

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 240: DEDUCTION - GROSS RECEIPTS TAX - RECEIPTS OF SALE OF FOOD AT RETAIL FOOD STORE

3.2.240.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[3.2.240.1 NMAC - N, 1/31/05]

3.2.240.2 SCOPE: This part applies to each person engaging in business in New Mexico.
[3.2.240.2 NMAC - N, 1/31/05]

3.2.240.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[3.2.240.3 NMAC - N, 1/31/05]

3.2.240.4 DURATION: Permanent.
[3.2.240.4 NMAC - N, 1/31/05]

3.2.240.5 EFFECTIVE DATE: 1/31/05, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[3.2.240.5 NMAC - N, 1/31/05]

3.2.240.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
[3.2.240.6 NMAC - N, 1/31/05]

3.2.240.7 DEFINITIONS: “FOOD”, “RETAIL FOOD STORE” AND “HOME CONSUMPTION”: For purposes of Section 7-9-92 NMSA 1978, the definitions of “food”, “food retail store” and “home consumption” are the definitions set forth in the federal Food Stamp Act of 1964, codified at 7 USC 2011 *et seq.*, as amended or renumbered and any regulations, rules and administrative materials promulgated thereunder, as they may be amended or renumbered.
[3.2.240.7 NMAC - N, 1/31/05]

3.2.240.8 WHO IS A RETAIL FOOD STORE:
A. A taxpayer that is authorized to accept food stamps under the federal Food Stamp Act is presumed to be a retail food store for the purpose of Section 7-9-92 NMSA 1978 for tax periods during which the taxpayer is authorized to accept food stamps. A taxpayer that meets the definition of “retail food store” but does not participate in the federal food stamp program may qualify as a retail food store for the purpose of Section 7-9-92 NMSA 1978 if the secretary certifies that the taxpayer is a retail food store. A taxpayer seeking certification as a “retail food store” shall apply for certification in the manner and on forms as the secretary shall prescribe.
B. A taxpayer who is not authorized under the federal Food Stamp Act to accept food stamps, and who has not been certified as a food retail store by the secretary, is presumed not to be a food retail store.
[3.2.240.8 NMAC - N, 1/31/05]

3.2.240.9 EQUIVALENCE OF FOOD SALES FOR FOOD STAMP AND SECTION 7-9-92 NMSA 1978 PURPOSES: Receipts from the sale of food for which a taxpayer could have accepted food stamps are receipts from the sale of food for purposes of Section 7-9-92 NMSA 1978.
[3.2.240.9 NMAC - N, 1/31/05]

3.2.240.10 RECEIPTS EXEMPT OR DEDUCTIBLE UNDER OTHER SECTIONS: Taxpayers may not deduct under Section 7-9-92 NMSA receipts that may be exempted or deducted under other sections of the Gross Receipts and Compensating Tax Act, including:
A. receipts of a government exempted from the gross receipts tax by Section 7-9-13 NMSA 1978;
B. receipts subject to the stadium surcharge but exempted from the gross receipts tax by Section 7-9-13.3 NMSA 1978;

C. receipts of a nonprofit entity from running facilities accommodating retired elderly persons exempted from the gross receipts tax by Section 7-9-16 NMSA 1978;

D. receipts from selling livestock and receipts of growers, producers, trappers and nonprofit marketing associations from selling livestock, live poultry, unprocessed agricultural products, pelts and hides exempted from the gross receipts tax by Section 7-9-18 NMSA 1978;

E. receipts from the lawful acceptance of food stamps exempted from the gross receipts tax by Section 7-9-18.1 NMSA 1978;

F. receipts of 501(c)(3) and 501(c)(6) organizations exempted by Section 7-9-29 NMSA 1978;

G. receipts of nonprofit organizations from registration fees exempted by Section 7-9-39 NMSA;

H. receipts from selling food to manufacturers that may be deducted under Section 7-9-46 NMSA 1978;

I. receipts from selling food for re-sale that may be deducted under Section 7-9-47 NMSA 1978;

J. receipts from selling food to governments that may be deducted under Section 7-9-54 NMSA 1978;

K. receipts from selling food in interstate commerce that may be deducted under Section 7-9-55 NMSA 1978;

L. receipts from selling food to 501(c)(3) organizations that may be deducted under Section 7-9-60 NMSA 1978;

M. receipts from selling food to credit unions that may be deducted under Section 7-9-61.2 NMSA 1978; and

N. receipts from selling food to an accredited foreign mission or accredited member of a foreign mission that may be deducted under Section 7-9-89 NMSA 1978.

[3.2.240.10 NMAC - N, 1/31/05]

History of 3.2.240 NMAC: [RESERVED]