

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 206: DEDUCTION - GROSS RECEIPTS TAX - SALE OF A SERVICE FOR RESALE

3.2.206.1 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, 3.2.206.1 NMAC - Rn, 3 NMAC 2.48.1, 5/31/01]

3.2.206.2 SCOPE: This part applies to all persons engaging in business in New Mexico.
[11/15/96, 3.2.206.2 NMAC - Rn, 3 NMAC 2.48.2, 5/31/01]

3.2.206.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/96, 3.2.206.3 NMAC - Rn, 3 NMAC 2.48.3, 5/31/01]

3.2.206.4 DURATION: Permanent.
[11/15/96, 3.2.206.4 NMAC - Rn, 3 NMAC 2.48.4, 5/31/01]

3.2.206.5 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, 3.2.206.5 NMAC - Rn, 3 NMAC 2.48.5 & A, 5/31/01]

3.2.206.6 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, 3.2.206.6 NMAC - Rn, 3 NMAC 2.48.6, 5/31/01]

3.2.206.7 DEFINITIONS: [Reserved.]
[11/15/96; 3.2.206.7 NMAC - Rn, 3 NMAC 2.48.7, 5/31/01]

3.2.206.8 RECEIPTS FROM THE NEXT SALE MUST BE TAXABLE:

A. Receipts from selling a service for resale may be deducted by the seller under Section 7-9-48 NMSA 1978 if the buyer has delivered an appropriate nontaxable transaction certificate (nttc) to the seller. If the buyer giving the nttc does not resell the service in a transaction that is taxable, then that person is subject to the compensating tax on the value of the services at the time they were rendered.

B. Example 1: X brings a truck into Y for repair. The trailer hitch has broken off the truck. Since Y does not have a welder, Y takes the truck to Z, who welds the trailer hitch back on to the truck. Y has executed an nttc which it has previously given to Z. Y bills as follows:

Bumper welding (performed by Z)	\$ 10.00
Service Charge	2.00
	\$ 12.00
Tax (at .05)	.60
TOTAL	\$ 12.60

Under these circumstances Z may deduct the \$10.00 gross receipts that it derived from selling a welding service for resale because it received an nttc.

C. Example 2: Y takes its service truck to Z to have Z weld a crane strut. Since Y has issued an nttc to Z, Z deducts its receipts from the performance of this service from its gross receipts. Y must pay compensating tax on the welding service performed by Z.

D. Example 3: M, a seller of concrete beams, hires a carrier to transport the beams to a buyer, C, who is engaged in the construction business. C delivers an nttc to M pursuant to the deduction allowable for the sale of tangible personal property to persons engaged in the construction business. As the sale by M to C is not subject to the gross receipts tax, if M delivers an nttc to the carrier, M will be subject to the compensating tax on the value of the transportation service. It is immaterial that the seller separately states the value of the transportation service in the billing to C, the purchaser of the beam.

E. Example 4: E, a seller of paper, hired a common carrier to transport several reams of paper to the buyer, the United States government. As E is not subject to the gross receipts tax on this transaction, if E delivers an nttc to the carrier E will be subject to the compensating tax on the value of the transportation services. It is

immaterial that the seller separately states the value of the transportation services in the billing to the United States government.

[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; 3.2.206.8 NMAC - Rn, 3 NMAC 2.48.8 & A, 5/31/01]

3.2.206.9 SEPARATELY STATING BY ATTACHMENT TO PRINCIPAL BILLING: For transactions occurring before July 1, 2000, the requirement of separately stating the value of the service resold is satisfied if an attachment to the principal billing is made showing the amount charged for the service resold. [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, 3.2.206.9 NMAC - Rn, 3 NMAC 2.48.9 & A, 10/31/2000]

3.2.206.10 INSTALLATION SERVICE:

A. Receipts from selling an installation service for resale may be deducted from gross receipts if the buyer of the service delivers a nontaxable transaction certificate (nttc) to the seller. The sale of the installation service by the buyer must be in the ordinary course of business and be subject to the gross receipts tax or the buyer will be subject to the compensating tax.

B. *Example:* W manufactures computers; however, because of the small size of the company W does not employ the proper personnel for installing the computers. Upon making a sale to S, W hired G to install the computers. The receipts G derived from installing the computers for W may be deducted from gross receipts pursuant to Section 7-9-48 NMAC 1978 if W delivers an nttc to G. The sale of the installation service by W must be in the ordinary course of business and subject to the gross receipts tax or W will be subject to the compensating tax. Note: If the installation service performed in a particular situation is determined by the department to be incidental to the sale of a tangible, then, even if the value of the installation service is separately stated from the value of the tangible personal property sold on the final billing to the buyer of the tangible personal property, all the receipts of the seller will be treated as receipts from the sale of tangible personal property.

C. This version of 3.2.206.10 NMAC applies to transactions occurring on or after July 1, 2000. [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, 3.2.206.10 NMAC - Rn, 3 NMAC 2.48.10 & A, 10/31/2000]

3.2.206.11 CERTAIN SERVICES WHICH ARE USED AND NOT RESOLD: Services performed in New Mexico which are deductible by the buyer under the provisions of the Internal Revenue Code as ordinary and necessary business expenses and services which are to be capitalized under the provisions of the Internal Revenue Code are "used" for purposes of Subsection B of Section 7-9-7 NMSA 1978 and are not purchased for resale pursuant to the provisions of Section 7-9-48 NMSA 1978. If the buyer has issued a nontaxable transaction certificate for the purchase of services which were in fact resold and subsequently obtains other services which are used by the buyer, the buyer is liable pursuant to Subsection B of Section 7-9-7 NMSA 1978 for compensating tax on the value of the services.

[3/11/88, 11/26/90, 11/15/96; 3.2.206.11 NMAC - Rn, 3 NMAC 2.48.11 & A, 5/31/01]

3.2.206.12 NONCONSTRUCTION SERVICES SOLD TO CONSTRUCTION CONTRACTORS:

A. Prior to January 1, 2013, any person engaged solely in the business of construction is not engaged in reselling services other than construction services in the ordinary course of business and may not execute a nontaxable transaction certificate (nttc) to purchase services for resale in connection with the construction business under the provisions of Section 7-9-48 NMSA 1978.

B. On or after January 1, 2013, any person engaged in the construction business who purchases construction-related services as defined in Section 7-9-52 NMSA 1978 and is engaged in reselling those construction-related services may execute an nttc to support the deduction under Section 7-9-52 NMSA 1978. [3/11/88, 11/26/90, 11/15/96; 3.2.206.12 NMAC - Rn, 3 NMAC 2.48.12 & A; 5/31/01; A, 11/30/05; A, 12/14/12]

3.2.206.13 ADVERTISING AND BROADCAST SERVICES:

A. **Advertising service: radio and television stations.** The receipts of a radio or television broadcasting station from the sale of advertising services to an advertising agency for resale may be deducted from gross receipts if the advertising agency delivers a nontaxable transaction certificate (nttc) to the broadcasting station. The subsequent sale must be in the ordinary course of business and subject to the gross receipts tax or the advertising agency will be subject to the compensating tax on the value of the advertising service at the time it was rendered.

(1) If a radio or television broadcasting station sells advertising services to an advertising agency for resale but refuses to accept delivery of an ntcc offered it by the advertising agency, the gross receipts tax consequences are:

(a) the net receipts of the broadcasting station from the transaction are subject to the gross receipts tax; and

(b) the receipts of the advertising agency, which are the full amount paid to the advertising agency by its customer (the advertiser), are subject to the gross receipts tax.

(2) This version of Subsection A of Section 3.2.206.13 NMAC applies to transactions occurring on or after July 1, 2000.

B. Advertising service: trading stamps. The sale of trading stamps constitutes the sale of an advertising or promotional service. Receipts from selling an advertising or promotional service for resale may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate (nttc) to the seller. The subsequent sale must be in the ordinary course of business and be subject to the gross receipts tax. This version of Subsection B of Section 3.2.206.13 NMAC applies to transactions occurring on or after July 1, 2000.

C. Sales of broadcast time for resale.

(1) A New Mexico radio or television broadcaster may deduct from its gross receipts the receipts derived from the sale of broadcast time to an advertising agency for resale so long as the broadcaster possesses a valid nontaxable transaction certificate (nttc) issued by the advertising agency and the contract under which the sale is made specifically states that the agency is not buying as an agent for its customer and that the agency, and not its customer, is liable for payment to the broadcaster for the purchase of broadcast time. The advertising agency must comply with the requirements of Section 7-9-48 NMSA 1978 by reselling the broadcast time in the normal course of business and by paying gross receipts tax upon the subsequent sale. If the agency fails to comply with these requirements, the agency will be liable for compensating tax on the broadcast time. This version of Paragraph (1) of Subsection C of Section 3.2.206.13 NMAC applies to transactions occurring on or after July 1, 2000.

(2) This deduction is in addition to the deduction available under Section 7-9-55 NMSA 1978. Thus, if the subsequent sale of broadcast time by the agency is made to a national or regional seller or advertiser, receipts from the sale are deductible by both the agency and broadcaster under Section 7-9-55 NMSA 1978, no ntcc shall be required and no compensating tax will be owed by the agency.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 3/3/86, 4/2/86, 11/26/90, 11/15/96, 3.2.206.13 NMAC - Rn, 3 NMAC 2.48.13 & A, 10/31/2000]

3.2.206.14 TRANSPORTATION SERVICES.

A. Transporting property. Receipts of a carrier from transporting property for the seller of the property who prepays the transportation charges may be deducted from the carrier's gross receipts if the seller executes with the carrier a nontaxable transaction certificate. The sale of the transportation service and property must be in the ordinary course of the seller's business and subject to the gross receipts tax on its subsequent sale. Otherwise, the seller will be liable for compensating tax on such transaction. This version of Subsection A of Section 3.2.206.14 NMAC applies to transactions occurring on or after July 1, 2000.

B. Transporting property.

(1) If a seller of tangible personal property employs a contract or common carrier to transport that property and delivers a nontaxable transaction certificate (nttc) to the carrier, and if the receipts from the sale of the property are not subject to the gross receipts tax, the seller will be subject to the compensating tax on the value of the transportation service purchased.

(2) Example: X sells tangible personal property to Y, a governmental entity, and hires a carrier to transport the tangible personal property to Y. X will be subject to compensating tax on the value of the transportation service if X delivers an ntcc to the carrier. It is immaterial that X separately states the value of the transportation service in the billing to Y.

C. Hauling prefabricated buildings.

(1) The hauler of prefabricated buildings may take a deduction from gross receipts pursuant to Section 7-9-48 NMSA 1978 if:

(a) the prefabricated builder resells the hauling service to customers who contract to purchase the building which has been moved to a permanent site; and

(b) the prefabricated builder executes with the hauler a nontaxable transaction certificate (nttc); and

(c) the subsequent sale is in the ordinary course of the prefabricated builder's business and subject to the gross receipts tax.

(2) This version of Subsection C of Section 3.2.206.14 NMAC applies to transactions occurring on or after July 1, 2000.

D. Transportation services.

(1) A person who subcontracts to haul property for a person who holds a certificate of public convenience and necessity issued by the public regulation commission of the state of New Mexico may accept a nontaxable transaction certificate (nttc) for the services. Receipts from hauling such property may be deducted from gross receipts provided the person provides both the transporting equipment and the operator.

(2) If the issuer of the nttc fails to meet the criteria of Section 7-9-48 NMSA 1978, the issuer will become liable for compensating tax on the value of the services at the time they were rendered.

(3) If the subcontractor provides only the transporting equipment, the subcontractor is engaged in the business of leasing property and the receipts are subject to the gross receipts tax. The issuance or receipt of an nttc in this situation would be improper.

[6/18/79, 11/5/81, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.14 NMAC - Rn, 3 NMAC 2.48.14 & A, 10/31/2000; A, 5/31/01]

3.2.206.15 MEDICAL SERVICES.

A. Medical laboratory services. Receipts from the sale of medical laboratory services, such as blood test analysis, urine analysis and similar test analysis, to a practitioner of the healing arts may be deducted from gross receipts if the practitioner delivers to the seller a nontaxable transaction certificate and the subsequent sale is in the ordinary course of the practitioner's business and is subject to the gross receipts tax. This version of Subsection A of Section 3.2.206.15 NMAC applies to transactions occurring on or after July 1, 2000.

B. Anesthetists' services. The receipts of an anesthetist from performance of service for a surgeon may be deducted from gross receipts if the surgeon resells the service to a patient and delivers a nontaxable transaction certificate (nttc) to the anesthetist. The surgeon delivering the nttc must separately state the value of the service purchased in the charge for the service on its subsequent sale, and the subsequent sale must be in the ordinary course of business and subject to the gross receipts tax. If these conditions are not satisfied, the surgeon will be subject to the compensating tax on the value of the service purchased.

[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, 3.2.206.15 NMAC - Rn, 3 NMAC 2.48.15 & A, 10/31/2000]

3.2.206.16 LINEN SERVICE FOR RESTAURANTS: The receipts from charges to a restaurant for laundering tablecloths, napkins, uniforms, towels and similar items may not be deducted from gross receipts because these are not services performed for resale.

[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, 3.2.206.16 NMAC - Rn, 3 NMAC 2.48.16, 5/31/01]

3.2.206.17 EQUIPMENT REPAIR SERVICES: Receipts from the sale of a repair service to a person engaged in the business of repairing equipment may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate (nttc) to the seller. The subsequent sale must be in the ordinary course of business and subject to the gross receipts tax or the buyer will be subject to the compensating tax on the value of the service. This version of 3.2.206.17 NMAC applies to transactions occurring on or after July 1, 2000.

[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, 3.2.206.17 NMAC - Rn, 3 NMAC 2.48.17 & A, 10/31/2000]

3.2.206.18 PHOTO PROCESSING SERVICE: The receipts of a person engaged in the business of processing photographic material, such as exposed film, are receipts from performing a service and may be deducted from gross receipts if the sale of the service is made to a buyer who delivers a nontaxable transaction certificate (nttc). The subsequent sale must be in the ordinary course of business and be subject to the gross receipts tax or the buyer will be liable for the compensating tax on the value of the service. This version of 3.2.206.18 NMAC applies to transactions occurring on or after July 1, 2000.

[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, 3.2.206.18 NMAC - Rn, 3 NMAC 2.48.18 & A, 10/31/2000]

3.2.206.19 MORTICIANS: Receipts from selling services such as grave digging and organ playing to morticians for use in their business are receipts from selling a service for resale and may be deducted from gross receipts if the mortician buying the service delivers a nontaxable transaction certificate (nttc) to the seller. The

subsequent sale must be in the ordinary course of the mortician's business and subject to the gross receipts tax or the mortician will be liable for the compensating tax on the value of the service. This version of 3.2.206.19 NMAC applies to transactions occurring on or after July 1, 2000.

[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, 3.2.206.19 NMAC - Rn, 3 NMAC 2.48.19 & A, 10/31/2000]

3.2.206.20 TELECOMMUNICATIONS SERVICES:

A. **Cable television hook-up.** Receipts from selling the service of hook-ups to cable television for resale may be deducted from gross receipts if the sale is made to a buyer who delivers a nontaxable transaction certificate (nttc) to the seller. The subsequent sale must be in the ordinary course of business and the receipts subject to the gross receipts tax. This version of Subsection A of Section 3.2.206.20 NMAC applies to transactions occurring on or after July 1, 2000.

B. **Telephone services.**

(1) Receipts of a telephone company from the performance of telephone services for a hotel or motel, to the extent that they are attributable to calls made from the rooms of the hotel's or motel's guests, may be deducted from gross receipts if the hotel or motel delivers a nontaxable transaction certificate (nttc) to the telephone company. The charge must be subject to the gross receipts tax or the hotel or motel will be subject to the compensating tax on the value of the telephone services.

(2) In order to apportion the use of telephone service at a hotel or motel between local calls made from the rooms of the hotel's or motel's guests and other local calls made from the hotel or motel, the department will, on audit of the telephone company claiming the deduction described in the preceding paragraph, allow as a deduction that portion of the receipts of the telephone company which are calculated in the following manner with respect to the month's billing to the hotel or motel:

(a) the telephone company's receipts from charges, indicated on its billing to the hotel or motel, as local service and additional local call and message units, which represent local telephone service are calculated; and

(b) the total calculated in Subparagraph (a) of Paragraph (2) of Subsection B of Section 3.2.206.20 NMAC is multiplied by a fraction, the numerator of which is the number of message units, as the term is used by the telephone company, indicated on its billing to the hotel or motel which represent local telephone calls which were made from the hotel or motel and the denominator of which is the total of message units, as the term is used by the telephone company, indicated on the telephone company's billing to the hotel or motel.

(3) The method set forth in Paragraph (2) of Subsection B of Section 3.2.206.20 NMAC is acceptable to the department as an "apportionment of use". However, other methods which more accurately reflect the apportionment of use may be acceptable to the department.

(4) *Example:* X is engaged in the business of selling alarm systems in New Mexico. As a part of these systems, a telephone line is leased by X from Y, a telephone company. Y bills X for each line on a monthly basis. X bills each customer on a monthly basis for service plus a telephone line charge. Receipts of Y from the performance of the telephone service for X may be deducted from Y's gross receipts if X delivers a type 5 nttc to Y. Receipts of X from its customers must be subject to the gross receipts tax, or X will be liable for the compensating tax on the value of the telephone services at the time they were rendered.

(5) This version of Subsection B of Section 3.2.206.20 NMAC applies to transactions occurring on or after July 1, 2000.

[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, 3.2.206.20 NMAC - Rn, 3 NMAC 2.48.20 & A, 10/31/2000]

3.2.206.21 GARBAGE COLLECTION: Receipts from selling the service of garbage collection for resale may be deducted from gross receipts if the sale is made to a buyer who delivers a type 5 nontaxable transaction certificate (nttc) to the seller. The subsequent sale must be in the ordinary course of business and subject to the gross receipts tax or governmental gross receipts tax, or the buyer will be liable for the compensating tax on the value of the service at the time it was rendered. If the seller of the service of garbage collection is a political subdivision of the state of New Mexico, its receipts from the sale are exempted from the gross receipts tax but will be subject to the governmental gross receipts tax. This version of Section 3.2.206.21 NMAC applies to transactions occurring on or after July 1, 2000.

[3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.21 NMAC - Rn, 3 NMAC 2.48.21 & A, 10/31/2000]

3.2.206.22 RECEIPTS FROM SALE OF SERVICES TO FULFILL PROMISOR'S OBLIGATION UNDER AUTOMOTIVE SERVICE CONTRACT NOT DEDUCTIBLE: The receipts of a repair facility from the promisor under an automotive service contract, as that term is defined in Subsection C of Section 3.2.1.16 NMAC, for furnishing services to fulfill the promisor's obligation under the contract are taxable gross receipts of the repair facility and are not deductible by the repair facility. Even though the promisor may have furnished the repair facility with a type 5 (service for resale) nontaxable transaction certificate, the receipts are not deductible because the services were sold by the repair facility to the purchaser of the automotive service contract for a consideration to be received from the promisor who makes the payment to the repair facility to discharge the promisor's obligation to the purchaser to pay for the services.
[6/28/89, 11/26/90, 11/15/96; 3.2.206.22 NMAC - Rn, 3 NMAC 2.48.22 & A, 5/31/01]

HISTORY OF 3.2.206 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 2.48, Deduction - Gross Receipts Tax - Sale of a Service for Resale, filed 11/4/96.
3.2.206 NMAC, Deduction - Gross Receipts Tax - Sale of a Service for Resale, filed 5/17/2001.