on public lands. These fees are not governmental gross receipts.

D. Example 3: University A rents its auditorium to a private group for a rock concert. The rental agreement calls for payment to A of a flat fee plus a percentage of the gate. A's receipts are receipts from the granting of a license to use real property and are not governmental gross receipts. If, in addition to the basic terms of the rental arrangement, A also agreed to furnish security, janitorial services and ticket selling services for additional fees, A's receipts from performing such services are not governmental gross receipts because these services are not refuse collection, refuse disposal, sewage or recreational, entertainment or athletic services.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.14 NMAC - Rn, 3 NMAC 2.100.14, 4/30/01; A, 1/30/09]

### **3.2.20.15 RECEIPTS FROM GRANTING LICENSES TO USE INFORMATION OR PERSONAL PROPERTY:**

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from granting licenses to use information or personal property are not receipts from a taxable activity. Such revenues are not governmental gross receipts.

B. Example 1: A governmental agency charges a fee for electronic access to its data files. The fee is composed of two parts, a monthly connection charge and a charge per item searched. The charges are not governmental gross receipts.

C. Example 2: A governmental agency charges a fee for use by private persons of its telefax machine to transmit documents to other locations. Receipts from the fee are not governmental gross receipts.

D. Example 3: For a fee, a state museum allows state officials to borrow paintings to decorate their state offices. The museum's receipts from these fees are receipts from granting a license to use personal property and are not governmental gross receipts.

E. Example 4: A library provides a coin-operated photocopying machine for use by its patrons. Receipts from use of the machine are receipts from granting a license to use personal property and are not governmental gross receipts.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.15 NMAC - Rn, 3 NMAC 2.100.15, 4/30/01]

### **3.2.20.16 RECEIPTS FROM LEASING:**

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from leasing real property or tangible personal property are not receipts from a taxable activity.

B. Example 1: Municipality X, under an industrial development project agreement with Company A, has arranged for the construction and equipping of a factory which it leases to Company A. The lease sets a monthly fee sufficient to cover the repayment of bonds issued by the municipality which provided the funds for the construction and equipping of the factory. At the end of the lease period, Company A may buy the factory and its equipment for a stated sum. The monthly receipts of the municipality from the lease are not governmental gross

receipts but its receipts from the sale of the project's tangible personal property at the end of the lease are governmental gross receipts.

C. Example 2: Municipality B owns a baseball stadium which it leases to a professional team on a long-term basis for the team's use as its home park for specified portions of each year covered by the lease. B receives a fixed annual fee plus a percentage of gate receipts as well as a percentage of income from certain concessions. As part of the lease agreement, the team also agrees to perform certain maintenance functions and to construct some improvements to the stadium. The monetary and other consideration given B are receipts from leasing real property and are not governmental gross receipts.

D. The receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from the sale of season passes or season tickets to recreational, entertainment or athletic events in facilities open to the general public are receipts from admissions and not from leasing. Such receipts are governmental gross receipts.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.16 NMAC - Rn, 3 NMAC 2.100.16, 4/30/01]

### **3.2.20.17 RECEIPTS FROM SERVICES - GENERAL:**

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from performing services other than services which are entirely or predominantly refuse collection, refuse disposal, sewage or recreational, entertainment or athletic services are not governmental gross receipts.

B. Example: Receipts from the sale of advertising space in a publication of a state agency are not receipts from performing a refuse collection, refuse disposal, sewage or recreational, entertainment or athletic service and are not governmental gross receipts.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.17 NMAC - Rn, 3 NMAC 2.100.17, 4/30/01]

### **3.2.20.18 RECEIPTS FROM SERVICES - REFUSE COLLECTION, REFUSE DISPOSAL AND SEWAGE:**

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from performing refuse collection, refuse disposal or sewage services are governmental gross receipts regardless of how or for whom they are performed.

B. Refuse collection services include picking up the refuse, transporting the refuse to a disposal site and disposing of the refuse. Receipts from operating a landfill by itself and not as part of a service of picking up, transporting and disposing of refuse are receipts from a refuse disposal service. Similarly, operation of a septic disposal service is a refuse disposal service.

C. Example: City X operates both a landfill and a refuse collection service. X charges each residential and commercial customer a monthly fee to pick up refuse at the residence or business, transport the refuse to the landfill and dump the refuse properly at the landfill. The landfill also charges commercial refuse collection firms for the privilege of disposing of refuse collected by them in the landfill. The receipts from X's refuse collection service are governmental gross receipts. X's receipts from the landfill charges to the private refuse collection companies are also governmental gross receipts.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.18 NMAC - Rn, 3 NMAC 2.100.18, 4/30/01]

### **3.2.20.19 RECEIPTS FROM SERVICES - RECREATIONAL, ENTERTAINMENT AND ATHLETIC SERVICES:**

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from performing services which are entirely or predominantly recreational, entertainment or athletic services in facilities which are open to the general public are governmental gross receipts and are subject to the governmental gross receipts tax.

B. Example: A public university sells season tickets to the games of its basketball team. The price of the season ticket includes use of a parking space in a parking lot near the place where the games are played. All receipts from the sale of the season tickets, including any receipts that might otherwise be attributable to the value of right to use the parking space, are governmental gross receipts.

C. Admissions fees to a recreational, entertainment or athletic facility open to the general public or to a recreational, entertainment or athletic event in a facility open to the general public are governmental gross receipts.

D. Example 1: Municipality X maintains a museum. An admissions fee of \$2 is charged for

admission to the museum, except that no fee is charged to school classes or accompanying adults. Receipts from the admissions fees collected are governmental gross receipts.

E. Example 2: A state agency maintains parks. It charges campers an admissions fee which also permits the use of a camping spot (whether designated or not). Receipts from the admissions fees collected are governmental gross receipts.

F. Student activity fees received by a state university, college or school are governmental gross receipts to the extent that the fees permit attendance at recreational, entertainment or athletic events in facilities open to the general public. When the portion of the student activity fees permitting attendance at recreational, entertainment or athletic events in facilities open to the general public is not readily determinable, reasonable methods may be used to estimate that portion, including the following.

(1) Reserved seats method. If a specific number of seats or places are reserved for students at the event, governmental gross receipts is estimated by multiplying the number of reserved seats or places times the amount of the lowest price ticket available to the general public.

(2) Face value method. When the student activity fee permits attendance of a student at an event at a reduced price (but not free), the governmental gross receipts from the sale of a discounted ticket is the cash received plus the amount of the discount, i.e., the face value of the ticket.

(3) Budget method. When the student activity fees are commingled with other revenue sources and the total is used to carry on several activities, including at least one taxable activity such as a program of athletic contests in facilities open to the general public, the portion of the student activity fees which are governmental gross receipts is estimated by multiplying the total amount of student activity fees by a fraction, the numerator of which is the amount budgeted for taxable activities and events and the denominator of which is the total amount of commingled funds budgeted for all activities and events.

(4) Any other method agreed to by the secretary or the secretary's delegate.

G. Fees received by a municipality for providing a swimming instruction program are not governmental gross receipts. Teaching someone to swim is an educational service and not a recreational, athletic or entertainment service. Fees for permitting individuals to use pool facilities or to swim are receipts from admissions to a recreational, athletic or entertainment event and are governmental gross receipts. See Paragraph (2) of Subsection A of 3.2.20.7 NMAC regarding admissions.

[6/28/91, 11/15/96; 3.2.20.19 NMAC - Rn, 3 NMAC 2.100.19, 4/30/01; A, 12/30/10]

### **3.2.20.20 RECEIPTS FROM TRANSACTIONS WHICH ARE PREDOMINANTLY THE SALE OF TANGIBLE PERSONAL PROPERTY:**

A. The entire receipts from transactions which are predominantly the sale of tangible personal property but which also include incidental services are governmental gross receipts. This version of Subsection A of Section 3.2.20.20 NMAC applies to transactions occurring on or after July 1, 2000.

B. Receipts from using the personnel and resources of the governmental agency to make reproductions (whether photocopies, tapes, disks or similar formats) of records or other documents for members of the general public or other governmental entities are primarily receipts from selling information or the granting of a license to use information, provided that ten or fewer copies of the record or other document are made for each person requesting copies. When more than ten copies of a record or other document are produced for a person, it will be presumed, in the absence of a preponderance of evidence to the contrary, that the transaction is predominantly the manufacture and sale of tangible personal property and that the receipts are governmental gross receipts.

[6/28/91, 11/15/96; 3.2.20.20 NMAC - Rn, 3 NMAC 2.100.20 & A, 10/31/2000]

### **3.2.20.21 RECEIPTS FROM SALES OF TANGIBLES - FACILITIES NOT OPEN TO THE GENERAL PUBLIC:**

A. Receipts from sales of tangible personal property to persons through facilities not open to the general public are not governmental gross receipts.

B. Example 1: The bookstore of a state university sells textbooks and other course-related materials to its students in a facility to which access is denied to anyone without a current student, faculty or staff identification card. Purchase of the materials is accomplished entirely within this facility. Receipts from selling these textbooks and other educational materials are not sales of tangible personal property through facilities open to the general public. Therefore such receipts are not governmental gross receipts.

C. Example 2: The cafeterias of public schools generally provide lunches to students, faculty and staff only. Members of the general public as a general rule are denied access; special permission is required for parents or other school visitors to purchase food from the cafeterias. Receipts from sale of food, drink and other tangibles by school cafeterias operating as described above are not sales of tangible personal property through facilities open to the general public. Therefore such receipts are not governmental gross receipts. [6/28/91, 11/15/96; 3.2.20.21 NMAC - Rn, 3 NMAC 2.100.21, 4/30/01]

#### **3.2.20.22 TAXES:**

A. The receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from the imposition of any tax, assessment or levy, including the governmental gross receipts tax, whether imposed by that entity or any other governmental entity, are not receipts from a taxable activity and are not governmental gross receipts.

B. Example 1: Municipality A receives a share of the gross receipts tax imposed by the state on taxable activities in Municipality A. A also imposes its own municipal gross receipts tax on those same activities. A's tax is collected by a state agency at the same time and in the same manner as the state gross receipts tax. Neither the share of the state tax nor the proceeds from A's own tax are governmental gross receipts.

C. Example 2: Upon a certain property in Municipality B, ad valorem taxes are levied by the state, county, municipality and certain special districts. All taxes are collected by the county treasurer and distributed to the entities imposing tax. None of the property taxes collected are governmental gross receipts for the county treasurer or any imposing entity.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.22 NMAC - Rn, 3 NMAC 2.100.22, 4/30/01]

#### **3.2.20.23 GRANTS - DONATIONS:**

A. The proceeds of any agency, institution, instrumentality or political subdivision of the state of New Mexico from grants from other governmental entities (federal, state or local) or grants, donations or bequests from private persons are not receipts from a taxable activity and are not governmental gross receipts.

B. Example: The Hospital Auxiliary holds a bake sale, the proceeds of which are donated to County X's hospital. The hospital's receipts are from donations and are not governmental gross receipts.

C. The proceeds from any raffle, lottery or similar game are receipts from a game of chance and are not governmental gross receipts. Such receipts will be treated as donations for the purposes of Section 7-9-3.2 NMSA 1978. In the event that tangible personal property (such as an automobile or camera) is offered as a prize by the raffle, lottery or other game, the tangible personal property will be deemed to be donated to the winner.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.23 NMAC - Rn, 3 NMAC 2.100.23 & A, 4/30/01]

#### **3.2.20.24 AGENCY:**

A. The receipts of an agent acting for an agency, institution, instrumentality or political subdivision of the state of New Mexico are subject to the governmental gross receipts tax if the receipts are from a taxable activity.

B. Example 1: City X operates a library open to the general public. A nonprofit organization called "Friends of the X Library" agrees to help raise funds for the library by, among other activities, selling Library X's excess or obsolete books and other materials. Money resulting from these sales are turned over to Library X. These receipts are governmental gross receipts.

C. Example 2: City Y operates a zoo. Admissions are charged; annual passes are also sold. A nonprofit organization, called Zoo People, is established by concerned citizens to provide various services to or for the zoo. Zoo People collects donations to defray the costs of its activities on behalf of the zoo. The zoo agrees to provide a limited number of annual passes in exchange for certain services to the organization. Zoo People sells these passes through raffles and other means. Although Zoo People does not turn over the proceeds from these sales to the zoo, the money helps pay for services provided to or for the zoo. The value of the services supplied is other consideration; the value of the consideration, up to the value of the passes supplied, is subject to the governmental gross receipts tax.

D. Receipts of groups or organizations (other than corporations) created by an agency, institution, instrumentality or political subdivision will be considered receipts of the agency, institution, instrumentality or political subdivision for the purposes of the governmental gross receipts tax if the group or organization is acting as an agent for the agency, institution, instrumentality or political subdivision.



[6/28/91, 10/2/92, 11/15/96; 3.2.20.24 NMAC - Rn, 3 NMAC 2.100.24, 4/30/01]

**3.2.20.25 IMPLEMENTATION OF GOVERNMENTAL GROSS RECEIPTS TAX FOR CASH BASIS TAXPAYERS AND ACCRUAL BASIS TAXPAYERS:**

A. Receipts of a cash basis taxpayer received prior to July 1, 1991 from selling tangible personal property or from performing a refuse collection, sewage or recreational, entertainment or athletic service which is to be delivered or performed after June 30, 1991 are not governmental gross receipts. Receipts received after June 30, 1991 by a cash basis taxpayer for tangible personal property sold prior to July 1, 1991 or from performing a refuse collection, sewage or recreational, entertainment or athletic service prior to July 1, 1991 are governmental gross receipts.

B. Example: Village C reports governmental gross receipts tax on a cash basis. The Village sells a water heater and other tangible personal property being removed from a building which is to be demolished. The Village sells the items for \$1,000 and receives payment on June 20, 1991 and delivers all but the water heater to the purchaser that same day. The purchaser does not actually pick up the water heater until July 2. Because the Village is a cash basis taxpayer, it does not matter that some of the tangible personal property was delivered after June 30, 1991. The \$1,000 receipts are not governmental gross receipts.

C. Receipts of an accrual basis taxpayer received prior to July 1, 1991 from selling tangible personal property or from performing a refuse collection, sewage or recreational, entertainment or athletic service which is to be delivered or performed after June 30, 1991 are governmental gross receipts to the extent of the revenues recognized for accounting purposes after June 30, 1991. Receipts received after June 30, 1991 by an accrual basis taxpayer with respect to revenues recognized for accounting purposes on the taxpayer's accounts prior to July 1, 1991 for selling tangible personal property sold prior to July 1, 1991 or from performing a refuse collection, sewage or recreational, entertainment or athletic service prior July 1, 1991 are not governmental gross receipts.

D. Example: U, a state university, is an accrual basis taxpayer. U runs a series of concerts during the period June through August 1991. U sells season tickets to the concerts. U recognizes the revenue from the season tickets as the concerts are performed. That part of U's receipts from season ticket sales received prior to July 1, 1991 are governmental gross receipts with respect to the receipts related to the concerts to be performed after June 30, 1991. Governmental gross receipts tax is due on the receipts related to the post-June concerts as they are recognized for accounting purposes as revenues on U's books.

E. Accrual basis taxpayers which bill customers for services or tangible personal property already delivered may reduce the amount reported as governmental gross receipts which represents the value of the service or tangible personal property provided prior to July 1, 1991. If the value of such services or tangible personal property is separately determinable, then that amount may be removed from the amount of governmental gross receipts to be otherwise reportable. If the amount is not readily determinable but the billing represents delivery of service or tangible personal property for a period of time, such as a month, then the portion which may be removed from the amount otherwise reportable is the amount of the bill times a fraction, the numerator of which is the number of days in the billing period prior to July 1, 1991 and the denominator of which is the number of days in the billing period.

F. Example: City G operates a water utility. It uses an accrual method of accounting and reporting revenues. It bills monthly but divides its customers among 20 different billing cycles, each of which begins on a different day of the month. In July 1991, some of the bills will be for water delivered almost entirely during the month of June 1991. Other customers will have only a few days of June delivery on their July bills. City A could reduce the amount of reportable governmental gross receipts for a billing cycle which runs from June 10, 1991 through July 9, 1991 by subtracting 70% of the total amount received from the billing.

G. Section 3.2.20.25 NMAC is retroactively applicable to transactions occurring on or after July 1, 1991.

[6/28/91, 9/17/91, 10/2/92, 11/15/96; 3.2.20.25 NMAC - Rn, 3 NMAC 2.100.25 & A, 4/30/01]

**3.2.20.26 REGISTRATION AND FILING:** An agency, institution, instrumentality or political subdivision of the state of New Mexico does not have to register to file tax returns under the Gross Receipts and Compensating Tax Act only if the entity's receipts are entirely from:

- A. activities or sources other than taxable activities; and
- B. activities which are exempt under the sections cited in Section 7-9-12 NMSA 1978.

[9/17/91, 10/2/92, 11/15/96; 3.2.20.26 NMAC - Rn, 3 NMAC 2.100.26 & A, 4/30/01]

**3.2.20.27 GOVERNMENTALLY-OWNED WATER UTILITIES - INSTALLATION AND STAND-BY CHARGES - MINIMUM CHARGES:**

A. Receipts of a water utility owned or operated by an agency, institution, instrumentality or political subdivision of the state of New Mexico from connect, disconnect, installation or stand-by charges or the like are not receipts from selling water or another taxable activity and therefore are not governmental gross receipts.

B. "Stand-by" charges are receipts other than from the sale of water by a utility and are imposed only where water has not been connected or is not being furnished. Minimum usage charges imposed upon persons connected to the utility are charges for the sale of water and are not stand-by charges.

[9/17/91, 10/2/92, 11/15/96; 3.2.20.27 NMAC - Rn, 3 NMAC 2.100.27, 4/30/01]

**3.2.20.28 TIME-PRICE DIFFERENTIALS - INCOME FROM INVESTMENTS:**

A. Receipts of an agency, institution, instrumentality or political subdivision of the state of New Mexico from any type of time-price differential are not receipts from a taxable activity and are not governmental gross receipts.

B. Example 1: University X charges full-time students \$500 tuition per semester. Students may elect to pay the tuition owed on a 4-month installment plan. Each installment payment amount is \$130. The receipts of University X from the \$20 time-price differential are not governmental gross receipts.

C. Example 2: City Z charges a fee at the rate of 12% per annum when charges for water sold by Z are not paid timely. Receipts from imposition of the late charges are receipts of a time-price differential and are not governmental gross receipts.

D. Receipts of an agency, institution, instrumentality or political subdivision of the state of New Mexico from interest, dividends or other forms of income from investment are not receipts from a taxable activity and are not governmental gross receipts.

E. Receipts of an agency, institution, instrumentality or political subdivision of the state of New Mexico from the gain on the sale of real estate or securities are not receipts from a taxable activity and are not governmental gross receipts.

[9/17/91, 10/2/92, 11/15/96; 3.2.20.28 NMAC - Rn, 3 NMAC 2.100.28, 4/30/01]

**3.2.20.29 RESERVED.**

**3.2.20.30 RECEIPTS FROM SALE OF REAL ESTATE:**

A. Receipts of an agency, institution, instrumentality or political subdivision of the state of New Mexico from the sale of real estate are not receipts from a taxable activity and are not governmental gross receipts.

B. Example 1: In the course of a project undertaken pursuant to the Metropolitan Redevelopment Code, City A sells a half-acre lot to a private interest. Receipts from the sale are receipts from the sale of real property and are not governmental gross receipts.

C. Example 2: City R maintains a cemetery. It sells plots in the cemetery to individuals. Receipts from the sale of the plots are receipts from the sale of real estate and are not governmental gross receipts.

[9/17/91, 10/2/92, 11/15/96; 3.2.20.30 NMAC - Rn, 3 NMAC 2.100.30, 4/30/01]

**3.2.20.31 RECEIPTS FROM RECREATIONAL, ATHLETIC AND ENTERTAINMENT SERVICES:**

A. Receipts of an agency, institution, instrumentality or political subdivision of the state of New Mexico from participating in an athletic event open to the general public which is conducted by another agency, institution, instrumentality or political subdivision of the state of New Mexico are receipts from performing an athletic service and are governmental gross receipts.

B. Example 1: The basketball team of University X, an institution of the state of New Mexico, plays the basketball team of University Y, another institution of the state of New Mexico. X is the host and collects \$20,000 in admissions to the contest. X pays Y \$8,000 for its team's participation. X has \$20,000 in governmental gross receipts; Y has \$8,000 in governmental gross receipts.

C. Repealed

D. Repealed

E. Receipts of a New Mexico agency, institution, instrumentality or political subdivision from performance of or admissions to a recreational, athletic or entertainment service or event are governmental gross receipts regardless of where the service or event takes place.

F. Example: University E is an institution of the state of New Mexico. University E's team is invited to play in a post-season tournament in another state. E's receipts from its team's participation in the tournament are governmental gross receipts.

G. This section is retroactively applicable to transactions occurring on or after July 1, 1991. [9/17/91, 10/2/92, 11/15/96, 4/30/99; 3.2.20.31 NMAC - Rn, 3 NMAC 2.100.31, 4/30/01]

### **3.2.20.32 FINES:**

A. Receipts from the imposition of criminal or civil fines or forfeitures are not receipts from a taxable activity and are not governmental gross receipts.

B. Example 1: The taxation and revenue department charges penalty (at 2% per month, or portion thereof, up to a maximum of 20%) for late payment of taxes. A \$5 minimum penalty applies even when no tax is due if a report due is late. The penalties collected are not governmental gross receipts.

C. Example 2: A governmentally-operated library charges a fine for late return of borrowed materials. Such fines are not governmental gross receipts.

D. Example 3: Police agencies under some laws are entitled to seize certain tangible personal property if the property is connected with certain unlawful behavior. The value of such property when seized is "receipts" but is not reportable as governmental gross receipts. If the agency sells the property from a facility open to the general public or to another part of the state, however, receipts from that sale are governmental gross receipts. [9/17/91, 10/2/92, 11/15/96; 3.2.20.32 NMAC - Rn, 3 NMAC 2.100.32, 4/30/01; A, 12/30/10]

### **HISTORY OF 3.2.20 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: 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:

3.2.100 NMAC, Governmental Gross Receipts, filed 11/4/96.

3.2.20 NMAC, Governmental Gross Receipts, filed 4/17/2001.