

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 225: DEDUCTION - GROSS RECEIPTS TAX - COMMISSIONS

3.2.225.1 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; 3.2.225.1 NMAC - Rn, 3 NMAC 2.66.1.1, 6/14/01]

3.2.225.2 SCOPE: This part applies to each person engaging in business in New Mexico.
[11/15/96; 3.2.225.2 NMAC - Rn, 3 NMAC 2.66.1.2, 6/14/01]

3.2.225.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/96; 3.2.225.3 NMAC - Rn, 3 NMAC 2.66.1.3, 6/14/01]

3.2.225.4 DURATION: Permanent.
[11/15/96; 3.2.225.4 NMAC - Rn, 3 NMAC 2.66.1.4, 6/14/01]

3.2.225.5 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; 3.2.225.5 NMAC - Rn, 3 NMAC 2.66.1.5 & A, 6/14/01]

3.2.225.6 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; 3.2.225.6 NMAC - Rn, 3 NMAC 2.66.1.6, 6/14/01]

3.2.225.7 DEFINITIONS: [Reserved.]
[11/15/96; 3.2.225.7 NMAC - Rn, 3 NMAC 2.66.1.7, 6/14/01]

3.2.225.8 COMMISSIONS ON SALES OF REAL PROPERTY, INTANGIBLE PROPERTY OR PRIVILEGES:

A. Receipts derived from commissions on sales of real property or intangible property such as negotiable instruments and stocks and bonds or privileges, such as licenses and tickets, are not deductible under Section 7-9-66 NMSA 1978.

B. Where a real estate brokerage commission is apportioned by prior agreement (written or oral) among the brokers who listed the property, the broker who sold the property and the sales personnel of each, gross receipts from the commission are to be allocated as provided in the agreement and are to be taxed in accordance with this allocation, provided that the real estate brokers are to withhold and pay over the gross receipts tax applicable to that portion of the commission allocated to sales personnel of that broker.

[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, 3/8/91, 11/15/96; 3.2.225.8 NMAC - Rn, 3 NMAC 2.66.1.8 & A, 6/14/01]

3.2.225.9 COMMISSIONS PAID TO NONEMPLOYEE AGENTS:

A. Receipts from commissions for services rendered in New Mexico paid to nonemployee agents of freight companies, bus transportation firms and the like are subject to the gross receipts tax.

B. The indicia outlined in Section 3.2.105.7 NMAC will be considered in determining whether a person is an employee or nonemployee agent.

C. The gross receipts of nonemployee agents include only the total commissions or fees received.
[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, 3/8/91, 11/15/96; 3.2.225.9 NMAC - Rn, 3 NMAC 2.66.1.9 & A, 6/14/01]

3.2.225.10 STOCKBROKERS:

A. The receipts of New Mexico stockbrokers or mutual fund salespeople, who are independent contractors, from commissions from the sale of stocks, bonds, or mutual fund shares are subject to the gross receipts

tax.

B. Receipts of out-of-state correspondents of New Mexico stockbrokers or out-of-state mutual fund sales companies from performance of service outside New Mexico are not subject to the gross receipts tax.

C. Receipts of New Mexico stockbrokers or mutual fund salespeople, who are independent contractors from commissions on the sale of stocks, bonds or mutual fund shares do not include amounts which are paid over to their out-of-state correspondents or their out-of-state mutual fund sales companies for the correspondent's or companies' service performed outside New Mexico.

[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; 3.2.225.10 NMAC - Rn, 3 NMAC 2.66.1.10, 6/14/01]

3.2.225.11 AUCTIONEERS: The receipts of an auctioneer selling property, on a commission or a fee basis, are subject to the gross receipts tax to the extent that the deduction provided by Section 7-9-66 NMSA 1978 does not apply. The receipts of a person selling property through an auctioneer who sells property on a commission or fee basis are subject to the gross receipts tax. However, the person's receipts from such a sale are exempted from the gross receipts tax if the sale is isolated or occasional and the other is neither regularly engaged nor holding out as engaged in the business of selling or leasing the same or similar property.

[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; 3.2.225.11 NMAC - Rn, 3 NMAC 2.66.1.11 & A, 6/14/01]

3.2.225.12 SALES "NOT SUBJECT" TO GROSS RECEIPTS TAX: Receipts derived from commissions on sales of tangible personal property, the receipts from which sales are either exempted from the gross receipts tax or deductible from gross receipts, may be deducted from gross receipts.

[3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.225.12 NMAC - Rn, 3 NMAC 2.66.1.12, 6/14/01]

HISTORY OF 3.2.225 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, 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 2.66.1, Deduction - Gross Receipts Tax - Commissions, filed 11/4/96.

3.2.225 NMAC, Deduction - Gross Receipts Tax - Commissions, filed 6/4/2001.