

**TITLE 3: TAXATION**  
**CHAPTER 2: GROSS RECEIPTS TAXES**  
**PART 201: NONTAXABLE TRANSACTION CERTIFICATES, FARMERS' AND RANCHERS' STATEMENTS AND OTHER EVIDENCE REQUIRED TO ENTITLE PERSONS TO DEDUCTIONS**

**3.2.201.1 ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1150 South St. Francis Drive, P.O. Box 630, Santa Fe NM 97504-0630  
[3/15/96; 3.2.201.1 NMAC - Rn, 3 NMAC 2.43.1.1, 5/31/01]

**3.2.201.2 SCOPE:** This part applies to each person engaging in business in New Mexico.  
[3/15/96, 11/15/96; 3.2.201.2 NMAC - Rn, 3 NMAC 2.43.1.2, 5/31/01]

**3.2.201.3 STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[3/15/96; 3.2.201.3 NMAC - Rn, 3 NMAC 2.43.1.3, 5/31/01]

**3.2.201.4 DURATION:** Permanent.  
[3/15/96; 3.2.201.4 NMAC - Rn, 3 NMAC 2.43.1.4, 5/31/01]

**3.2.201.5 EFFECTIVE DATE:** 3/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.  
[3/15/96, 11/15/96; 3.2.201.5 NMAC - Rn, 3 NMAC 2.43.1.5 & A, 5/31/01]

**3.2.201.6 OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.  
[3/15/96; 3.2.201.6 NMAC - Rn, 3 NMAC 2.43.1.6, 5/31/01]

**3.2.201.7 DEFINITIONS:** [Reserved.]  
[3/15/96; 3.2.201.7 NMAC - Rn, 3 NMAC 2.43.1.7, 5/31/01]

**3.2.201.8 POSSESSION AND DELIVERY OF NONTAXABLE TRANSACTION CERTIFICATES - TYPES OF CERTIFICATES:**

A. With respect to receipts and transactions deductible under the Gross Receipts and Compensating Tax Act:

(1) The taxpayer should be in possession of all nontaxable transaction certificates (nttcs) at the time the deductible transaction occurs.

(2) The taxpayer must be in possession of and have available for inspection all nttcs for the period of an audit within 60 days of notice by the department requiring such possession. This notice may be sent out or delivered no earlier than the commencement of an audit of the taxpayer claiming the deduction.

(3) An nttc acquired by the taxpayer after the 60 days following notice have expired will not be honored by the department for the period covered by the audit.

(4) An nttc executed using the department's online system, and that is recorded on the online system, will be considered to be in the possession of the taxpayer to whom the nttc has been executed.

B. An audit of such a taxpayer commences when one of the following occurs:

(1) a department auditor physically gives a dated letter of introduction which states the auditor is commencing an authorized audit of the taxpayer or states the auditor requires the production of the taxpayer's books and records for examination; or

(2) a department employee begins an authorized office examination of files, books or records pertaining to the taxpayer, provided that the taxpayer or the taxpayer's representative is informed reasonably promptly by letter or in person that an audit has commenced.

C. The department issues different types of nttcs. Each type is of limited usage and relates only to one or more particular deductions. An nttc is not valid if it does not contain the information or is not in a form prescribed by the department. For a deduction that requires possession of the appropriate nttc, other types of proof of deductibility may not and will not be accepted by the department, unless other proof is permitted explicitly by the deduction or another provision of the Gross Receipts and Compensating Tax Act with respect to that deduction.

D. The taxpayer need be in possession of only one nttc of the type required by the department from each buyer or lessee in order to claim the particular deduction allowed by that type of nttc. A taxpayer need be in possession of only one nttc of the type required by the department in order to claim a particular deduction from a buyer which has several places of business, provided the buyer is operating under only one department identification number.

E. Nothing shall prevent the department from changing the substance, form or type of ntcs to be used. Nothing shall prevent the department from changing the form of notification requiring the possession of ntcs. [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, 9/20/93, 11/15/96, 4/30/99; 3.2.201.8 NMAC - Rn, 3 NMAC 2.43.1.8, 5/31/01; A, 12/14/12]

### **3.2.201.9 APPLICATION FOR AND USE OF NONTAXABLE TRANSACTION CERTIFICATES:**

Except as provided in Section 3.2.201.17 NMAC, registration and identification of buyers or lessees who, by reason of their status or the nature of use of the property or service purchased or leased by them, would entitle the vendor or lessor to a deduction from gross receipts with respect to receipts from the purchases or leases of some kind of property or service, and application for department-issued nontaxable transaction certificates (ntcs) is accomplished in the following manner:

A. The buyer or lessee registers with the department for gross receipts tax purposes.  
B. The buyer or lessee submits to the department a completed application form indicating the type and quantity of nttc forms required.

C. The department, upon receipt and approval of this application form, will issue the buyer or lessee serially numbered nttc forms.

D. After completion of the information required on the nttc and after proper signature, the buyer or lessee executes the original certificate to the seller or lessor and retains one copy for the buyer's or lessee's records. For all subsequent transactions with that seller or lessor, the buyer or lessee is responsible for informing the seller whenever a particular transaction is not covered by the nttc.

E. When a seller or lessor accepts a nttc form, other than the type the seller or lessor is required to possess to sustain the deduction which the seller or lessor is claiming, the deduction shall not be allowed.

F. Except as provided in Section 3.2.201.17 NMAC, only buyers or lessees who have applied for and have been issued ntcs by the department may execute ntcs. An nttc must be executed on the serially numbered form specifically issued to the buyer or lessee by the department. The department may require a person to whom the department has issued ntcs to account for all nttc forms issued to that person. ntcs may not be executed by anyone other than the person to whom the department has issued these certificates.

G. The buyer or lessee who has an excess of unexecuted nttc forms is required to return them to the department. Upon termination of business, the firm must return all unexecuted ntcs to the department. The department may seize excess unexecuted ntcs which are in the possession of a taxpayer.

[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, 9/20/93, 10/28/94, 11/15/96, 9/30/98, 4/30/99; 3.2.201.9 NMAC - Rn, 3 NMAC 2.43.1.9 & A, 5/31/01]

### **3.2.201.10 DOCUMENTATION REQUIRED:**

A. Receipts which are deductible under the Gross Receipts and Compensating Tax Act can be deducted only if documentation justifying the deduction is maintained so it can be verified upon audit.

B. The following examples illustrate the documentation requirements.

(1) Example 1: X sells tangible personal property to Y, a governmental agency. X may deduct the sale if the government purchase order is retained or a copy of the check, the check stub or voucher identifying the source of payment is retained for audit purposes.

(2) Example 2: A, a grocer, makes a cash sale to C, a cafe. C has issued the appropriate type nontaxable transaction certificate (nttc) to A. A may deduct the receipts from the sale if a sales ticket is prepared identifying the property purchased, the name of the customer and the date and amount of the transaction.

(3) Example 3: M, a motor parts store, deducts receipts for sales made over the counter to cash customers who have delivered proper ntcs. A sales ticket is prepared by M indicating the date, the amount and the items purchased. "CASH" is written in the space provided for the customer's name. If M is audited, the deduction would be disallowed; the transaction could not be related to a specific nttc.

C. A taxpayer claiming the deduction under Section 7-9-47 NMSA 1978 has the burden of proving that the sale was in fact a nontaxable sale for resale. If the sale was made to a person who was an active registered retailer or wholesaler at the time of the sale and the property purchased was of the type or types ordinarily purchased

for resale by that purchaser, the presumption that the deduction of the receipts from the sale should be disallowed can be overcome during an audit or upon reconsideration. A taxpayer claiming a deduction pursuant to Section 7-9-47 NMSA 1978 who is unable to provide a nttc within the sixty-day period specified in Subsection A of Section 7-9-43 NMSA 1978 will be allowed to submit other evidence, as specified in Subsection F of this section. Such other evidence is meant to provide the department with sufficient information to verify that the deduction under Section 7-9-47 NMSA 1978 is appropriate and will only be accepted if the conditions of Subsection E of Section 7-9-43 NMSA 1978 are met.

D. For purposes of Subsection C of this section, “unable to provide a nttc” means the inability to obtain a nttc within the sixty-day period specified in Subsection A of Section 7-9-43 NMSA 1978 because:

- (1) the buyer of the property is no longer engaged in business in New Mexico;
- (2) the buyer was authorized by the department to execute nttcs at the time of the transaction but since then the authority to obtain or issue nttcs has been suspended by the department because the buyer is not in compliance with the department for the payment of their taxes;
- (3) an act of God caused physical damage to the taxpayer's records or place of business; or
- (4) there are other circumstances that reasonably justify a determination that the taxpayer is unable to provide a nttc.

E. The following are examples of when a taxpayer would be “unable to provide a nttc” as that phrase is used in Subsection C of this section:

(1) Example 1: X, a New Mexico retailer, sells tangible personal property to Y, another small retailer located in a rural part of New Mexico. Y purchases the tangible personal property with the intent of reselling it in the ordinary course of business but fails to provide X with the proper nttc to support the resale deduction. Two years later X is selected for an audit by the taxation and revenue department. At the beginning of the audit, X is given a sixty-day letter that requires X to obtain all necessary nttcs to support any deductions taken during the periods being audited. X attempts to obtain a nttc from Y, but is unable to do so because Y is no longer in business in New Mexico. If X can show that Y is no longer in business, X will be considered unable to provide a nttc within the sixty-day period.

(2) Example 2: L, a small lighting company, receives a notice that an audit is to be conducted by the department. L has been instructed to have in its possession all nttcs that support any deductions for the period in question within sixty days. While compiling the documentation requested by the department, L realizes it does not have the proper nttc for a number of transactions with D, a retail customer. L calls D to obtain the proper nttc but is told by D that the department will not issue nttcs to D because D has an outstanding tax liability and that it is not in compliance. Because D's ability to execute a nttc has been suspended, the department will consider L as being unable to provide a nttc within the sixty-day period specified in Subsection A of Section 7-9-43 NMSA 1978.

F. A taxpayer who is unable to provide a nttc, as provided in Subsection D and E of this section, can provide the department with other evidence, pursuant to the requirements of this section, that will provide the department with sufficient information to verify that the deduction under Section 7-9-47 NMSA 1978 is appropriate. Such other evidence must include one of the following:

(1) information identifying the buyer (i.e., name, address, identification number, etc.) that can be used to verify against department records that the buyer is no longer engaged in business and that the deduction under Section 7-9-47 is appropriate;

(2) a letter sent to the buyer inquiring as to the buyer's disposition of the property purchased from the seller; the letter shall include the following information:

- (a) seller's name and combined reporting system (CRS) identification number;
- (b) date of invoice(s) or date of transaction(s);
- (c) invoice number(s) (copies of actual invoices may be attached);
- (d) copies of purchase order(s), if available;
- (e) amount of purchase(s);
- (f) a description of the property purchased or other identifying information; and
- (g) a section completed and signed by the buyer that includes:
  - (i) the buyer's name, combined reporting system (CRS) identification number, and

printed name;

- (ii) title of the signor;
- (iii) a statement as to the nature of the purchase; and
- (iv) a statement of the buyer or signor indicating that the buyer sold or intends to resell

the tangible personal property purchased from the seller, either by itself or in combination with other tangible

personal property in the ordinary course of business; or

(3) any other documentary evidence that has been approved by the department in writing prior to any assessment of tax or a protest that has been acknowledged by the department prior to December 31, 2011.

[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, 9/30/98; 3.2.201.10 NMAC - Rn, 3 NMAC 2.43.1.10, 5/31/01; A, 8/15/11]

### **3.2.201.11 CONSTRUCTION CONTRACTORS:**

A. Any person applying to execute nontaxable transaction certificates (nttcs) related to deductions found under Sections 7-9-51, 7-9-52 or 7-9-52.1 NMSA 1978 must indicate the applicant's New Mexico contractor's license number or furnish proof that no contractor's license is required by the construction industries division of the regulations and licensing department in order to engage in one of the construction activities listed in 7-9-3.4 NMSA 1978. Failure to comply with 3.2.201.11 NMAC will result in denial of the requested certificates.

B. A person engaged in the construction business who makes any false or misleading representations in any material respect in an application for nttcs may become subject to the penalties imposed by Section 7-1-73 NMSA 1978 as well as other penalties, civil or criminal, prescribed in the Tax Administration Act. False or misleading representations include, but are not confined to:

(1) indicating a contractor's license number on the application which is not issued to the applicant or which cannot lawfully be used by the applicant;

(2) applying for nttcs which someone other than the applicant will execute; or

(3) furnishing false or misleading documentation that a contractor's license is not required of the applicant by the construction industries division.

C. Any person who has previously applied for and been issued nttcs related to construction as defined in Section 7-9-3.4 NMSA 1978, under circumstances wherein the person would not have been entitled to obtain such certificates pursuant to 3.2.201.11 NMAC, will be assessed gross receipts or compensating tax, as appropriate, based on the representations actually made in the application for nttcs.

D. Any person engaged in the construction business is presumed not to be engaged in reselling services other than construction services, or, on or after January 1, 2013, construction-related services, in the ordinary course of business. Except as provided in Subsection E of this section, this person will not be issued nttcs other than those appropriate for the deductions under Sections 7-9-51, 7-9-52 and 7-9-52.1 NMSA 1978.

E. A person who can demonstrate to the department's satisfaction that the person is engaged in the construction business and also in the business of selling property other than construction materials or performing or selling one or more services, that are not construction services or, on or after January 1, 2013, construction-related services, may qualify for and be issued nttcs in addition to those appropriate for the deductions under Sections 7-9-51, 7-9-52 and 7-9-52.1 NMSA 1978. The additional types of nttc may be executed by the person only when the person is acquiring tangible personal property other than construction material, a service other than a construction service or, on or after January 1, 2013, a construction-related service, in a manner meeting the conditions for execution of the additional type of nttc. In determining whether the person engaged in the construction business is engaged in a business in addition to the construction business, the department will consider these factors:

(1) whether the person possesses, when possession is required, a current license to sell or lease the nonconstruction property or to perform or sell the nonconstruction service;

(2) whether the person has entered into a contract requiring the sale or lease of the nonconstruction property or the performance or sale of the nonconstruction service;

(3) whether the person holds himself out to be in the business; and

(4) other factors deemed appropriate by the secretary.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 9/20/93, 11/15/96, 4/30/99; 3.2.201.11 NMAC - Rn, 3 NMAC 2.43.1.11 & A, 5/31/01; A, 11/30/05; A, 12/14/12]

### **3.2.201.12 DELIVERY OF NTTC AFTER DATE REPORT DUE:**

A. Except as provided otherwise in Subsection D of Section 3.2.201.12 NMAC, a taxpayer who receives a properly executed nontaxable transaction certificate (nttc) or other documentation required by Section 7-9-43 NMSA 1978 for a transaction included in a previously filed return and on which the taxpayer paid the gross receipts tax is entitled to a refund of that previously paid tax. To obtain the refund the taxpayer is required to file a claim for refund and submit either an amended return for each period to which the refund relates or a schedule acceptable to the department containing equivalent information.

B. A taxpayer may not accumulate the allowable deductible receipts for prior periods and take the

entire amount as a deduction for the period in which the proper nttc or other documentation is received.

C. A taxpayer who has been audited by the department and has failed to present the nttcs or other documentation required within the time required to support deductions claimed after having been requested to do so pursuant to Section 3.2.201.8 NMAC is not entitled to the deductions.

D. The provisions of the preceding paragraphs do not apply to deductions claimed with respect to transactions occurring during the period July 1, 1992 through May 31, 1997 if the seller or lessor had received a notice from the department pursuant to Section 3.2.201.8 NMAC to present the nttcs or other documentation and the time for complying with the request expired prior to July 1, 1997. In such cases for receipts from transactions during the period July 1, 1992 through May 31, 1997, the nttc or other acceptable proof must be in the possession of the seller or lessor no later than the date gross receipts from the transaction are required to be reported. Receipt of the nttc or other acceptable proof after that date does not support the deduction or a claim for refund with respect to gross receipts required to be reported prior to that date; such nttc or other acceptable proof will support only deductions for gross receipts required to be reported on or after the date the nttc or other acceptable proof was received. With respect to gross receipts in the period July 1, 1992 through May 31, 1997 for which an appropriate nttc or other acceptable proof is not in the possession of the seller or lessor at the date the gross receipts are required to be reported, any deduction claimed will be disallowed and any claim for refund submitted prior to July 1, 1997 will be denied.

[9/8/86, 11/26/90, 1/20/93, 11/15/96, 9/30/98; 3.2.201.12 NMAC - Rn, 3 NMAC 2.43.1.12 & A, 5/31/01]

### **3.2.201.13 MULTIJURISDICTIONAL UNIFORM SALES AND USE TAX CERTIFICATES:**

A. The department deems the uniform sales and use tax certificate issued by the multistate tax commission or by any member state other than New Mexico to a taxpayer not required to be registered in New Mexico to be a nontaxable transaction certificate (nttc) equivalent to those nttc types issued by the department to support the deductions under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978. As evidence of the deductibility of a specific transaction authorized under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978 the department will accept the multistate tax commission uniform sales and use tax certificate:

(1) only in those situations in which possession of a properly executed nttc is acceptable evidence of the deductibility of the transaction; and

(2) if the uniform sales and use tax certificate is issued by the multistate tax commission or a member state other than New Mexico to a taxpayer not required to be registered in New Mexico.

B. No certificate or other document from any other state or taxing jurisdiction is acceptable evidence under 3.2.201.13 NMAC.

[3/10/87, 11/26/90, 3/15/96, 9/30/98, 4/30/99; 3.2.201.13 NMAC - Rn, 3 NMAC 2.43.1.13 & A, 5/31/01; A, 3/15/10]

### **3.2.201.14 GOOD FAITH ACCEPTANCE OF NONTAXABLE TRANSACTION CERTIFICATES:**

A. Acceptance of nontaxable transaction certificates (nttcs) in good faith that the property or service sold thereunder will be employed by the purchaser in a nontaxable manner is determined at the time of each transaction. The taxpayer claiming the protection of a certificate continues to be responsible that the goods delivered or services performed thereafter are of the type covered by the certificate.

B. Example 1: A type 6 nttc, which may be executed and accepted for the purchase of construction materials, will not protect the deduction taken by an automobile dealer for receipts from the sale of automobile parts or a lumber yard for receipts from the sale of a power saw.

C. Example 2: An automobile dealer who accepts a type 2 nttc from an airline for the purchase of parts cannot rely on the type 2 (resale of tangibles) nttc to protect the deduction of receipts from such sale unless the dealer can demonstrate good faith acceptance by showing that the airline is in the business of reselling parts. A statement on the back of or attached to the certificate separately signed by a responsible employee of the airline showing that the airline runs a retail parts store would protect the dealer who did not know the statement was false.

[6/28/89, 11/26/90, 11/15/96, 9/30/98; 3.2.201.14 NMAC - Rn, 3 NMAC 2.43.1.14, 5/31/01]

### **3.2.201.15 PHOTOCOPIES OR OTHER REPRODUCTIONS OF NONTAXABLE TRANSACTION CERTIFICATES:**

A. Except as provided otherwise in Section 3.2.201.15 NMAC, no person may make photocopies of, or otherwise reproduce, nontaxable transaction certificates (nttcs) issued or executed by the department. Photocopies or other reproductions may be made:

(1) by the department or, upon request of the department, by the person to whom the nttcs have been issued or the seller or lessor who has accepted an nttc for audit, tax compliance or tax administration purposes;

(2) by the person to whom the nttcs have been issued by the department for internal record keeping purposes or in response to a request from a seller or lessor to whom the person has delivered an executed nttc for a duplicate of the executed nttc; and

(3) by the seller or lessor who has accepted in good faith a nttc executed by a buyer or lessee for internal record keeping purposes only.

B. In no event may any buyer, lessee, seller or lessor execute or attempt to execute a photocopy or other reproduction of a previously executed nttc. Doing so is grounds for suspension, pursuant to Section 7-9-44 NMSA 1978, of the right to use nttcs.

[1/20/93, 11/15/96; 3.2.201.15 NMAC - Rn, 3 NMAC 2.43.1.15 & A, 5/31/01]

**3.2.201.16 DIFFERENCE BETWEEN “ISSUE” AND “EXECUTE”:** As used in Section 7-9-43 NMSA 1978 and in regulations concerning nontaxable transaction certificates (nttcs), the verb “issue” indicates the process by which the department supplies a requesting taxpayer with one or more nttc forms, which in turn are to be completed by that taxpayer and delivered to the taxpayer's vendors to support a claim of deduction by the vendor. Only the department issues nttcs. The verb “execute” refers to the process by which a taxpayer, having already obtained the requisite forms from the department, completes an nttc form by entering the required information about the vendor to whom the nttc is to be delivered. When timely delivered, the executed nttc serves as the required or permitted proof to support a claim of deduction by the vendor with respect to certain transactions between the taxpayer and the vendor. The department, as a purchaser of goods or services, may also execute nttc forms for delivery to its vendors.

[1/20/93, 11/15/96; 3.2.201.16 NMAC - Rn, 3 NMAC 2.43.1.16 & A, 5/31/01]

**3.2.201.17 SPECIAL NONTAXABLE TRANSACTION CERTIFICATE TYPE OSB AUTHORIZED FOR CERTAIN OUT-OF-STATE BUYERS:**

A. Any person engaging in business in New Mexico who, within the time required by the provisions of Section 7-9-43 NMSA 1978, accepts a nontaxable transaction certificate denominated as an nttc-osb in good faith that the purchaser will, in the ordinary course of business, either resell the property purchased or incorporate the property purchased as an ingredient or component part of a manufactured product, may deduct the receipts from the sale under Section 7-9-46 or 7-9-47 NMSA 1978. A person who performs a manufacturing service in New Mexico and who, within the time required by the provisions of Section 7-9-43 NMSA 1978, accepts a nttc-osb in good faith that the purchaser is in the business of manufacturing and will have the manufacturing service performed directly upon tangible personal property the purchaser is in the business of manufacturing, or ingredient or component parts thereof, may deduct the receipts from performing the manufacturing service under Section 7-9-75 NMSA 1978.

B. A purchaser qualifies to execute an nttc-osb if the purchaser:

(1) maintains its principle place of business and commercial domicile outside New Mexico;

(2) is registered with or licensed by the state or foreign jurisdiction in which the purchaser maintains a place of business for sales or similar taxes;

(3) does not maintain a business location in New Mexico;

(4) is not subject to New Mexico gross receipts tax pursuant to Section 7-9-4 NMSA 1978 on its receipts; and

(5) is not registered as an agent to collect and pay over New Mexico compensating tax pursuant to Section 7-9-10 NMSA 1978.

C. Any person who sells tangible personal property or performs a manufacturing service, who is engaged in business in New Mexico and who is registered with the department for gross receipts tax purposes, shall be referred to in Section 3.2.201.17 NMAC as a “seller” and may apply to receive blank nttc-osb forms. The seller may then provide a qualifying purchaser with a blank nttc-osb form which the purchaser shall complete and return to the seller. The seller shall not cause or allow the reproduction of any un-issued certificate and shall rely on the department as the sole source of the nttc-osb forms. The department may or may not, at the discretion of the secretary or the secretary's delegate, provide any seller with a supply of nttc-osb forms. A seller, who has received a supply of blank nttc-osb forms, shall retain a copy of each executed form and account for each nttc-osb which has been issued by the department to that seller whether or not each form has been executed by an out-of-state purchaser. If it becomes necessary to void a nttc-osb form, the word “void” shall be written boldly across the face of the form; the seller shall retain and account for the voided certificate.

D. Prior to providing the purchaser with a nttc-osb, the seller shall obtain adequate proof that the purchaser is either registered with or licensed by the appropriate taxing agency of another state or foreign jurisdiction for a sales or similar tax program. To meet this requirement the seller must obtain the purchaser's license or other identification number issued by the appropriate agency of the state or foreign jurisdiction in which the purchaser engages in business and other documentation which clearly identifies that the purchaser is engaged in business in that state. Such other documentation includes, but is not limited to, a business card, purchase order or letterhead which identifies the purchaser, the location of the business, the type of business and the business name under which the purchaser engages in business. The seller shall attach the other documentation to the seller's copy of the executed nttc-osb and retain both in the same manner used by the seller to retain other nontaxable transaction certificates provided by other customers. Proper execution of the nttc-osb shall constitute registration with the department by the purchaser as required by Section 7-9-43 NMSA 1978 and Section 3.2.201.9 NMAC. Failure of the seller to obtain from the purchaser the documentation required by the provisions of Section 3.2.201.17 NMAC shall cause a presumption of acceptance of the nttc-osb without the required good faith that the purchaser will employ the property transferred in a nontaxable manner or had the manufacturing service performed directly on tangible personal property, or ingredient or component parts thereof, that the purchaser is in the business of manufacturing. In this instance, the transaction shall be presumed to be subject to the gross receipts tax and no deduction shall be allowed. If the purchaser fails to provide all information required to be provided by the purchaser on the face of the nttc-osb or if the purchaser either fails or refuses to sign the statement contained within the nttc-osb, such nttc-osb shall not be valid and no deduction shall be allowed for the receipts from selling to that purchaser.

E. The provisions of Section 3.2.201.17 NMAC are applicable to transactions occurring on or after April 1, 1994.  
[10/28/94, 11/15/96, 12/15/99; 3.2.201.17 NMAC - Rn, 3 NMAC 2.43.1.17 & A, 5/31/01]

### **3.2.201.18        RESERVED.**

### **3.2.201.19        BORDER STATES UNIFORM SALE FOR RESALE CERTIFICATE:**

A. For transactions specified below, the department deems a border states uniform sale for resale certificate issued by a border state other than New Mexico to a taxpayer not required to be registered in New Mexico to be a nontaxable transaction certificate (nttc) equivalent to those nttc types issued by the department that support the deductions under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978. The department will accept the border states uniform sale for resale certificate as evidence of the deductibility of a specific transaction authorized under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978, only when the following conditions exist:

- (1) the buyer is purchasing tangible personal property for resale or incorporation as an ingredient or component part into a manufactured product in the ordinary course of the buyer's business or the buyer is purchasing a manufacturing service on a manufactured product or ingredient or component part thereof;
- (2) the tangible personal property purchased or the product, or ingredient or component part thereof, upon which the manufacturing service is performed is to be transported across state or national boundaries; and
- (3) the buyer is located in the northern border region or in a border state other than New Mexico.

B. No other certificate or document from any other state or taxing jurisdiction is acceptable evidence under 3.2.201.19 NMAC.

C. For the purposes of 3.2.201.19 NMAC:

(1) "border state" means Arizona, California, New Mexico and Texas and any other state joining the border states caucus subsequent to January 1, 1996; and

(2) "northern border region" means:

(a) the border strip of 20 kilometers parallel, north and south, to the international dividing line between the United Mexican States and the United States of America;

(b) all territory of the lower California states, south lower California and Quintana Roo, the municipality of Cananea, Sonora and part of the state of Sonora as delimited by the border states caucus; and

(c) any additional territory of the United Mexican States incorporated into the definition by the border states caucus subsequent to January 1, 1996.

[3/15/96, 9/30/98, 12/15/99; 3.2.201.19 NMAC - Rn, 3 NMAC 2.43.1.19 & A, 5/31/01; A, 3/15/10]

### **HISTORY OF 3.2.201 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 2.43.1, Nontaxable Transaction Certificates, Farmers' and Ranchers' Statements and Other Evidence Required to Entitle Persons to Deductions, filed 3/4/96.

3.2.201 NMAC, Nontaxable Transaction Certificates, Farmers' and Ranchers' Statements and Other Evidence Required to Entitle Persons to Deductions, filed 5/17/2001.