

**TITLE 3: TAXATION**  
**CHAPTER 2: GROSS RECEIPTS TAXES**  
**PART 102: EXEMPTION - COMPENSATING TAX - GOVERNMENTAL AGENCIES - INDIANS**

**3.2.102.1 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; 3.2.102.1 NMAC - Rn, 3 NMAC 2.14.1, 5/15/01]

**3.2.102.2 SCOPE:** This part applies to each person using property in New Mexico.  
[11/15/96; 3.2.102.2 NMAC - Rn, 3 NMAC 2.14.2, 5/15/01]

**3.2.102.3 STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[11/15/96; 3.2.102.3 NMAC - Rn, 3 NMAC 2.14.3, 5/15/01]

**3.2.102.4 DURATION:** Permanent.  
[11/15/96; 3.2.102.4 NMAC - Rn, 3 NMAC 2.14.4, 5/15/01]

**3.2.102.5 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; 3.2.102.5 NMAC - Rn, 3 NMAC 2.14.5 & A, 5/15/01]

**3.2.102.6 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; 3.2.102.6 NMAC - Rn, 3 NMAC 2.14.6, 5/15/01]

**3.2.102.7 DEFINITIONS:** [Reserved.]  
[11/15/96; 3.2.102.7 NMAC - Rn, 3 NMAC 2.14.7, 5/15/01]

**3.2.102.8 USE OF PROPERTY BY GOVERNMENTAL ENTITIES:**

A. For purposes of Section 7-9-14 NMSA 1978, the phrase “United States” does not include individual states or any agency, department, instrumentality or political subdivision of an individual state. The phrase “the state of New Mexico” includes any agency, institution of higher education, board, commission or department which has been created by statute, executive order or action of the legislature and which has been charged with the administration or enforcement of certain provisions of New Mexico statutes. The phrase “or any political subdivision thereof” includes incorporated municipalities, counties, school districts, conservation districts or other entities authorized by statute and which are governed by representatives elected by the public. The use of property in New Mexico by the United States or any of its agencies, departments or instrumentalities is exempt from compensating tax. Except for tangible personal property incorporated into a metropolitan redevelopment project or into a construction project, the use of property in New Mexico by the state of New Mexico or any of its agencies, departments, instrumentalities or political subdivisions is exempt from compensating tax.

B The following examples illustrate the application of Section 7-9-14 NMSA 1978:

(1) Example 1: The air force purchases a fighter jet for use at an air force base in New Mexico. The use of this plane in New Mexico by the United States is exempt from the compensating tax.

(2) Example 2: Z, a soil and water conservation district created pursuant to the Soil and Water Conservation District Act, buys equipment and trees for its use in controlling erosion. Because Z is a political subdivision of New Mexico, its use of the equipment and trees are not subject to the compensating 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, 4/2/86, 11/26/90, 3/16/95, 11/15/96; 3.2.102.8 NMAC - Rn, 3 NMAC 2.14.8 & A, 5/15/01; A, 12/30/10]

**3.2.102.9 TANGIBLE PERSONAL PROPERTY INCORPORATED INTO A METROPOLITAN REDEVELOPMENT PROJECT:** Tangible personal property purchased by a New Mexico municipality and incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code is subject to the compensating tax if purchased from an out-of-state supplier who does not pay either the New Mexico gross receipts tax or the New Mexico compensating tax on behalf of the buyer on the sale. Tangible personal property purchased by a New Mexico municipality for an otherwise nontaxable use and subsequently converted to

use in a metropolitan redevelopment project created under the Metropolitan Redevelopment Code is subject to the compensating tax. The value of tangible personal property in either fact situation is subject to New Mexico compensating tax.

[10/2/85, 4/2/86, 11/26/90, 11/15/96; 3.2.102.9 NMAC - Rn, 3 NMAC 2.14.9, 5/15/01]

### **3.2.102.10 USE OF PROPERTY BY INDIAN GOVERNMENTS:**

A. Use of property by an Indian nation, tribe or pueblo in Indian country is exempt from compensating tax. The use, to be exempt, is not required to be on the territory of the Indian nation, tribe or pueblo using the property but must be in Indian country.

B. The exemption from compensating tax created by Subsection B of Section 7-9-14 NMSA 1978 does not extend to the use of property owned by individuals who are members of an Indian nation, tribe or pueblo. The use of such property on the territory of the member's nation, tribe or pueblo, however, is not subject to the compensating tax if taxation is prohibited by federal law.

C. The following examples illustrate the provisions of Section 3.2.102.10 NMAC.

(1) Example 1: The Y Tribe purchases a bulldozer outside New Mexico, for use in clearing land in New Mexico on its own land and that of other Indian governments. Compensating tax is not applicable to this transaction.

(2) Example 2: X, an Indian, purchases a tractor outside New Mexico, for use in New Mexico. X contends that, being an Indian, X is exempt from the payment of the compensating tax. The exemption set forth in Section 7-9-14 NMSA 1978 does not apply to individual Indians. It applies only to Indian nations, tribes or pueblos. As long as federal law prohibits taxation of it, however, X's use of the tractor on land within the territory of X's nation, tribe or pueblo is exempt from compensating tax.

[3/16/95, 11/15/96; 3.2.102.10 NMAC - Rn, 3 NMAC 2.14.10 & A, 5/15/01]

**3.2.102.11 AMERICAN NATIONAL RED CROSS:** The American national red cross chartered pursuant to 36 U.S.C. 300101 et seq. is immune from state taxation as an instrumentality of the federal government. As such, its use of property in New Mexico is exempt from compensating tax under Section 7-9-14 NMSA 1978.

[5/31/97; 3.2.102.11 NMAC - Rn, 3 NMAC 2.14.11 & A, 5/15/01; A, 12/30/10]

### **HISTORY OF 3.2.102 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 2.14, Exemptions - Compensating Tax - Governmental Agencies - Indians, filed 11/4/96.

3.2.102 NMAC, Exemptions - Compensating Tax - Governmental Agencies - Indians, filed 4/30/2001.