

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 204: DEDUCTION - GROSS RECEIPTS TAX - SALES TO MANUFACTURERS

3.2.204.1 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, 3.2.204.1 NMAC - Rn, 3 NMAC 2.46.1, 5/31/01]

3.2.204.2 SCOPE: This part applies to all persons engaging in business in New Mexico.
[11/15/96, 3.2.204.2 NMAC - Rn, 3 NMAC 2.46.2, 5/31/01]

3.2.204.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/96, 3.2.204.3 NMAC - Rn, 3 NMAC 2.46.3, 5/31/01]

3.2.204.4 DURATION: Permanent.
[11/15/96, 3.2.204.4 NMAC - Rn, 3 NMAC 2.46.4, 5/31/01]

3.2.204.5 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, 3.2.204.5 NMAC - Rn, 3 NMAC 2.46.5 & A, 5/31/01]

3.2.204.6 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, 3.2.204.6 NMAC - Rn, 3 NMAC 2.46.6, 5/31/01]

3.2.204.7 DEFINITIONS: [Reserved.]
[11/15/96; 3.2.204.7 NMAC - Rn, 3 NMAC 2.46.7, 5/31/01]

3.2.204.8 MOTOR VEHICLE PARTS: Receipts from the sale of parts, to be used in the repair of used motor vehicles or other items of equipment which are held by the purchaser of the parts for sale in the ordinary course of a used car or used equipment business, or to be used to fulfill the dealer's warranty obligation on used motor vehicles or other items of equipment, are deductible from the seller's gross receipts provided the purchaser gives the seller a nontaxable transaction certificate. The purchaser must use the parts in the nontaxable manner indicated on the certificate or be liable for the compensating tax.
[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, 11/15/96; 3.2.204.8 NMAC - Rn, 3 NMAC 2.46.8, 5/31/01]

3.2.204.9 PRINTING AND SILK-SCREENING:

A. Paper, ink, staples, glue, binding, chemicals, dyes and other tangible property used by a printer or a silk-screener in the production of a newspaper or other printed or silk-screened material for sale in the ordinary course of business are ingredients or component parts of a manufactured product. If all paper, ink, staples, glue, binding, chemicals, dyes and other tangible items are furnished to the printer or silk-screener by the customer as ingredients or component parts of the end product, then the printer or silk-screener is providing a service and not selling tangible personal property.

B. Example: N, a newspaper supply company, sells newsprint (paper), ink, offset plates, lithographic plates, linotype plates, lead plates, pre-cast type plates and photographic plates to newspapers. The newsprint and ink are ingredients or component parts because, when combined, they can be found in the product which is being manufactured. However, the various plates are not ingredients or component parts because they cannot be found in the manufactured product, the newspaper.

[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, 11/15/96; 3.2.204.9 NMAC - Rn, 3 NMAC 2.46.9 & A, 5/31/01]

3.2.204.10 [RESERVED]

[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, 11/15/96; 3.2.204.10 NMAC - Rn, 3 NMAC 2.46.10, 5/31/01; Repealed, 6/28/13]

3.2.204.11 TRANSPORTATION EXPENSES: Transportation expenses incurred in marketing a manufactured product are not deductible pursuant to Section 7-9-46 NMSA 1978.
[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, 11/15/96; 3.2.204.11 NMAC - Rn, 3 NMAC 2.46.11 & A, 5/31/01]

3.2.204.12 DENTAL SUPPLIES: Gold, teeth and similar items used in making dentures for sale in the ordinary course of business are ingredients or component parts of a manufactured product.
[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; 3.2.204.12 NMAC - Rn, 3 NMAC 2.46.12, 5/31/01]

3.2.204.13 PHOTOGRAPHIC SUPPLIES:

A. Sensitized paper, backing paper, frames, mounts, glass and other items used by a photographer, photographic processor or developer in the production of a photograph for sale in the ordinary course of business are ingredients or component parts of a manufactured product.

B. Film used by a photographer is not an ingredient or component part of a finished photograph but it is consumed in the manufacturing of the photographs. Therefore, the sale of film to a photographer may be deducted pursuant to Subsection B of Section 7-9-46 NMSA 1978 as tangible personal property consumed in the manufacturing process.

C. This version of 3.2.204.13 NMAC applies to transactions occurring on or after January 1, 2013.
[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; 3.2.204.13 NMAC - Rn, 3 NMAC 2.46.13 & A, 5/31/01; A, 6/28/13]

3.2.204.14 UPHOLSTERY MATERIALS: Upholsterers are engaged in the business of performing a service and are not manufacturers. If an upholsterer separately states on the billings to customers the value of the material used in conjunction with the services, the upholsterer may issue a Type 2 nontaxable transaction certificate (NTTC) to the supplier of the material. If the value of the material is not separately stated on the billings to customers and either an NTTC is executed or the materials are purchased without a sales or gross receipts tax appearing on the invoice from an out-of-state vendor, the upholsterer will be liable for compensating tax on the value of the material.
[1/6/84, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.204.14 NMAC - Rn, 3 NMAC 2.46.14, 5/31/01; A, 6/28/13]

3.2.204.15 SOFTWARE MATERIALS: Materials such as blank diskettes, blank video disks, packaging, paper and labels which are used by a person who manufactures and sells in the ordinary course of business copies of computer software, together with explanatory materials and instructions, are ingredient and component parts of a manufactured product.
[4/30/97; 3.2.204.15 NMAC - Rn, 3 NMAC 2.46.15, 5/31/01]

3.2.204.16 RECEIPTS FROM CUSTOM SOFTWARE DEVELOPED FOR MANUFACTURER OF PACKAGED SOFTWARE NOT DEDUCTIBLE:

A. Receipts from developing custom software for a manufacturer of packaged software are not deductible under Section 7-9-46 NMSA 1978 because the deduction under Section 7-9-46 NMSA 1978 is available only for receipts from selling tangible personal property which is incorporated as an ingredient or component part of the manufactured product. Developing custom software is a service.

B. Example: M, a manufacturer of packaged software, contracts with S, a software development company, for the development of a new personal finances program which M plans to manufacture and sell. S is performing a service under this contract. M may not execute and S may not accept a nontaxable transaction certificate.

[4/30/97; 3.2.204.16 NMAC - Rn, 3 NMAC 2.46.16 & A, 5/31/01; A, 6/28/13]

3.2.204.17 UNPROCESSED METAL ORES: The receipts of a person who is not subject to the Resources Excise Tax Act and who sells unprocessed metal ores to a processor in this state are deductible under Section 7-9-46 NMSA 1978 provided the person is in possession of a properly executed nontaxable transaction certificate of the appropriate type.
[10/31/97; 3.2.204.17 NMAC - Rn, 3 NMAC 2.46.17 & A, 5/31/01]

3.2.204.18 CAR WASHING AND DETAILING: Persons who engage in the business of car washing, car waxing or car detailing are not thereby in the business of manufacturing. The deduction provided by Section 7-9-46 NMSA 1978 does not apply to receipts from car washing, car waxing or car detailing.
[3.2.204.18 - N, 10/31/2000]

3.2.204.19 TOOLS AND EQUIPMENT:

A. Tools and equipment used by a person engaged in the manufacturing business to manufacture a product are not considered to be consumed in the manufacturing process and therefore are not deductible under Subsection B of Section 7-9-46 NMSA 1978. As used in Section 7-9-46 NMSA 1978 the terms “tool” and “equipment” are defined as follows:

(1) “tool” means an implement, instrument, utensil, usually hand held, that is used to form, shape, fasten, add to, take away from, or otherwise change the manufactured product or equipment; and

(2) “equipment” means an essential machine, mechanism or tool, or a component or fitting thereof, used directly and exclusively in a manufacturing operation and subject to depreciation for purposes of the Internal Revenue Code by the taxpayer carrying on the manufacturing operation.

B. If any piece of a tool or equipment that breaks during the manufacturing process that is required to be replaced, is not considered to be consumed in the manufacturing process and the related receipts are not deductible under Subsection B of Section 7-9-46 NMSA 1978.

C. This version of 3.2.204.20 NMAC applies to transactions occurring on or after January 1, 2013.
[3.2.204.19 NMAC - N, 6/28/13]

HISTORY OF 3.2.204 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 2.46, Deduction - Gross Receipts Tax - Sales to Manufacturers, filed 11/4/96.

3.2.204 NMAC, Deduction - Gross Receipts Tax - Sales to Manufacturers, filed 5/17/2001.