

**TITLE 3: TAXATION**  
**CHAPTER 2: GROSS RECEIPTS TAXES**  
**PART 215: DEDUCTION - GROSS RECEIPTS TAX - SALE OF CERTAIN SERVICES TO AN OUT-OF-STATE BUYER**

**3.2.215.1 ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1150 South St. Francis Drive, P.O. Box 630, Santa Fe NM 97504-0630  
[3/15/96; 3.2.215.1 NMAC - Rn, 3 NMAC 2.57.1, 5/31/01]

**3.2.215.2 SCOPE:** This part applies to each person engaging in business in New Mexico.  
[3/15/96, 11/15/96; 3.2.215.2 NMAC - Rn, 3 NMAC 2.57.2, 5/31/01]

**3.2.215.3 STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[3/15/96; 3.2.215.3 NMAC - Rn, 3 NMAC 2.57.3, 5/31/01]

**3.2.215.4 DURATION:** Permanent.  
[3/15/96; 3.2.215.4 NMAC - Rn, 3 NMAC 2.57.4, 5/31/01]

**3.2.215.5 EFFECTIVE DATE:** 3/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.  
[3/15/96, 11/15/96; 3.2.215.5 NMAC - Rn, 3 NMAC 2.57.5 & A, 5/31/01]

**3.2.215.6 OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.  
[3/15/96; 3.2.215.6 NMAC - Rn, 3 NMAC 2.57.6 & A, 5/31/01]

**3.2.215.7 DEFINITIONS:** [Reserved.]  
[3/15/96; 3.2.215.7 NMAC - Rn, 3 NMAC 2.57.7, 5/31/01]

**3.2.215.8 [Reserved.]**  
[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: Rp, 10/31/2000; 3.2.215.8 NMAC - Rn, 3 NMAC 2.57.8, 5/31/01]

**3.2.215.9 SERVICES PERFORMED ON FEDERAL AREAS:** Federal areas located within the boundaries of New Mexico are not outside New Mexico for purposes of Section 7-9-57 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; 3.2.215.9 NMAC - Rn, 3 NMAC 2.57.9 & A, 5/31/01]

**3.2.215.10 OTHER EVIDENCE:**

A. As used in Section 7-9-57 NMSA 1978, "other evidence acceptable to the secretary" includes invoices, contracts, photostatic copies of checks and letters which show that the sale is to an out-of-state buyer and which indicate that the initial use of the product of the service did not occur in New Mexico.

B. Example 1: E drafts a manuscript about deer hunting in New Mexico and sends the manuscript to a sports magazine publisher in New York. The publisher accepts by letter the story for publication and encloses a check. E may deduct this payment from gross receipts if E preserves the letter or a photostatic copy of the check.

C. Example 2:

(1) W is a writer who performs some writing services in New Mexico. W's manuscripts and all rights thereto are sold by W's literary agent in New York City, exclusively to publishers, motion picture companies and other media located outside New Mexico. None of the rights to W's manuscripts or other literary works are sold to publishers, editors or media within the state of New Mexico. Funds are remitted to the literary agent in New York by the out-of-state purchaser of the rights to W's works. The agent then pays W. W's receipts may be deducted from gross receipts if:

- (a) The buyers of W's works deliver nontaxable transaction certificates to W; or
- (b) W's agent certifies in writing that all of W's work is published or otherwise initially used outside New Mexico; or

(c) W's agent accounts to W for each sale on a document or documents clearly indicating that the sales are to out-of-state buyers and that the initial use of the product of the service did not occur in New Mexico and W preserves the agent's detailed accounting.

(2) If the buyers rewrite, publish or otherwise initially use W's writing services inside New Mexico, the compensating tax imposed by Subsection B of Section 7-9-7 NMSA 1978 is due from the buyer on the value of the services at the time they were rendered.

[10/17/73, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.215.10 NMAC - Rn, 3 NMAC 2.57.10 & A, 5/31/01]

### **3.2.215.11 PRODUCT OF SERVICE WHICH IS REVIEWED AND ACCEPTED OUTSIDE OF NEW MEXICO BUT INITIALLY USED IN NEW MEXICO:**

A. Effective July 1, 1989, and for so long as the provisions of that version of Section 7-9-57 NMSA 1978 enacted by Laws 1989, Chapter 262, Section 6 remain in effect, the deduction provided by Section 7-9-57 NMSA 1978 does not apply to the receipts from the sale of a service the product of which is initially used for the intended purpose in New Mexico even though the product of the service is delivered to the buyer outside of New Mexico for review and acceptance. Review and acceptance of the product of the service does not constitute "initial use" or "initially used" as those terms are defined in Section 7-9-3 NMSA 1978. The initial use of the product of the service is the "first employment for the intended purpose".

B. Example 1: X, an architect, prepares in New Mexico plans for a construction project to be built in New Mexico. On completion of the plans, X delivers the plans outside of New Mexico to the project owner for the owner's review and acceptance. After accepting the plans, the owner delivers the plans to the construction contractor who uses the plans during the construction of the project in New Mexico. Since the intended purpose of architectural plans is to serve as instructions for construction of a project, the initial use of the plans occurred when the contractor used the plans during the actual construction of the project in New Mexico. Therefore, X's receipts for preparing architectural plans for a construction project to be built in New Mexico are not deductible under the provisions of Section 7-9-57 NMSA 1978.

C. Example 2: Y, a research and development contractor, has a contract with the government to develop a new application for existing technology. In order to complete the contract, Y subcontracts a portion of the service to Z who analyzes particular data and prepares a report, all work being done outside New Mexico. Z delivers the report to the government in Washington, D.C., for review and acceptance. Upon granting approval of Z's report, the government delivers the report to Y in New Mexico. Y uses the report to construct a prototype as a component of the service which Y performs under the terms of its contract with the government. The initial use of Z's report is Y's use of the information contained in the report to construct the prototype. The review and acceptance of the report is not the initial use of the report. Since the initial use occurred in New Mexico, Z's receipts from the sale of Z's service are not deductible under the provisions of Section 7-9-57 NMSA 1978. Z, however, may be entitled to the deduction provided by Section 7-9-48 NMSA 1978 if Y provides a Type 5 Nontaxable Transaction Certificate (nttc) to Z. Y must meet the requirements set forth by Section 7-9-48 NMSA 1978 if Y issues the nttc to Z.

D. Section 3.2.215.11 NMAC applies to transactions on or after July 1, 1989.  
[3/8/91, 11/15/96; 3.2.215.11 NMAC - Rn, 3 NMAC 2.57.11 & A, 5/31/01]

### **3.2.215.12 GENERAL EXAMPLES:** For transactions occurring on or after July 1, 1989, the following statements illustrate circumstances which:

A. contravene the requirements necessary for deducting the sale of a service for initial use out-of-state under Section 7-9-57 NMSA 1978 and, therefore, eliminate the deduction and cause the transaction to be taxable:

(1) the product of the service is delivered in New Mexico to the purchaser or to an employee, agent or authorized representative of the purchaser; or

(2) the purchaser's initial use of the product of the service occurs in New Mexico;

B. do not contravene the conditions set forth in Section 7-9-57 NMSA 1978, thereby allowing the deduction for the receipts from the transaction:

(1) the purchaser has a person or persons assigned in this state to oversee the performance of the service in New Mexico by the contractor but the product of the service is delivered to the purchaser outside of this state and the purchaser initially uses the product of the service outside of this state;

(2) the purchaser has a person or persons in New Mexico assigned to the project who work in conjunction with employees of the seller on the product or the service required by the contract but the product of the service is delivered to the purchaser outside of this state and the purchaser initially uses the product of the service

outside of this state;

(3) the purchaser or employees, agents or authorized representatives of the purchaser exercise administrative control from within New Mexico over the performance of the service by the contractor but the product of the service is delivered to the purchaser outside of this state and the purchaser initially uses the product of the service outside of this state; or

(4) the purchaser maintains a place of business in New Mexico and is performing work in this state related to the subject matter of the contract but the product of the service is delivered to the purchaser outside of this state and the purchaser initially uses the product of the service outside of this state.

[12/29/89, 11/26/90, 3/15/95, 3.2.215.12 NMAC - Rn, 3 NMAC 2.57.12 & A, 10/31/2000]

#### **HISTORY OF 3.2.215 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 2.57, Deduction - Gross Receipts Tax - Sale of Certain Services to an Out-of-State Buyer, filed 3/4/96.

3.2.215 NMAC, Deduction - Gross Receipts Tax - Sale of Certain Services to an Out-of-State Buyer, filed 5/17/2001.