

**TITLE 3: TAXATION**  
**CHAPTER 2: GROSS RECEIPTS TAXES**  
**PART 216: DEDUCTION - GROSS RECEIPTS TAX - FEED - FERTILIZERS**

**3.2.216.1 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; 3.2.216.1 NMAC - Rn, 3 NMAC 2.58.1, 6/14/01]

**3.2.216.2 SCOPE:** This part applies to each person engaging in business in New Mexico.  
[11/15/96; 3.2.216.2 NMAC - Rn, 3 NMAC 2.58.2, 6/14/01]

**3.2.216.3 STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[11/15/96; 3.2.216.3 NMAC - Rn, 3 NMAC 2.58.3, 6/14/01]

**3.2.216.4 DURATION:** Permanent.  
[11/15/96; 3.2.216.4 NMAC - Rn, 3 NMAC 2.58.4, 6/14/01]

**3.2.216.5 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; 3.2.216.5 NMAC - Rn, 3 NMAC 2.58.5 & A, 6/14/01]

**3.2.216.6 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; 3.2.216.6 NMAC - Rn, 3 NMAC 2.58.6, 6/14/01]

**3.2.216.7 DEFINITIONS:**

A. **“Farming” defined:**

(1) A person regularly engaged in the business of “farming” is a person who regularly engages in the business of:

(a) cultivating a tract of land of over one acre with the purpose of producing a plant which is grown primarily for sale or use in the ordinary course of business as fiber or as food for human or animal consumption;

(b) growing plants in a greenhouse or by hydroponics primarily for sale or use in the ordinary course of business as fiber or as food for human or animal consumption; or

(c) cultivating an orchard on a tract of land of over one acre with the purpose of producing nuts, fruit or other products for sale or use in the ordinary course of business for human or animal consumption.

(2) A person whose farming operation has been determined by the internal revenue service to be a hobby for federal income tax purposes is not regularly engaged in the business of farming.

B. **“Ranching” defined:**

(1) A person regularly engaged in “ranching” is a person who regularly engages in the business of:

(a) grazing or rearing livestock, such as horses, cattle, sheep or goats, on a tract of land of over one acre either with the purpose of deriving receipts from selling the livestock or livestock products such as meat, wool, mohair and dairy products;

(b) feeding, pasturing, penning or handling of livestock;

(c) raising fish for human consumption; or

(d) raising poultry.

(2) A person whose ranching operation has been determined by the internal revenue service to be a hobby for federal income tax purposes is not regularly engaged in the business of ranching.

C. **“Feed for livestock” defined:** “Feed for livestock” includes livestock feed supplements in a liquid state, which contain proteins, phosphorus, molasses, trace minerals, vitamins or other additives.

[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; 3.2.216.7 NMAC - Rn, 3 NMAC 2.58.7, 6/14/01]

**3.2.216.8 WRITTEN STATEMENT OF FARMING OR RANCHING:**

A. Receipts from selling certain items to persons who state in writing that they are regularly engaged

in the business of farming or ranching may be deducted from the seller's gross receipts pursuant to Section 7-9-58 NMSA 1978 if the statement:

(1) contains a declaration that the purchaser-signer is regularly engaged in the business of ranching or farming; and

(2) is personally signed by the purchaser or the purchaser's agent who makes the statement; and

(3) is accepted in good faith by the seller.

B. The following sentence is an example of a statement that will be accepted by the department as conclusive evidence that receipts from selling enumerated items to persons signing the statement may be deducted from the seller's gross receipts pursuant to Section 7-9-58 NMSA 1978 if the seller accepted such a statement in good faith. "I swear or affirm that I am regularly engaged in the business of farming or ranching. This declaration is made for the purpose of allowing receipts from selling feed for livestock, fish raised for human consumption, poultry or for animals raised for their hides or pelts, seeds, roots, bulbs, plants, soil conditioners, fertilizers, insecticides, insects used to control populations of other insects, fungicides or weedicides or water for irrigation purposes to be deducted from the gross receipts of the seller pursuant to Section 7-9-58 NMSA 1978."

C. The following statement signed by the purchaser or authorized agent is insufficient as a statement in writing that a person is regularly engaged in the business of farming or ranching as required by Section 7-9-58 NMSA 1978. "I hereby certify the product or products purchased are for agricultural use only."

D. Receipts from selling any of the items mentioned in Section 7-9-58 NMSA 1978 may not be deducted from gross receipts unless the sale is made to a person who makes a written statement which is in compliance with Section 3.2.216.8 NMAC.

E. For the purposes of Section 7-9-58 NMSA 1978 it is sufficient if the seller receives one written statement from each purchaser, provided the seller maintains that statement on file.

[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; 3.2.216.8 NMAC - Rn, 3 NMAC 2.58.8 & A, 6/14/01]

### **3.2.216.9 GOOD FAITH ACCEPTANCE OF BUYER'S STATEMENT:**

A. When a seller accepts in good faith a person's written statement that the person is regularly engaged in the business of farming or ranching, the written statement shall be conclusive evidence that the proceeds from the transaction with the person having made this statement are deductible from the seller's gross receipts.

B. Example 1: X owns a water company that furnishes water to Y for use in irrigating Y's cotton crop. Y gives X the proper written statement that Y is regularly engaged in the business of farming. X may deduct the gross receipts received from the sale of the water.

C. Example 2: Z also buys water from X, a water company. Z is not engaged in the business of farming or ranching but nevertheless gives X a written statement in proper form that X is engaged in the business of farming. X accepts the statement in good faith. X may deduct the gross receipts received from the sale of the water but Z is liable for the compensating tax and may be liable for making false statements.

D. Example 3: C buys one hundred gallons of chemicals from E for \$15.00. The chemicals are used to delint cotton in C's cotton gin. E maintains that E can deduct the \$15.00 from gross receipts since the chemical helps the seed to germinate and therefore must be a fertilizer. E may not take the deduction.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.216.9 NMAC - Rn, 3 NMAC 2.58.9, 6/14/01]

**3.2.216.10 FEED FOR HORSES:** For the period July 1, 1991 through June 30, 1992 only, the receipts from selling feed for those horses not included within the definition of livestock pursuant to Section 7-9-3.1 NMSA 1978 are not deductible under the provisions of Section 7-9-58 NMSA 1978 in effect for that period.

[10/18/77, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 3/19/92, 12/23/92, 11/15/96; 3.2.216.10 NMAC - Rn, 3 NMAC 2.58.10 & A, 6/14/01]

### **HISTORY OF 3.2.216 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 2.58, Deduction - Gross Receipts Tax - Feed - Fertilizers, filed 11/4/96.

3.2.216 NMAC, Deduction - Gross Receipts Tax - Feed - Fertilizers, filed 6/4/2001.