

TITLE 3 TAXATION
CHAPTER 2 GROSS RECEIPTS TAXES
PART 218 DEDUCTION - GROSS RECEIPTS TAX - SALES TO CERTAIN ORGANIZATIONS

3.2.218.1 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; 3.2.218.1 NMAC - Rn, 3 NMAC 2.60.1, 6/14/01]

3.2.218.2 SCOPE: This part applies to each person engaging in business in New Mexico.
[11/15/96; 3.2.218.2 NMAC - Rn, 3 NMAC 2.60.2, 6/14/01]

3.2.218.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/96; 3.2.218.3 NMAC - Rn, 3 NMAC 2.60.3, 6/14/01]

3.2.218.4 DURATION: Permanent.
[11/15/96; 3.2.218.4 NMAC - Rn, 3 NMAC 2.60.4, 6/14/01]

3.2.218.5 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; 3.2.218.5 NMAC - Rn, 3 NMAC 2.60.5 & A, 6/14/01]

3.2.218.6 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; 3.2.218.6 NMAC - Rn, 3 NMAC 2.60.6, 6/14/01]

3.2.218.7 DEFINITIONS: [RESERVED]
[11/15/96; 3.2.218.7 NMAC - Rn, 3 NMAC 2.60.7, 6/14/01]

3.2.218.8 SALE TO A 501(c)(3) ORGANIZATION: Receipts from selling tangible personal property to organizations which demonstrate to the department that they have been granted an exemption from federal income tax as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1954, Section 501(c)(3) of the United States Internal Revenue Code of 1986 or Section 101(6) of the United States Internal Revenue Code of 1939 may be deducted from the seller's gross receipts if the buyer delivers a nontaxable transaction certificate (nttc) to the seller and if the tangible personal property sold is employed by the 501(c)(3) organization in its ordinary functions. Receipts from the sale of tangible personal property to a 501(c)(3) or 101(6) organization which are employed in the conduct of an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1986, as amended or renumbered, or Section 422(b) of the United States Internal Revenue Code of 1939, may not be deducted pursuant to Section 7-9-60 NMSA 1978. If the 501(c)(3) organization delivering the nttc employs the property purchased in the conduct of an unrelated trade or business, the compensating tax is due.

[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; 3.2.218.8 NMAC - Rn, 3 NMAC 2.60.8 & A, 6/14/2001]

3.2.218.9 SERVICES, LEASES, CONSTRUCTION SERVICES:

A. Receipts from services performed for and from leases entered into with 501(c)(3) organizations are not deductible pursuant to Section 7-9-60 NMSA 1978.

B. Except as provided in Subsection C, receipts from selling construction, including construction material to a 501(c)(3) organization, are receipts derived from performing a service and are not eligible for the deduction pursuant to Section 7-9-60 NMSA 1978.

C. Receipts from selling construction material that is tangible personal property, whether removable on 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, may be deducted from gross receipts when the sale is made to a 501(c)(3) organization.

[3/16/1979, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.218.9 NMAC - Rn, 3 NMAC 2.60.9 & A, 6/14/2001; A, 12/27/2018]

3.2.218.10 CUSTOM SOFTWARE: Because it is a service, receipts from developing or selling custom software for 501(c)(3) organizations are not deductible under Section 7-9-60 NMSA 1978.
[4/30/97; 3.2.218.10 NMAC - Rn, 3 NMAC 2.60.10 & A, 6/14/01]

3.2.218.11 SALE OF MEALS: Meals are tangible personal property. Therefore receipts from selling meals to a 501(c)(3) organization are receipts from selling tangible personal property. Such receipts may be deducted from gross receipts under Section 7 9 60 NMSA 1978 if the organization delivers a properly executed Type 9 non-taxable transaction certificate or alternative evidence to the seller. Sales of meals directly to members of a 501(c)(3) organization may not be deducted under Section 7 9 60 NMSA 1978 even if the meals are served at a function of the organization. The 501(c)(3) organization is an entity distinct from its members.
[10/29/1999; 3.2.218.11 NMAC - Rn, 3 NMAC 2.60.11 & A, 6/14/2001, 12/27/2018]

3.2.218.12 LODGING: Receipts derived from the rental of lodging in hotels, motels, boarding houses or similar facilities to a Section 501(c)(3) organization may not be deducted from gross receipts pursuant to Section 7-9-60 NMSA 1978 because the rental of such lodging is not the sale of tangible personal property.
[1/15/00; 3.2.218.12 NMAC - Rn, 3 NMAC 2.60.12 & A, 6/14/01]

3.2.218.13 SALE OF GASES: Gases, such as natural gas, nitrogen, carbon dioxide, helium, oxygen, propane, acetylene and nitrous oxide, are tangible personal property. Therefore receipts from selling gases to a 501(c)(3) organization may be deducted from gross receipts under Section 7 9 60 NMSA 1978 if the organization delivers a properly executed non-taxable transaction certificate or alternative evidence to the seller.
[3.2.218.13 NMAC - N, 3/15/2010; A, 12/27/2018]

3.2.218.14 SINGLE MEMBER LIMITED LIABILITY COMPANY WHOSE SOLE MEMBER IS A 501(c)(3) ORGANIZATION:

A. A single member limited liability company (llc) whose sole member is a 501(c)(3) organization will be treated like a 501(c)(3) organization and receive the same treatment for purposes of Section 7-9-60 NMSA 1978 so long as the llc is recognized by the internal revenue service as a disregarded entity for federal income tax purposes.

B. Receipts from the sale of tangible personal property to an llc described in Subsection A above when the property is employed in the conduct of an unrelated trade or business as defined in Section 513 of the Internal Revenue Code of 1986, as amended or renumbered, are not deductible pursuant to Subsection A of Section 7-9-60 NMSA 1978. If the llc, or its 501(c)(3) single member, delivering the non-taxable transaction certificate or alternative evidence employs the tangible personal property in the conduct of an unrelated trade or business, the llc, or its 501(c)(3) single member, is liable for the seller's gross receipts tax plus penalty and interest pursuant to Section 7-9-43 NMSA 1978.
[3.2.218.14 NMAC - N, 1/15/2015; A, 12/27/2018]

HISTORY OF 3.2.218 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, 12-5-69, 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, 12/15/73, 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 2.60, Deduction - Gross Receipts Tax - Sales to Certain Organizations, filed 11/4/1996.

3.2.218 NMAC, Deduction - Gross Receipts Tax - Sales to Certain Organizations, filed 6/4/2001.