

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 208: DEDUCTION - GROSS RECEIPTS TAX - LEASE FOR SUBSEQUENT LEASE

3.2.208.1 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; 3.2.208.1 NMAC - Rn, 3 NMAC 2.50.1, 5/31/01]

3.2.208.2 SCOPE: This part applies to each person engaging in business in New Mexico.
[11/15/96; 3.2.208.2 NMAC - Rn, 3 NMAC 2.50.2, 5/31/01]

3.2.208.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/96; 3.2.208.3 NMAC - Rn, 3 NMAC 2.50.3, 5/31/01]

3.2.208.4 DURATION: Permanent.
[11/15/96; 3.2.208.4 NMAC - Rn, 3 NMAC 2.50.4, 5/31/01]

3.2.208.5 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; 3.2.208.5 NMAC - Rn, 3 NMAC 2.50.5 & A, 5/31/01]

3.2.208.6 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; 3.2.208.6 NMAC - Rn, 3 NMAC 2.50.6, 5/31/01]

3.2.208.7 DEFINITIONS: [Reserved.]
[11/15/96; 3.2.208.7 NMAC - Rn, 3 NMAC 2.50.7, 5/31/01]

3.2.208.8 GENERAL QUALIFICATIONS:

A. To qualify to issue a nontaxable transaction certificate (nttc) under the provisions of Section 7-9-50 NMSA 1978, the business issuing the nttc must subsequently lease the tangible property in the ordinary course of business. If the seller accepts an nttc in good faith and if the tangible property is not subsequently leased in the ordinary course of business, the lessee will owe compensating tax on the total amount paid to the lessor under the terms of the lease.

B. Example: H manufactures fishing tools for use in the oil field. H leases these tools to J, a rental company, which in turn rents the tools to P, a drilling company. If J delivers a nontaxable transaction certificate to H, H may deduct the amount of its rental receipts from its gross receipts.
[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; 3.2.208.8 NMAC - Rn, 3 NMAC 2.50.8 & A, 5/31/01]

3.2.208.9 LEASE VS. LICENSE TO USE:

A. Receipts of a person who is a lessor of tangible personal property from leasing tangible personal property to a lessee who grants a license to use the leased items of tangible personal property to a third party may not be deducted from gross receipts pursuant to Section 7-9-50 NMSA 1978. However, the deduction will be allowed if the lessor has accepted a nontaxable transaction certificate (nttc) from the buyer in good faith that the property would be used in a nontaxable manner.

B. If the lessee delivering the nttc does not use the property in a nontaxable manner, compensating tax is due.

C. Example 1: T leases television sets to X, a motel, to place in the rooms of its guests. X delivers an nttc to T pursuant to Section 7-9-50 NMSA 1978. X may not properly deliver an nttc pursuant to Section 7-9-50 NMSA 1978 because it is not subsequently leasing the television sets to its guests in the ordinary course of business; rather, it is granting its guests a license to use the television sets.

D. Example 2: X leases bowling equipment to a local bowling alley which in turn grants its

customers a license to use that equipment. The local bowling alley may not deliver an ntte to X pursuant to Section 7-9-50 NMSA 1978 because the lease of the equipment is not for subsequent lease.

E. Example 3: X is in the business of selling and leasing golf carts. Y, a country club, leases a golf cart from X and permits golfers to use it for a consideration. X's receipts from leasing the golf cart may not be deducted from gross receipts pursuant to Section 7-9-50 NMSA 1978 because Y is not subsequently leasing the golf cart to golfers but is merely granting a license to use the golf cart.

[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; 3.2.208.9 NMAC - Rn, 3 NMAC 2.50.9 & A, 5/31/01]

3.2.208.10 EMPLOYER/EMPLOYEE VEHICLE LEASE AGREEMENT:

A. When an employee is the owner of a vehicle and enters into a lease agreement with an employer who pays the employee wages which are exempt from gross receipts tax under Section 7-9-17 NMSA 1978, the receipts derived from the lease of the vehicle to perform the transportation services are not deductible pursuant to Section 7-9-50 NMSA 1978.

B. Example: X, a bona fide employee of Y, a highway escort service, uses X's own vehicle and equipment to perform highway escort services for Y. X owes gross receipts tax on receipts from leasing the vehicles and equipment. Since X is a true employee of Y, X does not owe gross receipts tax on wages received from Y. If X were not a true employee of Y, X would owe gross receipts tax on the total amount received.

[6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.208.10 NMAC - Rn, 3 NMAC 2.50.10 & A, 5/31/01]

HISTORY OF 3.2.208 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 2.50, Deduction - Gross Receipts Tax - Lease for Subsequent Lease, filed 11/4/96.

3.2.208 NMAC, Deduction - Gross Receipts Tax - Lease for Subsequent Lease, filed 5/17/2001.