

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 239: DEDUCTION - GROSS RECEIPTS TAX - FUNDRAISING

3.2.239.1 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; 3.2.239.1 NMAC - Rn, 3 NMAC 2.85.1, 6/14/01]

3.2.239.2 SCOPE: This part applies to each person engaging in business in New Mexico.
[11/15/96; 3.2.239.2 NMAC - Rn, 3 NMAC 2.85.2, 6/14/01]

3.2.239.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/96; 3.2.239.3 NMAC - Rn, 3 NMAC 2.85.3, 6/14/01]

3.2.239.4 DURATION: Permanent.
[11/15/96; 3.2.239.4 NMAC - Rn, 3 NMAC 2.85.4, 6/14/01]

3.2.239.5 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; 3.2.239.5 NMAC - Rn, 3 NMAC 2.85.5 & A, 6/14/01]

3.2.239.6 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; 3.2.239.6 NMAC - Rn, 3 NMAC 2.85.6, 6/14/01]

3.2.239.7 “FUNDRAISING EVENT” DEFINED:

A. For the purposes of Section 7-9-85 NMSA 1978 and subject to the limitation set forth in Part 3.2.239 NMAC, a “fundraising event” is an activity undertaken by an organization for the purpose of acquiring funds that will be used in the conduct of the organization's exempt activities. A fundraising event must be open to the public and not limited to members of the organization.

B. Example 1: A fraternal society operating under the lodge system, exempt from Federal income tax under Section 501(c)(10) of the Internal Revenue Code, conducts two fundraising events each calendar year to obtain the money necessary to purchase eyeglasses for underprivileged children. Each spring, they sell brooms to the general public. Each fall, they sell the services of their members to any person who wants assistance with house painting, gutter cleaning and similar household maintenance tasks. Both of these activities result in the organization receiving gross receipts and both qualify as fundraising events.

C. The solicitation of donations in itself, not connected with the sale or transfer of property or the performance of any service, is not a fundraising event and is not subject to the provisions of Section 7-9-85 NMSA 1978. Any event in which both the receipt of donations and the sale of tangible personal property or the performance of any service occur is a fundraising event.

D. Example 2: U, itself a 501(c)(3) organization, holds an annual fundraising drive for itself and thirty other 501(c) entities. U solicits the general population for donations but does not sell or transfer property to, nor perform services for, contributors. Each entity receives a fixed proportion of undesignated donations plus any donations designated for the entity. Ten of the entities are organizations qualifying for the deduction under Section 7-9-85 NMSA 1978. Because the fundraising activity consists solely of soliciting donations, none of the entities involved has conducted a fundraising event under Section 7-9-85 NMSA 1978.
[3/16/95, 11/15/96; 3.2.239.7 NMAC - Rn, 3 NMAC 2.85.7 & A, 6/14/01]

3.2.239.8 CERTAIN ORGANIZATIONS NOT ELIGIBLE FOR DEDUCTION - “ORGANIZATION” DEFINED:

A. No organization described in Section 501(c)(3) of the Internal Revenue Code may claim the deduction provided by Section 7-9-85 NMSA 1978 but the receipts of 501(c)(3) organizations, except for unrelated business income, are exempt from gross receipts tax under Section 7-9-29 NMSA 1978.

B. As used in Part 3.2.239 NMAC, “organization” means:

- (1) any organization described in Section 501(c) of the Internal Revenue Code, other than

organizations described in Section 501(c)(3); and

(2) any officially recognized chapter, lodge or similar affiliate of an organization described in Paragraph (1) of Subsection B of Section 3.2.239.8 NMAC of this section.
[3/16/95, 11/15/96; 3.2.239.8 NMAC - Rn, 3 NMAC 2.85.8 & A, 6/14/01]

3.2.239.9 RECEIPTS NOT ELIGIBLE FOR DEDUCTION: The deduction provided by Section 7-9-85 NMSA 1978 does not apply to the receipts from more than two (2) fundraising events during any calendar year.
[3/16/95, 11/15/96; 3.2.239.9 NMAC - Rn, 3 NMAC 2.85.9 & A, 6/14/01; A, 4/30/07]

3.2.239.10 WHO CONDUCTS FUNDRAISING EVENT:

A. When several organizations jointly conduct a fundraising event, each participating organization receiving gross receipts from the event has conducted a fundraising event.

B. Example 1: A 501(c)(8) state organization and each of its four New Mexico lodges together conduct a fundraising event, with the proceeds shared by the state organization and the lodges. The state organization and each of its lodges have conducted a fundraising event.

C. The participation of members of one organization, even as an official activity of the organization, in a fundraising event of another is not a fundraising event of the members' organization if:

- (1) the members' organization receives no revenues from the event; and
- (2) the members' organization is not a chapter, lodge or other affiliate of any organization receiving revenues from the event.

D. Example 2: A television auction is broadcast to benefit M, a 501(c) organization. The members of several unaffiliated 501(c) organizations staff telephones, track bids, help display or demonstrate auctioned items and otherwise assist in the conduct of the auction. They are identified on the air as members of their respective organizations. None of the organizations other than M receives any revenues from the event. Only M has conducted a fundraising event.

E. Example 3: Same facts as in Example 1 except that the state organization retains all proceeds from the event. Regardless of the fact that the lodges receive no direct benefit from the fundraising event, each of the lodges as well as the state organization has conducted a fundraising event.
[3/16/95, 11/15/96; 3.2.239.10 NMAC - Rn, 3 NMAC 2.85.10, 6/14/01]

3.2.239.11 PERIOD FOR FUNDRAISING EVENT LIMITED:

A. A fundraising event must be of limited duration. A recurring, regularly scheduled activity, or any portion of a regularly scheduled activity, is not a fundraising event and the receipts are not deductible under Section 7-9-85 NMSA 1978. A fundraising event must have a specific commencement date and a specific ending date. The period of time between the commencement and ending dates may not exceed ten (10) consecutive calendar days except:

- (1) fundraising events conducted in association with and coterminous with the annual state fair may be conducted for the period in which the state fair is held;
- (2) planning, contracting, advertising and other organizational or administrative activities may take place at any time before the specific commencement date;
- (3) ticket sales to a fundraising event may precede the specific commencement date by up to sixty (60) days before the specific commencement date but the department, upon written application from the organization showing good cause, may permit a longer period; and
- (4) final accounting and similar administrative tasks may be conducted after the specific ending date.

B. Example 1: The local garden club, exempt from federal income tax under Section 501(c)(5) of the Internal Revenue Code, raises money for the club's selected charity by selling flower bulbs donated by club members on two consecutive weekends in the spring. Because two consecutive Saturday/Sunday periods fall within ten consecutive calendar days, the bulb sale is a single fundraising event and the receipts may be deducted under Section 7-9-85 NMSA 1978.

C. Example 2: The local post of a national veteran's organization, exempt from Federal income taxation under Section 501(c)(19) of the Internal Revenue Code, raises money for the post's exempt activities by selling pies at the local county fair. The fair runs for two weeks, beginning on a Wednesday. The local post, however, sells pies only from the first Friday through the second Sunday during the fair. Because this period does not exceed ten consecutive calendar days, the pie sale is a single fundraising event and the receipts may be deducted under Section 7-9-85 NMSA 1978.

D. Example 3: A local social welfare organization, exempt from federal income tax under Section 501(c)(4) of the Internal Revenue Code, conducts a car wash on donated property every Saturday, weather permitting, as a way to raise funds for the organization's exempt activities. Because the car wash is a regularly scheduled, recurring event, it is not a fundraising event and the receipts from the car wash may not be deducted under Section 7-9-85 NMSA 1978.

E. If the fundraising event involves the solicitation of orders for the subsequent delivery of tangible personal property or the subsequent performance of personal services, the period of time in which orders are solicited will be considered the fundraising event. Delivery of the ordered tangible personal property or performance of the ordered personal service may occur after the specific ending date of the fundraising event.

F. Example 4: The local chapter of a national sorority, exempt from federal income tax under Section 501(c)(7) of the Internal Revenue Code, sells calendars and appointment books to raise money to benefit a selected charity. Members of the sorority solicit orders for the calendars and appointment books during October, so the items can be delivered in time for use as holiday gifts. If the order solicitation period in October is limited to no more than ten consecutive calendar days, the activity is a single fundraising event and the receipts may be deducted under Section 7-9-85 NMSA 1978 even though the calendars and appointment books will not be delivered until December. [3/16/95, 11/15/96; 3.2.239.11 NMAC - Rn, 3 NMAC 2.85.11 & A, 6/14/01]

3.2.239.12 IDENTIFICATION OF FUNDRAISING EVENTS:

A. Each organization may deduct under Section 7-9-85 NMSA 1978 the receipts of two fundraising events conducted during a calendar year. If an organization conducts more than two fundraising events during a calendar year, the first two fundraising events will be presumed to be those qualifying for the deduction provided by Section 7-9-85 NMSA 1978 unless the organization has identified in writing in advance the two fundraising events for which the organization intends to claim the deduction prior to conducting any fundraising event during the calendar year.

B. Example 1: A civic league, exempt from federal income tax under Section 501(c)(4) of the Internal Revenue Code, sponsors the following activities each calendar year:

- (1) a button sale on the second Sunday of February;
- (2) an indoor track meet on the first Saturday of March;
- (3) a fireworks display on the Saturday closest to July 4; and
- (4) an art fair on the last weekend in September.

C. Each of these activities qualifies as a fundraising event. However, only the receipts from the button sale and the indoor track meet may be deducted under Section 7-9-85 NMSA 1978. The civic league must pay gross receipts tax on the receipts from the fireworks display and the art fair.

D. Example 2: The same facts as Example 1, except that the civic league adopts a resolution in January identifying the track meet and the fireworks display as the two fundraising events for which the civic league intends to claim the deduction provided in Section 7-9-85 NMSA 1978. The receipts from the track meet and the fireworks display may be deducted under Section 7-9-85 NMSA 1978. The civic league must pay gross receipts tax on the receipts from the button sale and the art fair.

E. Example 3: The same facts as Example 1, except that the civic league adopts a resolution at their meeting on the last Thursday of February identifying the track meet and the fireworks display as the two fundraising events for which the civic league intends to claim the deduction provided in Section 7-9-85 NMSA 1978. Because the resolution was not adopted prior to the first fundraising event sponsored by the civic league, the receipts from the button sale and the track meet may be deducted under Section 7-9-85 NMSA 1978. The civic league must pay gross receipts tax on the receipts from the fireworks display and the art fair.

F. The requirement for written advance identification can be satisfied by adopting a resolution to be retained in the permanent records of the organization or reflecting the decision in the minutes or other permanent records of the organization. The written identification must include, at a minimum:

- (1) a general description of the event;
- (2) a statement about how the proceeds of the event will be used;
- (3) the specific commencement and ending dates for the event; and
- (4) if any activity will precede or follow the event, an explanation of that activity.

G. The written advance identification must be retained by the organization and provided to the department on request.

[3/16/95, 11/15/96; 3.2.239.12 NMAC - Rn, 3 NMAC 2.85.12 & A, 6/14/01]

HISTORY OF 3.2.239 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 2.85, Deduction - Gross Receipts Tax - Fundraising, filed 11/4/96.

3.2.239 NMAC, Deduction - Gross Receipts Tax - Fundraising, filed 6/4/2001.