

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 228: DEDUCTION - GROSS RECEIPTS TAX - WARRANTY OBLIGATIONS

3.2.228.1 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; 3.2.228.1 NMAC - Rn, 3 NMAC 2.68.1, 6/14/01]

3.2.228.2 SCOPE: This part applies to each person engaging in business in New Mexico.
[11/15/96; 3.2.228.2 NMAC - Rn, 3 NMAC 2.68.2, 6/14/01]

3.2.228.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/96; 3.2.228.3 NMAC - Rn, 3 NMAC 2.68.3, 6/14/01]

3.2.228.4 DURATION: Permanent.
[11/15/96; 3.2.228.4 NMAC - Rn, 3 NMAC 2.68.4, 6/14/01]

3.2.228.5 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; 3.2.228.5 NMAC - Rn, 3 NMAC 2.68.5 & A, 6/14/01]

3.2.228.6 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; 3.2.228.6 NMAC - Rn, 3 NMAC 2.68.6, 6/14/01]

3.2.228.7 DEFINITIONS: [Reserved.]
[11/15/96; 3.2.228.7 NMAC - Rn, 3 NMAC 2.68.7, 6/14/01]

3.2.228.8 WARRANTY SUBCONTRACTOR: If a dealer subcontracts with another person (subcontractor) to fulfill the dealer's warranty obligation of the manufacturer of the property, the receipts of the subcontractor may not be deducted pursuant to Section 7-9-68 NMSA 1978. The subcontractor is not the dealer of record.
[3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.228.8 NMAC - Rn, 3 NMAC 2.68.8 & A, 6/14/01]

3.2.228.9 WARRANTY OBLIGATIONS - GENERAL EXAMPLES:

A. A person authorized by the manufacturer to repair tangible personal property under the warranty of the manufacturer is a "dealer" for the purposes of Section 7-9-68 NMSA 1978. The person therefore may deduct receipts received directly from the manufacturer for parts and labor necessary to fulfill the manufacturer's warranty obligation. Receipts of the dealer which are received from any person other than the manufacturer may not be deducted under the provisions of Section 7-9-68 NMSA 1978.

B. Example 1: X, a washing machine company, offers a five-year warranty against defective parts (only) in all washing machines it manufactures and sells. C, who bought a washing machine manufactured by X, engages D, a dealer for X, to replace a defective part within the warranty period. D undertakes the repair and bills X for the parts used and C for the labor involved. X pays D for the parts and C pays D for the labor. D may deduct the receipts from X under Section 7-9-68 NMSA 1978 but D may not deduct under Section 7-9-68 NMSA 1978 the receipts derived from C for the labor charges not covered under the manufacturer's warranty.

C. Example 2: Y, a manufacturer of televisions, authorizes R, a television repair service, to repair televisions manufactured by Y under Y's warranty. R receives payment from Y to cover both parts and labor necessary to repair televisions manufactured by Y which are covered by Y's warranty. R may deduct the receipts from Y for fulfilling Y's warranty obligation.

[5/25/89, 11/26/90, 11/15/96; 3.2.228.9 NMAC - Rn, 3 NMAC 2.68.9 & A, 6/14/01]

3.2.228.10 SERVICE CONTRACT AND MANUFACTURER'S WARRANTY DISTINGUISHED: A manufacturer's warranty may be distinguished from an automotive service contract, as that term is defined in Subsection C of Section 3.2.1.16 NMAC, on which the manufacturer is the promisor by the characterization used by

the manufacturer so long as no separate charge is made to the ultimate customer for a manufacturer's undertaking characterized as a warranty.

[6/20/89, 11/26/90, 11/15/96; 3.2.228.10 NMAC - Rn, 3 NMAC 2.68.10 & A, 6/14/01]

3.2.228.11 RECEIPTS FROM CO-PAYMENTS/DEDUCTIBLES UNDER WARRANTIES: The dealer's receipts from the "co-payment" or "deductible" amount paid to the dealer by the purchaser as required by some manufacturers' warranties are gross receipts and not deductible from gross receipts under Section 7-9-68 NMSA 1978 since the receipts from the purchaser are not receipts from furnishing goods or services to fulfill the manufacturer's obligation. The manufacturer's obligation under such a warranty is limited to the charge for the goods and services minus the required co-payment or deductible.

[6/20/89, 11/26/90, 11/15/96; 3.2.228.11 NMAC - Rn, 3 NMAC 2.68.11 & A, 6/14/01]

HISTORY OF 3.2.228 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 2.68, Deduction - Gross Receipts Tax - Warranty Obligations, filed 11/4/96.

3.2.228 NMAC, Deduction - Gross Receipts Tax - Warranty Obligations, filed 6/4/2001.