

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 238: DEDUCTION - COMPENSATING TAX - USE OF TANGIBLE PERSONAL PROPERTY FOR LEASING

3.2.238.1 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; 3.2.238.1 NMAC - Rn, 3 NMAC 2.78.1, 6/14/01]

3.2.238.2 SCOPE: This part applies to each person engaging in the business of leasing tangible personal property in New Mexico.
[11/15/96; 3.2.238.2 NMAC - Rn, 3 NMAC 2.78.2, 6/14/01]

3.2.238.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/96; 3.2.238.3 NMAC - Rn, 3 NMAC 2.78.3, 6/14/01]

3.2.238.4 DURATION: Permanent.
[11/15/96; 3.2.238.4 NMAC - Rn, 3 NMAC 2.78.4, 6/14/01]

3.2.238.5 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; 3.2.238.5 NMAC - Rn, 3 NMAC 2.78.5 & A, 6/14/01]

3.2.238.6 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; 3.2.238.6 NMAC - Rn, 3 NMAC 2.78.6, 6/14/01]

3.2.238.7 DEFINITIONS: [Reserved.]
[11/15/96; 3.2.238.7 NMAC - Rn, 3 NMAC 2.78.7, 6/14/01]

3.2.238.8 AUTOMOBILE LEASING: The value of tires, engine repair parts and similar items used by a lessor in the maintenance of vehicles held for lease or already leased may be deducted in computing compensating tax if the following three conditions are met:

- A. the parts are used by the lessor on vehicles held for lease or already leased and the receipts from leasing or selling vehicles are a substantial portion of the receipts;
- B. the maintenance of the vehicles is performed at no additional cost to the lessee under the lease agreement; and
- C. the lessor does not use the vehicles or parts in any manner other than holding them for lease or sale or leasing or selling them either by themselves or in combination with other tangible personal property in the ordinary course of business.

[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; 3.2.238.8 NMAC - Rn, 3 NMAC 2.78.8, 6/14/01]

3.2.238.9 GENERAL EXAMPLES: The following examples illustrate the application of Section 7-9-78 NMSA 1978:

- A. Example 1: E, a New Mexico corporation, is solely engaged in the business of leasing electric typewriters to business establishments in New Mexico. E purchases a typewriter in Texas to hold for lease in the ordinary course of its business. E does not use the typewriter in any other manner. E may deduct the value of the typewriter in computing its compensating tax due.
- B. Example 2: E, a Colorado company, buys stoves from Z, a Colorado company. E initially uses the stoves in its business in Colorado but later converts their use solely to leasing. E then brings the stoves into New Mexico for purposes of leasing. E is not liable for the compensating tax if the stoves are leased to restaurants. If E brings the stoves into New Mexico to be furnished as part of a leased dwelling house of which E is the lessor, E is liable for the compensating tax.

[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, 11/15/96; 3.2.238.9 NMAC -

Rn, 3 NMAC 2.78.9 & A, 6/14/01]

HISTORY OF 3.2.238 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 2.78, Deduction - Compensating Tax - Use of Tangible Personal Property for Leasing, filed 11/4/96.

3.2.238 NMAC, Deduction - Compensating Tax - Use of Tangible Personal Property for Leasing, filed 6/4/2001.