

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 209: DEDUCTION - GROSS RECEIPTS TAX - SALE OF CONSTRUCTION MATERIALS

3.2.209.1 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; 3.2.209.1 NMAC - Rn, 3 NMAC 2.51.1, 5/31/01]

3.2.209.2 SCOPE: This part applies to each person engaging in business in New Mexico.
[11/15/96; 3.2.209.2 NMAC - Rn, 3 NMAC 2.51.2, 5/31/01]

3.2.209.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/96; 3.2.209.3 NMAC - Rn, 3 NMAC 2.51.3, 5/31/01]

3.2.209.4 DURATION: Permanent.
[11/15/96; 3.2.209.4 NMAC - Rn, 3 NMAC 2.51.4, 5/31/01]

3.2.209.5 EFFECTIVE DATE: November 15, 1996, 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; 3.2.209.5 NMAC - Rn, 3 NMAC 2.51.5 & A, 5/31/01]

3.2.209.6 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; 3.2.209.6 NMAC - Rn, 3 NMAC 2.51.6, 5/31/01]

3.2.209.7 INGREDIENT OR COMPONENT PART DEFINED: To be an "ingredient or component part" as used in Section 7-9-51 NMSA 1978 the tangible property must be an intended part of the finished project. The finished project is the end product of construction.
[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; 3.2.209.7 NMAC - Rn, 3 NMAC 2.51.7 & A, 5/31/01]

3.2.209.8 ITEMS THAT ARE NOT INGREDIENT OR COMPONENT PARTS - OIL FIELD:
Receipts from the sale of the following items may not be deducted from gross receipts since these items do not become ingredient or component parts of a construction project within the meaning of Section 7-9-51 NMSA 1978:

A. drilling equipment, including derricks, blocks, substructures, draw-works, flooring, rotary tables, engines, mud pumps, pipe racks, tanks, doghouses, hoses, water and fuel lines, water well equipment, blowout preventers and other drilling equipment and tools;

B. drill stems, drill collars, subs and kelly;

C. drilling bits, core bits and barrels;

D. fishing tools;

E. fuels, including natural gas, LPG, diesel and electricity; and

F. drilling fluids, including mud, additives, air and lost circulation materials.

[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; 3.2.209.8 NMAC - Rn, 3 NMAC 2.51.8 & A, 5/31/01]

3.2.209.9 ITEMS THAT ARE INGREDIENT OR COMPONENT PARTS - OIL FIELDS:
Receipts from the sale of casing, cement, shoes and float equipment, casing heads and well heads may be deducted from gross receipts if the other requirements of Section 7-9-51 NMSA 1978 are met and a nontaxable transaction certificate or alternative evidence is provided by a well drilling company performing a turnkey project, as these items become ingredient or component parts of the construction project.
[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.9 NMAC - Rn, 3 NMAC 2.51.9 & A, 5/31/2001; A, 12/27/2018]

3.2.209.10 MATERIALS IN CONCRETE WORK:
A. Receipts from selling materials and special coating used in concrete work may be deducted from gross receipts if the materials sold become an ingredient or component part of a construction project and if the other

requirements of Section 7-9-51 NMSA 1978 are met.

B. Concrete curing compounds, hardening agents and liquid curing compounds which remain on or in concrete become ingredient or component parts of construction projects within the meaning of Section 7-9-51 NMSA 1978.

C. Form coatings and form oils used to ease the separation of forms from concrete and snap ties, even though they remain imbedded in concrete, do not become ingredient or component parts of construction projects within the meaning of Section 7-9-51 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; 3.2.209.10 NMAC - Rn, 3 NMAC 2.51.10 & A, 5/31/01]

3.2.209.11 SALE OF WATER: Receipts from selling water to a construction company may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate or alternative evidence and if the water becomes an ingredient or component part of the finished product such as in concrete or in moistening fill. However, if the water is used as merely a lubricating agent, such as in well drilling, it is not a component part of the finished product and the receipts are not deductible. [12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.11 NMAC - Rn, 3 NMAC 2.51.11, 5/31/2001; A, 12/27/2018]

3.2.209.12 FORMS AND FUEL:

A. Receipts from selling lumber for forms and fuel for trucks to a person engaged in the construction business may not be deducted from gross receipts because neither the lumber nor the fuel actually becomes an ingredient or component part of the finished product. However, if the form lumber is later used for sheeting in the construction project, the form lumber may be purchased with a nontaxable transaction certificate (nttc) or alternative evidence pursuant to Section 7-9-51 NMSA 1978.

B. The receipts from selling screed pins used in plastering and forms which must, by reason of design, be left in place after concrete has been poured over them may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate (nttc) or alternative evidence.

[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.12 NMAC - Rn, 3 NMAC 2.51.12 & A, 5/31/2001; A, 12/27/2018]

3.2.209.13 WELDING RODS: Receipts from selling welding electrodes (welding rods), which melt to provide filler or fused metal, to a person engaged in the construction business may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate (nttc) or alternative evidence to the seller and the buyer delivering the nttc uses the welding electrodes in such a way that they become an ingredient or component part of the construction project [3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.13 NMAC - Rn, 3 NMAC 2.51.13 & A, 5/31/2001; A, 12/27/2018]

3.2.209.14 PAINT AND PAINTING SUPPLIES:

A. The receipts from the sale of paint, filler, thinner, varnish or similar items to a person engaged in the painting business who delivers a nontaxable transaction certificate (nttc) or alternative evidence to the seller may be deducted from the seller's gross receipts.

B. Receipts from the sale of brushes, sandpaper, scrapers, sand for sandblasting, machinery and similar items used in the painting business to persons engaged in the painting business may not be deducted from gross receipts because such items do not become an ingredient or component part of the construction project.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.14 NMAC - Rn, 3 NMAC 2.51.14 & A, 5/31/2001; A, 12/27/2018]

3.2.209.15 SPRINKLER SYSTEMS: Receipts from selling pipes, joints, nozzles and similar items of tangible personal property which become ingredient or component parts of a sprinkler system to a person engaged in the business of selling and installing sprinkler systems may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate or alternative evidence.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.15 NMAC - Rn, 3 NMAC 2.51.15, 5/31/2001; A, 12/27/2018]

3.2.209.16 BURNER FUEL: Receipts from selling burner fuel used to heat aggregates and asphalt to a

person engaged in the construction business may not be deducted from gross receipts since burner fuel does not become an ingredient or component part of a construction project within the meaning of Section 7-9-51 NMSA 1978.

[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; 3.2.209.16 NMAC - Rn, 3 NMAC 2.51.16 & A, 5/31/01]

3.2.209.17 SURVEY SUPPLIES: Receipts from selling survey supplies used to survey a construction project to a person engaged in the construction business may not be deducted from gross receipts because such survey supplies do not become an ingredient or component part of the construction project within the meaning of Section 7-9-51 NMSA 1978.

[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; 3.2.209.17 NMAC - Rn, 3 NMAC 2.51.17 & A, 5/31/01]

3.2.209.18 WINDOWS AND DOORS:

A. Receipts from the sale of screens, screen doors and windows to a person engaged in the construction business may be deducted from the seller's gross receipts if the buyer delivers a nontaxable transaction certificate (nttc) or alternative.

B. Receipts from the sale of aluminum panel, aluminum T bar, aluminum angle, bulk or roll screen stock and jalousie glass to a person who produces screens, screen doors or windows and sells them installed in a construction project may be deducted from the seller's gross receipts pursuant to Section 7-9-51 NMSA 1978 if the buyer delivers an nttc or alternative evidence.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.18 NMAC - Rn, 3 NMAC 2.51.18 & A, 5/31/2001; A, 12/27/2018]

3.2.209.19 ELECTRICITY: The receipts of an electric utility company from the sale of electricity to a person engaged in the construction business may not be deducted from the utility's gross receipts pursuant to Section 7-9-51 NMSA 1978 because electricity does not become an ingredient or component part of the end product of the construction project.

[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; 3.2.209.19 NMAC - Rn, 3 NMAC 2.51.19 & A, 5/31/01]

3.2.209.20 BLUEPRINTS - PHOTOSTATS: Receipts from the sale of blueprints or photostats to a person engaged in the construction business are subject to the gross receipts tax. These receipts may not be deducted pursuant to Section 7-9-51 NMSA 1978, because they do not become an ingredient or component part of a construction project.

[3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.209.20 NMAC - Rn, 3 NMAC 2.51.20 & A, 5/31/01]

3.2.209.21 COMPENSATING TAX ON MATERIALS: When a person engaged in the construction business leases or otherwise uses a construction project which was built with construction materials purchased with a nontaxable transaction certificate, the compensating tax is due on the value of the construction materials incorporated into the project. The value to be reported is the actual cost.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.209.21 NMAC - Rn, 3 NMAC 2.51.21, 5/31/01]

3.2.209.22 INGREDIENT AND COMPONENT PARTS OF A CONSTRUCTION PROJECT: In determining whether tangible personal property will become an ingredient or component part of a construction project, the department will use the following criteria, but not exclusively:

A. Was the person performing the work using the tangible personal property required to be licensed under the Construction Industries Licensing Act, Sections 60-13-1 to 60-13-59 NMSA 1978.

B. Did the work for which the tangible personal property was used require a permit from one or more of the trade boards established by the Construction Industries Licensing Act or from a municipal building or mechanical department.

[6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.22 NMAC - Rn, 3 NMAC 2.51.22 & A, 5/31/2001; A, 12/27/2018]

3.2.209.23 CONSTRUCTION MATERIALS USED IN NONTAXABLE CONSTRUCTION

PROJECTS:

A. A seller of construction material may not claim the deduction from gross receipts provided by Section 7-9-51 NMSA 1978, or accept a nontaxable transaction certificate (NTTC) in good faith as required by Section 7-9-43 NMSA 1978, when the seller can reasonably determine that the construction material sold will be incorporated into a construction project which will not be subject to gross receipts tax upon completion because it is located outside New Mexico.

B. A seller can reasonably determine that a project is located outside New Mexico when the seller has documents identifying the location of the project.

C. No construction project located outside New Mexico will be subject to gross receipts tax upon completion.

[1/24/1986, 4/2/1986, 11/26/1990, 11/15/1996, 3.2.209.23 NMAC - Rn & A, 3 NMAC 2.51.23, 10/31/2000; A, 12/27/2018]

3.2.209.24 MATERIALS USED IN NONTAXABLE PROJECTS: A person who purchases construction materials using a nontaxable transaction certificate and who subsequently uses the construction materials on a project located either outside the state of New Mexico or on a project, other than a project sold to an Indian nation, tribe or pueblo or its member that is located on the tribal territory of that Indian nation, tribe or pueblo, not subject to the gross receipts tax upon completion shall be liable for the compensating tax on the value of the materials used. This version of 3.2.209.24 NMAC applies retroactively to transactions occurring on or after March 7, 2000. [1/24/86, 4/2/86, 11/26/90, 11/15/96, 3.2.209.24 NMAC - Rn, 3 NMAC 2.51.24 & A, 10/31/2000]

3.2.209.25 CARPETS AND DRAPERIES INSTALLED IN A CONSTRUCTION PROJECT: When carpets or draperies are to be installed as an ingredient or component part of a construction project a person engaged in the construction business may deliver a nontaxable transaction certificate for the purchase of carpet or draperies, or the installation of carpets or draperies, to the seller and the seller may deduct receipts from the sale pursuant to Section 7-9-51 NMSA 1978.

[3.2.209.25 NMAC - N, 12/14/12]

3.2.209.26 MATERIALS USED IN GOVERNMENT OR NON-PROFIT PROJECTS: Receipts from the sale to a person engaged in the construction business who delivers a nontaxable transactions certificate or alternative evidence to the seller of construction materials that are tangible personal property, whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property by Section 168 of the Internal Revenue Code of 1986 as that section may be amended or renumbered, may be deducted if the construction material will ultimately be deductible pursuant to Section 7-9-54 or 7-9-60 NMSA 1978 provided that the remaining construction services portion of the project is subject to gross receipts tax.

[3.2.209.26 NMAC - N, 12/27/2018]

HISTORY OF 3.2.209 NMAC:

Pre-NMAC History:

BOR 67-2, NM Gross Receipts and Compensating Tax Regulations, September 1967, filed 9/29/1967.

BOR 69-4, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 12/5/1969, filed 12/5/1969.

BOR 72-4, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 3/9/1972, filed 3/9/1972.

BOR 74-2, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 12/15/1973, filed 3/20/1974.

BOR 76-1, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 7/26/1976, filed 7/26/1976.

R.D.79-1, Gross Receipts and Compensating Tax Act Regulations, filed 6/18/1979.

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 4/7/1982.

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 5/4/1984.

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 4/2/1986.

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 11/26/1990.

History of Repealed Material: [RESERVED]

NMAC History:

3 NMAC 2.51, Deduction - Gross Receipts Tax - Sale of Construction Materials, filed 11/4/1996.
3.2.209 NMAC, Deduction - Gross Receipts Tax - Sale of Construction Materials, filed 5/17/2001.