

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 108: EXEMPTION - GROSS RECEIPTS TAX - CERTAIN RECEIPTS OF HOMEOWNERS ASSOCIATIONS

3.2.108.1 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; 3.2.108.1 NMAC - Rn, 3 NMAC 2.20.1, 5/15/01]

3.2.108.2 SCOPE: This part applies to homeowners associations in New Mexico and their members.
[11/15/96; 3.2.108.2 NMAC - Rn, 3 NMAC 2.20.2, 5/15/01]

3.2.108.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/96; 3.2.108.3 NMAC - Rn, 3 NMAC 2.20.3, 5/15/01]

3.2.108.4 DURATION: Permanent.
[11/15/96; 3.2.108.4 NMAC - Rn, 3 NMAC 2.20.4, 5/15/01]

3.2.108.5 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; 3.2.108.5 NMAC - Rn, 3 NMAC 2.20.5 & A, 5/15/01]

3.2.108.6 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; 3.2.108.6 NMAC - Rn, 3 NMAC 2.20.6, 5/15/01]

3.2.108.7 DEFINITIONS: [Reserved.]
[11/15/96; 3.2.108.7 NMAC - Rn, 3 NMAC 2.20.7, 5/15/01]

3.2.108.8 OWNERSHIP OF PROPERTY WITHIN THE DEVELOPMENT OR SUBDIVISION REQUIRED:

A. To be exempt from gross receipts tax under the provisions of Section 7-9-20 NMSA 1978, the receipts of the homeowners association must be from members of the association who own residential property within the development or subdivision which the homeowner association serves.

B. The receipts of a homeowner association which are received as membership fees, dues, assessments or other charges from persons who are not owners of residential units, residences or residential lots within the development or subdivision which the association serves are not exempt from gross receipts under Section 7-9-20 NMSA 1978.
[3/8/91, 11/15/96; 3.2.108.8 NMAC - Rn, 3 NMAC 2.20.8 & A, 5/15/01]

3.2.108.9 RECEIPTS OTHER THAN MEMBERSHIP FEES, DUES OR ASSESSMENTS:

A. The receipts of any homeowner association from the sale or lease of property to any individual, whether or not the individual is a member of the association, are not exempt from the gross receipts tax under Section 7-9-20 NMSA 1978. The receipts of any homeowner association from the sale of a service performed solely for the benefit of an individual, whether or not the individual is a member of the association, are not exempt from the gross receipts tax under Section 7-9-20 NMSA 1978 when the service is not performed on common areas served or controlled by the association.

B. The following examples illustrate the application of Section 7-9-20 NMSA 1978.

(1) Example 1: Association A maintains vending and other coin operated machines for the convenience of its members and their guests. The receipts which Association A receives from the operation of the coin operated machines are not exempt from gross receipts tax under the provisions of Section 7-9-20 NMSA 1978. Association A will be liable for gross receipts tax on any sale of tangible personal property through vending machines and on any service provided by coin operated machines.

(2) Example 2: Association B owns and operates a golf course for the sole use by its members and their guests. Association B also rents golf carts on a per use basis. Its receipts from the rental of the golf carts are not

received as membership fees, dues or assessments from members for payment of taxes, insurance, utility expenses, management or improvement, maintenance or rehabilitation of common areas, elements or facilities. The receipts from the rental of the golf carts are subject to the gross receipts tax.

(3) Example 3: Association C has contracted to paint the interior and exterior of an individual member's residence. The maintenance of an individual's residence is not maintenance of common areas, elements or facilities. Therefore, Association C's receipts used for painting the member's individual property are subject to the gross receipts tax and are not exempt under Section 7-9-20 NMSA 1978.

[3/8/91, 11/15/96; 3.2.108.9 NMAC - Rn, 3 NMAC 2.20.9 & A, 5/15/01]

3.2.108.10 RECEIPTS OF ASSOCIATIONS WHERE COMMON AREAS ARE OPEN TO NON-

MEMBERS: If a homeowners association allows the use of the common areas or facilities by persons other than members of the association or their guests, the association's receipts from use of the common areas or facilities by such non-members are not exempt from gross receipts tax under Section 7-9-20 NMSA 1978 since those common areas, elements or facilities are not for the sole use of the owners and their guests.

[3/8/91, 11/15/96; 3.2.108.10 NMAC - Rn, 3 NMAC 2.20.10 & A, 5/15/01]

HISTORY OF 3.2.108 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 2.20, Exemption - Gross Receipts Tax - Certain Receipts of Homeowners Associations, filed 11/4/96.

3.2.108 NMAC, Exemption - Gross Receipts Tax - Certain Receipts of Homeowners Associations, filed 4/30/2001.