

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 212: DEDUCTION - GROSS RECEIPTS TAX - SALES TO GOVERNMENTAL AGENCIES

3.2.212.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.
[11/15/1996; 3.2.212.1 NMAC - Rn, 3 NMAC 2.54.1, 5/31/2001]

3.2.212.2 SCOPE: This part applies to each person engaging in business in New Mexico.
[11/15/1996; 3.2.212.2 NMAC - Rn, 3 NMAC 2.54.2, 5/31/2001]

3.2.212.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/1996; 3.2.212.3 NMAC - Rn, 3 NMAC 2.54.3, 5/31/2001]

3.2.212.4 DURATION: Permanent.
[11/15/1996; 3.2.212.4 NMAC - Rn, 3 NMAC 2.54.4, 5/31/2001]

3.2.212.5 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.
[11/15/1996; 3.2.212.5 NMAC - Rn & A, 3 NMAC 2.54.5, 5/31/2001]

3.2.212.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
[11/15/1996; 3.2.212.6 NMAC - Rn, 3 NMAC 2.54.6, 5/31/2001]

3.2.212.7 DEFINITIONS: [RESERVED]
[11/15/1996; 3.2.212.7 NMAC - Rn, 3 NMAC 2.54.7, 5/31/2001]

3.2.212.8 LEASING OF TANGIBLE PERSONAL PROPERTY TO A GOVERNMENTAL AGENCY:

A. The receipts from the leasing of tangible personal property to a governmental agency are not deductible pursuant to Section 7-9-54 NMSA 1978. Only receipts from selling tangible personal property to a governmental agency are deductible.

B. Example 1: B rents computers to the United States for use in New Mexico. B contends that the gross receipts from these rentals are deductible for the purpose of computing gross receipts tax. The receipts are not deductible. Only receipts from selling tangible personal property to the United States are deductible.

C. Example 2: A county election board made the decision that in the last election they would use Q's electronic voting system. Because the county is small and the system is very new and expensive, the parties agreed to lease the equipment. All the installation and supplies were provided by Q under the contract. Q deducted the receipts from the transaction. The deduction is not allowable under Section 7-9-54 NMSA 1978 because this is not a sale of tangible personal property to a political subdivision of the state of New Mexico.

[9/29/1967, 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; 3.2.212.8 NMAC - Rn & A, 3 NMAC 2.54.8, 5/31/2001]

3.2.212.9 SALE OF SERVICE TO A GOVERNMENTAL AGENCY:

A. Receipts from the sale of a service to a governmental agency are not deductible pursuant to Section 7-9-54 NMSA 1978. Only the receipts from selling tangible personal property to a governmental agency are deductible.

B. Example 1: The city contracts with E, an employment agency, to provide substitutes for vacationing city secretarial employees each summer. E deducts the receipts from the city in computing its gross receipts tax liability. This is a sale of services to a political subdivision of the state of New Mexico and not a sale of tangible personal property. The deduction cannot be allowed.

C. Example 2: B is an attorney who performs legal services in New Mexico for various Indian tribes and Indian pueblos. B is not an enrolled member of any Indian nation, tribe or pueblo. B's receipts from these services are not deductible under Section 7-9-54 NMSA 1978. A deduction from gross receipts under Section 7-9-54 NMSA 1978 is allowed only for receipts from the sale of tangible personal property to the governing bodies of

Indian tribes or Indian pueblos for use on Indian reservations or pueblo grants. (If the services are performed on the tribe's territory, however, they may be exempt under Subsection D of Section 3.2.4.9 NMAC).
[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; 3.2.212.9 NMAC - Rn & A, 3 NMAC 2.54.9, 5/31/2001]

3.2.212.10 CONSTRUCTION PERFORMED FOR A GOVERNMENTAL AGENCY:

A. Except as provided in Subsection B, receipts from performing a construction project for a governmental agency are receipts derived from performing a service and are not deductible pursuant to Section 7-9-54 NMSA 1978. The deduction is not available for construction materials whether the materials are billed separately on the same contract as the construction services or are billed under a separate contract.

B. Receipts from the sale of construction material that is 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, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, are deductible. The amount of the deduction is the asset basis, as those terms are defined by the Internal Revenue Code of 1986, as that code may be amended or renumbered.

C. Example: A contractor enters a contract with a municipality to construct a building and to furnish and equip it. Construction is a service, and receipts from selling construction, including construction materials except for certain tangible personal property, are not deductible under Section 7-9-54 NMSA 1978. An analysis is performed to distinguish the value of the construction, construction materials and tangible personal property included in the project. The contractor's receipts from the sale of 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 including the indirect costs related to the asset basis, pursuant to Section 168 of the Internal Revenue Code, as that section may be amended or renumbered, are deductible provided the analysis includes sufficient information to demonstrate that the requirements of Section 7-9-54 NMSA 1978 are met.
[9/29/1967, 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; 3.2.212.10 NMAC - Rn & A, 3 NMAC 2.54.10, 5/31/2001; A, 12/27/2018]

3.2.212.11 SALE OF MEALS: The receipts from selling meals on a contract basis to a governmental agency are receipts from selling tangible personal property. Such receipts may be deducted from gross receipts. Receipts of a private supplier from furnishing meals to persons visiting a governmental agency may not be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978 unless the meal is sold to that governmental agency.
[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; 3.2.212.11 NMAC - Rn & A, 3 NMAC 2.54.11, 5/31/2001]

3.2.212.12 LODGING: Receipts derived from the rental of lodging in hotels, motels, boarding houses, etc. to a governmental agency may not be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978 because the rental of such lodging is not the sale of tangible personal property.
[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; 3.2.212.12 NMAC - Rn & A, 3 NMAC 2.54.12, 5/31/2001]

3.2.212.13 PUBLIC HOUSING AUTHORITY: Receipts from selling tangible personal property, other than non-fissionable metalliferous ore, to a public housing authority may be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978 if the public housing authority is the state of New Mexico or any political subdivision thereof or the United States or any agency or instrumentality thereof.
[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; 3.2.212.13 NMAC - Rn & A, 3 NMAC 2.54.13, 5/31/2001]

3.2.212.14 LANDSCAPING:

A. Except when the landscape items are part of a construction project, receipts from selling and installing landscape items such as plants, shrubs, sod, seed, trees, rocks and ornaments are receipts from the sale of tangible personal property. Therefore, the receipts from the sale and installation of these landscape items pursuant to a contract with a governmental agency may be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978. Receipts from selling and installing these landscape items as part of a construction project may not be deducted pursuant to Section 7-9-54 NMSA 1978. This version of Subsection A of Section 3.2.212.14 NMAC applies to transactions occurring on or after March 2, 2018.

B. Receipts from the installation of sprinkler systems are receipts from the performance of a service and are not receipts from selling tangible personal property. Therefore, receipts from the installation of sprinkler systems for a governmental agency may not be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978.

[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, 3.2.212.14 NMAC - Rn & A, 3 NMAC 2.54.14, 10/31/2000; A, 12/27/2018]

3.2.212.15 SALE OF DENTURES TO INMATES OF PRISONS:

A. The receipts of a dental laboratory from selling dentures to the New Mexico state penitentiary for use by inmates are receipts from selling tangible personal property to the state of New Mexico and may be deducted from gross receipts where:

- (1) a dentist not associated with a dental laboratory examines an inmate, makes the necessary impressions of the mouth and teeth and prescribes the type of denture to be made by the dental laboratory; and
- (2) the laboratory makes dentures and delivers them directly to the New Mexico state penitentiary; and
- (3) the dental laboratory and the dentist send separate statements to and are paid separately by the New Mexico state penitentiary; and
- (4) no contractual relationship exists between the dental laboratory and the dentist.

B. If each of these conditions is present, receipts of the dental laboratory from the sale of dentures to the New Mexico state penitentiary for use by inmates are receipts from selling tangible personal property to the state of New Mexico and may be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978.

[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; 3.2.212.15 NMAC - Rn & A, 3 NMAC 2.54.15, 5/31/2001]

3.2.212.16 SCHOOL PICTURES: Receipts of a photographer from sales of photographs taken by the photographer to school children or parents of school children are subject to gross receipts tax even if a public school makes actual payment to the photographer from a "picture fund" made up of contributions of school children or parents of school children. The receipts from the portion of such sales attributable to any separately stated item of tangible personal property, such as prints, may not be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978 since it is not a sale to a public school. Receipts from the portion of such sales attributable to services are subject to the gross receipts tax and may not be deducted pursuant to Section 7-9-54 NMSA 1978 because it is not a sale of tangible personal property.

[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; 3.2.212.16 NMAC - Rn & A, 3 NMAC 2.54.16, 5/31/2001]

3.2.212.17 NON-APPROPRIATED ACTIVITIES OF MILITARY SERVICES: Receipts from selling tangible personal property, other than non-fissionable metalliferous ore or that which will become an ingredient or component part of a construction project, to *non-appropriated* fund activities of military services may be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978 where such *non-appropriated* fund activities are declared to be instrumentalities of the United States by military regulations promulgated and signed by the secretary of the Army, the secretary of the Navy or the secretary of the Air Force.

[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; 3.2.212.17 NMAC - Rn & A, 3 NMAC 2.54.17, 5/31/2001]

3.2.212.18 SALE OF DRUGS TO WELFARE PATIENTS: The receipts of a pharmacist from selling drugs to welfare patients may be deducted from gross receipts in a situation in which the health and environment department remits to the pharmacist the wholesale cost of the drug sold and a fixed amount per prescription filled. Such receipts are derived from the sale of tangible personal property to the state of New Mexico and may be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978.

[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; 3.2.212.18 NMAC - Rn & A, 3 NMAC 2.54.18, 5/31/2001]

3.2.212.19 PROOF OF PAYMENT:

A. A seller must be able to prove that payment for the tangible personal property sold was made from the United States, or any agency or instrumentality thereof, or from the state of New Mexico, or any political subdivision thereof, or from the governing body of any Indian nation, tribe or pueblo or the deduction will not be

allowed.

B. Proof of payment acceptable to the secretary consists of either a Type 9 nontaxable transaction certificate or other documentation demonstrating payment by a governmental entity. Such other documentation includes:

- (1) for sales to any governmental entity (including federal agencies), documents related to the transaction showing the governmental entity's name, such as purchase orders, copies of warrants issued in payment and contracts covering the items purchased;
- (2) for sales to federal agencies only, the federal contract number; and
- (3) other documents determined by the secretary to constitute proof of payment.

[3/16/1979, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.212.19 NMAC - Rn, 3 NMAC 2.54.19, 5/31/2001]

3.2.212.20 METROPOLITAN REDEVELOPMENT PROJECTS:

A. Receipts from selling tangible personal property which is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code in New Mexico are subject to gross receipts tax.

B. A seller of tangible personal property which is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code may not claim the deduction from gross receipts provided by Section 7-9-54 NMSA 1978 by accepting a nontaxable transaction certificate from the municipality in question nor by proving payment from government funds.

[10/2/1985, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.212.20 NMAC - Rn & A, 3 NMAC 2.54.20, 5/31/2001]

3.2.212.21 GOVERNMENT CREDIT OR PROCUREMENT CARD PURCHASES:

A. Receipts from sales of tangible personal property to an agency of the United States government or the state of New Mexico are deductible from the gross receipts of the seller when paid for by a credit or procurement card issued to the United States government or the state of New Mexico. Through November 29, 1998, credit or procurement cards bearing the legends "U S GOVT TAX EXEMPT" and "I.M.P.A.C." are such credit or procurement cards issued to the United States government. On and after November 30, 1998, credit or procurement cards bearing the legends "United States of America" and "Tax Exempt I.D. 140001849" are such credit or procurement cards issued to the United States government. On or after June 30, 2003, credit or procurement cards bearing the legend "state of New Mexico" and the state seal are such credit or procurement cards issued to the state of New Mexico.

B. Receipts from credit or procurement card sales of construction materials or services or receipts from credit or procurement card payments of leases of tangible property are not deductible. Receipts from credit or procurement card sales to employees or representatives of the federal government or the state of New Mexico using a credit or procurement card other than a card issued to the United States government or the state of New Mexico are not deductible from gross receipts under Section 7-9-54 NMSA 1978.

[10/24/1989, 11/26/1990, 11/15/1996, 3/31/1999; 3.2.212.21 NMAC - Rn & A, 3 NMAC 2.54.21, 5/31/2001; A, 10/15/2003]

3.2.212.22 TANGIBLE PERSONAL PROPERTY IN PROJECTS FINANCED BY INDUSTRIAL REVENUE OR SIMILAR BONDS:

A. For the purposes of this section, a "bond project" is an arrangement entered into under the authority of the Industrial Revenue Bond Act, the County Industrial Revenue Bond Act or similar act in which a private person agrees:

- (1) to arrange for the constructing and equipping of a facility for a state or local government by acting as agent for the government in procuring construction services, other services, tangible personal property which becomes an ingredient or component part of a construction project and other tangible personal property necessary for constructing and equipping the facility;
- (2) to lease the completed facility from the government; and
- (3) to buy the facility upon repayment of the bonds. The government agrees to own the facility, to finance the project in whole or in part through the issuance of bonds, to designate the private person as its agent in procuring the necessary property and services, to lease the facility to the private person and to sell the facility to the private person upon repayment of the bonds.

B. Receipts from the sale of tangible personal property to the private person who is acting as agent for the government with respect to the bond project are deductible under Section 7-9-54 NMSA 1978 if the tangible

personal property is not construction material excluding 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, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may be amended or renumbered. To be deductible, the cost of the bond project tangible personal property must not increase the basis, as determined under the provisions of Section 1011 of the Internal Revenue Code in effect on the date the bond project commences, of the structure or other facility included in the definition of construction.

C. A bond project commences when the governing body of the state or local government takes official action to enter into the arrangement, but no earlier than the adoption of an inducement resolution.

D. This version of 3.2.212.22 NMAC applies to transactions occurring on or after March 2, 2018. [2/22/1995, 11/15/1996; 3.2.212.22 NMAC - Rn & A, 3 NMAC 2.54.22, 5/31/2001; A, 12/27/2018]

3.2.212.23 SALE OF A LICENSE TO A GOVERNMENT: Licenses are intangible property. Receipts from selling licenses are not deductible under Section 7-9-54 NMSA 1978. [4/30/1997; 3.2.212.23 NMAC - Rn & A, 3 NMAC 2.54.23, 5/31/2001]

3.2.212.24 CUSTOM SOFTWARE:

A. Because it is a service, receipts from developing or selling custom software for governmental entities are not deductible under Section 7-9-54 NMSA 1978.

B. Example 1: X contracts with the United States to develop software to test certain devices which the United States is considering purchasing. X is performing a service under this contract.

C. Example 2: Same facts as in Example 1 except that X is to modify an existing software test program. X is nonetheless performing a service under the contract.

D. Example 3: X enters into a qualifying research and development contract with a signatory agency of the United States. The contract is to develop software to test certain devices which the United States is considering purchasing. X is performing a service under this contract. To create the testing program X buys several pieces of packaged software and develops new programming to interconnect the packaged software into a coherent testing program. X may execute, and the vendors may accept in good faith, Type 15 non-taxable transaction certificates or alternative evidence as provided by Section 7-9-43 NMSA 1978 for the purchase of the packaged software.

[4/30/1997; 3.2.212.24 NMAC - Rn & A, 3 NMAC 2.54.24, 5/31/2001; A, 12/27/2018]

3.2.212.25 FEDERAL CREDIT UNIONS ARE GOVERNMENTAL INSTRUMENTALITIES BUT STATE CREDIT UNIONS ARE NOT.

A. Federal courts have ruled that credit unions chartered under the Federal Credit Union Act are instrumentalities of the federal government. See *United States v. Maine*, 524 F. Supp. 1056 (D. Me. 1981) and *United States v. Michigan*, 851 F.2d 803 (6th Cir. 1988). Therefore persons who sell tangible personal property to federal credit unions are entitled to the deduction provided by Section 7-9-54 NMSA 1978.

B. Although Section 58-11-61 NMSA 1978 exempts from gross receipts tax the receipts of a credit union organized under or subject to the Credit Union Regulatory Act to the same extent that the receipts of a credit union chartered under federal law are exempt, the receipts of a vendor who sells tangible personal property to credit unions organized under or subject to the Credit Union Regulatory Act are not deductible under Section 7-9-54 NMSA 1978. The gross receipts tax is imposed on the receipts of the vendor; it is not imposed on the credit union. Credit unions organized under or subject to the Credit Union Regulatory Act are not instrumentalities of the federal government and no statute or judicial determination makes them instrumentalities of New Mexico. A vendor's receipts from selling tangible personal property to state-chartered credit unions, however, may be deductible under Section 7-9-61.2 NMSA 1978. This version of Subsection B of Section 3.2.212.25 NMAC applies to transactions occurring on or after July 1, 2000.

C. Section 3.2.212.25 NMAC is applicable to transactions on or after July 1, 1997. [5/31/97, 3.2.212.25 NMAC - Rn & A, 3 NMAC 2.54.25, 10/31/2000]

3.2.212.26 AMERICAN NATIONAL RED CROSS: Since the American National Red Cross chartered pursuant to 36 U.S.C. 300101 *et seq.* is an instrumentality of the federal government, persons who sell tangible personal property to the American National Red Cross are entitled to the deduction provided by Section 7-9-54 NMSA 1978.

[5/31/97; 3.2.212.26 NMAC - Rn & A, 3 NMAC 2.54.26, 5/31/2001]

3.2.212.27 SALE OF GASES: Gases, such as natural gas, nitrogen, carbon dioxide, helium, propane, oxygen, acetylene and nitrous oxide, are tangible personal property. Therefore receipts from selling gases to a governmental agency may be deducted from gross receipts under Section 7-9-54 NMSA 1978.
[3.2.212.27 - N, 3/15/10]

HISTORY OF 3.2.212 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: BOR 67-2, NM Gross Receipts and Compensating Tax Regulations, filed 9/29/1967.

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

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

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

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 2.54, Deduction - Gross Receipts Tax - Sales to Governmental Agencies, filed 11/4/1996.

3.2.212 NMAC, Deduction - Gross Receipts Tax - Sales to Governmental Agencies, filed 5/17/2001.