

**TITLE 3: TAXATION**  
**CHAPTER 2: GROSS RECEIPTS TAXES**  
**PART 226: DEDUCTION - GROSS RECEIPTS TAX - CERTAIN REAL ESTATE TRANSACTIONS**

**3.2.226.1 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; 3.2.226.1 NMAC - Rn, 3 NMAC 2.66.2.1, 6/14/01]

**3.2.226.2 SCOPE:** This part applies to each person engaging in business in New Mexico.  
[11/15/96; 3.2.226.2 NMAC - Rn, 3 NMAC 2.66.2.2, 6/14/01]

**3.2.226.3 STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[11/15/96; 3.2.226.3 NMAC - Rn, 3 NMAC 2.66.2.3, 6/14/01]

**3.2.226.4 DURATION:** Permanent.  
[11/15/96; 3.2.226.4 NMAC - Rn, 3 NMAC 2.66.2.4, 6/14/01]

**3.2.226.5 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; 3.2.226.5 NMAC - Rn, 3 NMAC 2.66.2.5 & A, 6/14/01]

**3.2.226.6 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; 3.2.226.6 NMAC - Rn, 3 NMAC 2.66.2.6, 6/14/01]

**3.2.226.7 DEFINITIONS:** [Reserved.]  
[11/15/96; 3.2.226.7 NMAC - Rn, 3 NMAC 2.66.2.7, 6/14/01]

**3.2.226.8 CALCULATING THE DEDUCTIBLE PORTION OF A REAL ESTATE COMMISSION:**

A. The portion of a real estate commission which is deductible is calculated using the following formula: Deductible commission equals total real estate commission times a fraction, the numerator of which is the taxable receipts from the sale of the property and the denominator of which is the total receipts from the sale of the property, or

Total commission x  $\frac{\text{taxable receipts from sale}}{\text{total receipts from sale}}$  = deductible commission

B. "Taxable receipts from the sale" means that portion of the receipts from the sale of real property which is attributable to improvements constructed on the real property by the seller in the ordinary course of the seller's construction business.

C. Example: A real estate broker receives a \$6,000 commission on a \$100,000 sale of property by a construction contractor. Of the \$100,000, \$70,000 is the value of improvements constructed by the seller, for which the seller is subject to gross receipts tax. \$30,000 is the value of the underlying land, which the seller (contractor) can deduct from gross receipts pursuant to Section 7-9-53 NMSA 1978. The real estate broker must report \$6,000 as gross receipts. The real estate broker may calculate the deductible portion using the formula given in Subsection A of Section 3.2.226.8 NMAC:

$$\$6,000 \times \frac{\$70,000}{\$100,000} = \$4,200$$

Thus, the real estate broker deducts \$4,200 and pays tax on the remaining \$1,800.

[3/13/85, 4/2/86, 11/26/90, 11/15/96; 3.2.226.8 NMAC - Rn, 3 NMAC 2.66.2.8 & A, 6/14/01]

**3.2.226.9 REAL ESTATE COMMISSION ON SALES NOT SUBJECT TO GROSS RECEIPTS TAX ARE FULLY TAXABLE:**

A. No portion of a real estate commission is deductible if the total receipts from the sale of the real property are either deductible or exempt from gross receipts tax.

B. Example 1: A real estate broker receives a \$6,000 commission on the sale of a home by the owner. The receipts of the homeowner from the sale are exempt as receipts from an isolated or occasional sale

pursuant to Section 7-9-28 NMSA 1978. The real estate broker must pay tax on the entire \$6,000 commission.

C. Example 2: A real estate broker receives a \$6,000 commission on the sale of a piece of raw land by a developer. Receipts from the sale of the land are deductible from gross receipts as receipts from the sale of real property pursuant to Section 7-9-53 NMSA 1978. The real estate broker must pay tax on the entire \$6,000 commission.

[3/13/85, 4/2/86, 11/26/90, 11/15/96; 3.2.226.9 NMAC - Rn, 3 NMAC 2.66.2.9 & A, 6/14/01]

#### **HISTORY OF 3.2.226 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 2.66.2, Deduction - Gross Receipts Tax - Certain Real Estate Transactions, filed 11/4/96.

3.2.226 NMAC, Deduction - Gross Receipts Tax - Certain Real Estate Transactions, filed 6/4/2001.