

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 207: DEDUCTION - GROSS RECEIPTS TAX - SALE OF TANGIBLE PERSONAL PROPERTY FOR LEASING

3.2.207.1 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; 3.2.207.1 NMAC - Rn, 3 NMAC 2.49.1, 5/31/01]

3.2.207.2 SCOPE: This part applies to each person engaging in business in New Mexico.
[11/15/96; 3.2.207.2 NMAC - Rn, 3 NMAC 2.49.2, 5/31/01]

3.2.207.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/96; 3.2.207.3 NMAC - Rn, 3 NMAC 2.49.3, 5/31/01]

3.2.207.4 DURATION: Permanent.
[11/15/96; 3.2.207.4 NMAC - Rn, 3 NMAC 2.49.4, 5/31/01]

3.2.207.5 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; 3.2.207.5 NMAC - Rn, 3 NMAC 2.49.5 & A, 5/31/01]

3.2.207.6 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; 3.2.207.6 NMAC - Rn, 3 NMAC 2.49.6, 5/31/01]

3.2.207.7 DEFINITIONS: [Reserved.]
[11/15/96; 3.2.207.7 NMAC - Rn, 3 NMAC 2.49.7, 5/31/01]

3.2.207.8 GENERAL QUALIFICATIONS - EXAMPLES:

A. To qualify to issue a nontaxable transaction certificate (nttc) under the provisions of Section 7-9-49 NMSA 1978, the business issuing the nttc must derive a substantial portion of its income from the sale or lease of the same type of property which is being purchased under the nttc. The property purchased under the nttc must subsequently be sold or leased in the ordinary course of business. If the seller accepts an nttc in good faith and if either of these requirements is not met the value of the tangible property purchased under such nttc will be subject to the compensating tax.

B. Example 1: X derives a substantial portion of its receipts from leasing or selling air compressors. When X buys air compressors from M, the manufacturer, X gives M an nttc. M's receipts from the sales are deductible.

C. Example 2: X, an office machine company, buys a typewriter from the manufacturer, M. X has given M an nttc. X leases the typewriter for six months after which X uses it in its office. M may deduct the receipts from the sale of the typewriter from its gross receipts. X must pay gross receipts tax on its receipts from leasing the typewriter. As a result of converting the typewriter to its own use, X must pay compensating tax on the market value of the typewriter at the time of its conversion to use under Section 7-9-7 NMSA 1978.

D. Example 3: A substantial portion of L's business is from leasing or selling lawnmowers. L has given an nttc to D, the dealer from whom L buys its lawnmowers. L buys five lawnmowers from D to lease to its customers. L sells one of the lawnmowers to Y and leases the others to X. D may deduct receipts from the sale of all five of the lawnmowers to L. L must pay the gross receipts tax on the receipts from leasing to X and the sale to Y.

E. Example 4: C, a flying service, sells new and used airplanes, rents airplanes, provides in-state charter service, and provides flying instruction. C purchases five airplanes from X, a New Mexico airplane manufacturer, for use in its charter service. "Chartering" is here defined as hiring a plane and a pilot to fly the customer, not freight. Receipts from in-state charter flights are not subject to gross receipts tax. A charter is not a lease. The receipts from leasing airplanes and flight instructions are subject to the gross receipts tax. X's receipts from the sale of planes to C are subject to the gross receipts tax. If C bought the planes under nttc it issued X, C would be liable for compensating tax on the value of the charter planes. Later, when C sells these planes, the receipts

from the sales of the used planes also are taxable. Sale of used planes is in the normal course of C's business. If C converts a plane it purchased for leasing to charter flights, even if the conversion is for a single flight, compensating tax becomes due on the market value of the plane at the time of conversion.

[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; 3.2.207.8 NMAC - Rn, 3 NMAC 2.49.8 & A, 5/31/01; A, 11/30/05]

3.2.207.9 AUTOMOBILE LEASING: The receipts from selling tires, engine repair parts, and similar items to a lessor who uses these items in the maintenance of vehicles held for lease or leased may be deducted from gross receipts if the lessor delivers a nontaxable transaction certificate to the seller. Unless the lessor meets the following conditions the lessor will be subject to compensating tax on the value of these items:

A. the parts are used by the lessor on vehicles held for lease, leased or held for sale and the receipts from leasing or selling vehicles are a substantial portion of the lessor's receipts; and

B. the maintenance of the vehicles is performed at no additional cost to the lessee of these vehicles under the lease agreement; and

C. the lessor does not use the vehicles or parts in any manner other than holding them for lease or sale or leasing or selling them either by themselves or in combination with other tangible personal property in the ordinary course of business.

[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; 3.2.207.9 NMAC - Rn, 3 NMAC 2.49.9, 5/31/01]

3.2.207.10 SAFE HARBOR LEASE - PURCHASE OF AND/OR SALE OF PROPERTY BY

SELLER/LESSEE: A seller/lessee who enters into a qualified "safe harbor lease" transaction as defined in Section 168 of the Internal Revenue Code and who is in the business of selling or leasing the same type of property sold under the "safe harbor lease" may issue and receive the nontaxable transaction certificate authorized by Section 7-9-49 NMSA 1978.

[2/23/83, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.207.10 NMAC - Rn, 3 NMAC 2.49.10 & A, 5/31/01]

HISTORY OF 3.2.207 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 2.49, Deduction - Gross Receipts Tax - Sale of Tangible Personal Property for Leasing, filed 11/4/96.

3.2.207 NMAC, Deduction - Gross Receipts Tax - Sale of Tangible Personal Property for Leasing, filed 5/17/2001.