

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 121: EXEMPTION - GROSS RECEIPTS TAX - PRODUCTS SUBJECT TO OIL AND GAS EMERGENCY SCHOOL TAX ACT

3.2.121.1 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; 3.2.121.1 NMAC - Rn, 3 NMAC 2.33.1, 5/15/01]

3.2.121.2 SCOPE: This part applies to each person who has receipts from the sale of products the severance of which is subject to the Oil and Gas Emergency School Tax Act.
[11/15/96; 3.2.121.2 NMAC - Rn, 3 NMAC 2.33.2, 5/15/01]

3.2.121.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/96; 3.2.121.3 NMAC - Rn, 3 NMAC 2.33.3, 5/15/01]

3.2.121.4 DURATION: Permanent.
[11/15/96; 3.2.121.4 NMAC - Rn, 3 NMAC 2.33.4, 5/15/01]

3.2.121.5 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; 3.2.121.5 NMAC - Rn, 3 NMAC 2.33.5 & A, 5/15/01]

3.2.121.6 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; 3.2.121.6 NMAC - Rn, 3 NMAC 2.33.6, 5/15/01]

3.2.121.7 DEFINITIONS: [Reserved.]
[11/15/96; 3.2.121.7 NMAC - Rn, 3 NMAC 2.33.7, 5/15/01]

3.2.121.8 FUEL IN THE OPERATION OF A "PRODUCTION UNIT": Receipts from the sale of oil, natural gas or liquid hydrocarbon, individually or any combination thereof, including butane and propane, when such products are used as fuel in the operation of a "production unit" as defined in Section 7-31-2 NMSA 1978 of the Oil and Gas Emergency School Tax Act are subject to the gross receipts tax. Only the value of the oil, natural gas or liquid hydrocarbon, individually or any combination thereof, produced on a "production unit" and used as fuel on the same "production unit" is exempt from provisions of the Gross Receipts and Compensating Tax Act.
[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, 10/31/97; 3.2.121.8 NMAC - Rn, 3 NMAC 2.33.8 & A, 5/15/01]

3.2.121.9 WHICH RECEIPTS ARE EXEMPT AND WHICH ARE TAXABLE:

A. To be exempt under Subsection A of Section 7-9-33 NMSA 1978, receipts are required to be from the sale of product for resale in the ordinary course of business, for consumption out of state or for use as an ingredient or component part of a manufactured product. Receipts from the sale of product for any other purpose are not exempt under Subsection A of Section 7-9-33 NMSA 1978.

B. Examples:

(1) A producer sells product to a public utility who uses the product in New Mexico to produce electricity. The product does not become an ingredient or component part of the electricity produced. Therefore the producer's receipts from the sale are not exempt from the gross receipts tax under Subsection A of Section 7-9-33 NMSA 1978. Unless some other exemption or deduction applies, the receipts from the sale are subject to gross receipts tax as well as to the emergency school tax.

(2) A producer sells product to a broker who, in turn, sells the product to a public utility who uses the product in New Mexico to produce electricity. The product does not become an ingredient or component part of the electricity produced. Because the sale by the producer to the broker is a sale for re-sale in the ordinary course of business, the producer's receipts from the transaction are exempt from gross receipts. The broker's sale of the product to the public utility, however, are not exempt from the gross receipts tax under Subsection A of Section 7-9-33

NMSA 1978. Unless some other exemption or deduction applies, the broker's receipts from the sale to the public utility are subject to gross receipts tax even though the producer was subject to the emergency school tax on the product.

(3) A producer sells natural gas to a chemical company which incorporates the gas into chemical fertilizer that it manufactures. The producer's receipts from this sale are exempt under Subsection A of Section 7-9-33 NMSA 1978.

(4) A producer sells natural gas to an out-of-state public utility that transports the gas out-of-state for sale to its out-of-state customers for consumption or other use outside New Mexico. The producer's receipts from the sale are exempt from gross receipts under Subsection A of Section 7-9-33 NMSA 1978.

(5) A producer sells oil to an in-state refinery that refines the oil into gasoline and other products. The oil is used as an ingredient of manufactured products and, therefore, the producer's receipts from the sale are exempt from gross receipts under Subsection A of Section 7-9-33 NMSA 1978.

[10/31/97; 3.2.121.9 NMAC - Rn, 3 NMAC 2.33.9 & A, 5/15/01]

HISTORY OF 3.2.121 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 2.33, Exemption - Gross Receipts Tax - Products Subject to Oil and Gas Emergency School Tax Act, filed 11/4/96.

3.2.121 NMAC, Exemption - Gross Receipts Tax - Products Subject to Oil and Gas Emergency School Tax Act, filed 4/30/2001.