

**TITLE 3: TAXATION**  
**CHAPTER 2: GROSS RECEIPTS TAXES**  
**PART 234: DEDUCTION - GROSS RECEIPTS TAX - SALE OF PRESCRIPTION DRUGS**

**3.2.234.1 ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630  
[10/29/99; 3.2.234.1 NMAC - Rn, 3 NMAC 2.73.3.1, 6/14/01]

**3.2.234.2 SCOPE:** This part applies to each person engaging in business in New Mexico.  
[10/29/99; 3.2.234.2 NMAC - Rn, 3 NMAC 2.73.3.2, 6/14/01]

**3.2.234.3 STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[10/29/99; 3.2.234.3 NMAC - Rn, 3 NMAC 2.73.3.3, 6/14/01]

**3.2.234.4 DURATION:** Permanent.  
[10/29/99; 3.2.234.4 NMAC - Rn, 3 NMAC 2.73.3.4, 6/14/01]

**3.2.234.5 EFFECTIVE DATE:** 10/29/99, unless a later date is cited at the end of a section, in which case the later date is the effective date.  
[10/29/99; 3.2.234.5 NMAC - Rn, 3 NMAC 2.73.3.5 & A, 6/14/01]

**3.2.234.6 OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.  
[10/29/99; 3.2.234.6 NMAC - Rn, 3 NMAC 2.73.3.6, 6/14/01]

**3.2.234.7 DEFINITIONS:** [Reserved.]  
[10/29/99; 3.2.234.7 NMAC - Rn, 3 NMAC 2.73.3.7, 6/14/01]

**3.2.234.8 PACKAGING AND STORAGE CONTAINERS**

A. "INJECTIBLES": Injectibles are a combination of tangible personal property sold as a unit for a single price in which a prescription drug is pre-loaded by the manufacturer into a device, such as a syringe, to administer the prescription drug. Receipts from selling the device, such as a syringe, by itself are not deductible under Section 7-9-73.2 NMSA 1978. When sold as part of an injectible, however, the device will be considered simply an elaborate form of packaging incidental to the sale of the prescription drug. Receipts from selling injectibles may be deducted from gross receipts under Section 7-9-73.2 NMSA 1978.

B. The receipts of an oxygen service provider from the lease of oxygen canisters, cylinders or similar storage containers to recipients of oxygen services are deductible pursuant to Section 7-9-73.2 NMSA 1978 if the oxygen service provider sells the entire package, including the lease of the containers, as part of the oxygen service they provide.

C. Receipts from the sale or lease of machines or equipment that produce oxygen or filter the air are not receipts from the sale of oxygen or from providing oxygen services and therefore not deductible under Section 7-9-73.2 NMSA 1978.

[10/29/99; 3.2.234.8 NMAC - Rn, 3 NMAC 2.73.3.8 & A, 6/14/01; A, 5/15/08]

**3.2.234.9 VACCINES:** Vaccines required to be administered by a person licensed by the state to do so are prescription drugs.  
[3.2.234.9 NMAC - N, 10/31/00]

**3.2.234.10 ITEMS THAT ARE NOT PRESCRIPTION DRUGS:** Tangible personal property that may be sold or dispensed for human consumption or administered to a human without a prescription of a person, such as a medical doctor, licensed to prescribe the property's use or to administer it are not "prescription drugs". Items that do not require a prescription, such as medical equipment, vitamins and aspirin are not "prescription drugs" even if prescribed by a licensed medical doctor. Tangible personal property sold or dispensed for non-human consumption or administered to a non-human are not "prescription drugs".  
[3.2.234.10 NMAC - N, 10/31/00; A, 5/15/08; A, 9/30/10]

**HISTORY OF 3.2.234 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 2.73.3, Deduction - Gross Receipts Tax - Sale of Prescription Drugs, filed 10/18/99.

3.2.234 NMAC, Deduction - Gross Receipts Tax - Sale of Prescription Drugs, filed 6/4/2001.