

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 219: DEDUCTION - GROSS RECEIPTS TAX - CERTAIN LOAN CHARGES

3.2.219.1 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; 3.2.219.1 NMAC - Rn, 3 NMAC 2.61.1.1, 6/14/01]

3.2.219.2 SCOPE: This part applies to each person engaging in business in New Mexico.
[11/15/96; 3.2.219.2 NMAC - Rn, 3 NMAC 2.61.1.2, 6/14/01]

3.2.219.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/96; 3.2.219.3 NMAC - Rn, 3 NMAC 2.61.1.3, 6/14/01]

3.2.219.4 DURATION: Permanent.
[11/15/96; 3.2.219.4 NMAC - Rn, 3 NMAC 2.61.1.4, 6/14/01]

3.2.219.5 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; 3.2.219.5 NMAC - Rn, 3 NMAC 2.61.1.5 & A, 6/14/01]

3.2.219.6 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; 3.2.219.6 NMAC - Rn, 3 NMAC 2.61.1.6, 6/14/01]

3.2.219.7 DEFINITIONS: [Reserved.]
[11/15/96; 3.2.219.7 NMAC - Rn, 3 NMAC 2.61.1.7, 6/14/01]

3.2.219.8 ESCROW FEES - INSTALLMENT CONTRACTS: The receipts of an escrow agent from charges made for handling installment purchase agreements (such as real estate contracts) are not receipts from handling loan payments and are not deductible from gross receipts under the provisions of Section 7-9-61.1 NMSA 1978.
[10/24/89, 11/26/90, 9/20/93, 11/15/96; 3.2.219.8 NMAC - Rn, 3 NMAC 2.61.1.8 & A, 6/14/01]

3.2.219.9 CERTAIN CHARGES ARE DEDUCTIBLE:
A. A charge by a bank or other financial institution with respect to an honored commitment (using funds other than the depositor's to cover an overdraft) are charges made in connection with the origination, making or assumption of a loan and are deductible under Section 7-9-61.1 NMSA 1978.
B. An overdraft protection fee charged by a bank or other financial institution is equivalent to a fee for maintaining a line of credit. The overdraft protection fee is a charge made in connection with the origination, making or assumption of a loan and is deductible under Section 7-9-61.1 NMSA 1978.
[9/20/93, 11/15/96; 3.2.219.9 NMAC - Rn, 3 NMAC 2.61.1.9 & A, 6/14/01]

3.2.219.10 CERTAIN CHARGES ARE NOT DEDUCTIBLE:
A. Fees charged by a bank or other financial institution from transferring funds from one account of a depositor to another of that same depositor are not charges made in connection with the origination, making or assumption of a loan, even if the transfer is made to cover an overdraft in one of the accounts. Such charges are not deductible under Section 7-9-61.1 NMSA 1978.
B. If a bank or other financial institution does not honor a check or other instrument when presented because insufficient funds are in the account or accounts, any fees charged relating to the dishonoring are not deductible under Section 7-9-61.1 NMSA 1978.
[9/20/93, 11/15/96; 3.2.219.10 NMAC - Rn, 3 NMAC 2.61.1.10 & A, 6/14/01]

HISTORY OF 3.2.219 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 2.61.1, Deduction - Gross Receipts Tax - Certain Loan Charges, filed 11/4/96.
3.2.219 NMAC, Deduction - Gross Receipts Tax - Certain Loan Charges, filed 6/4/2001.