

**TITLE 3: TAXATION**  
**CHAPTER 2: GROSS RECEIPTS TAXES**  
**PART 242: DEDUCTION - GROSS RECEIPTS TAX - RECEIPTS OF RETAILERS FROM SALES OF CERTAIN TANGIBLE PERSONAL PROPERTY**

**3.2.242.1 ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630

[3.2.242.1 NMAC - N, 8/15/05]

**3.2.242.2 SCOPE:** This part applies to each person engaging in business in New Mexico.

[3.2.242.2 NMAC - N, 8/15/05]

**3.2.242.3 STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.

[3.2.242.3 NMAC - N, 8/15/05]

**3.2.242.4 DURATION:** Permanent.

[3.2.242.4 NMAC - N, 8/15/05]

**3.2.242.5 EFFECTIVE DATE:** 8/15/05, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.242.5 NMAC - N, 8/15/05]

**3.2.242.6 OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.242.6 NMAC - N, 8/15/05]

**3.2.242.7 DEFINITIONS:**

A. As used in Section 7-9-95 NMSA 1978 “standard classroom” means a classroom that:

- (1) is located in a school;
- (2) is configured for a general education curriculum; and
- (3) does not contain specialized equipment such as scientific laboratory equipment or musical instruments.

B. As used in Section 7-9-95 NMSA 1978 “school supplies normally used by students in a standard classroom for educational purposes” means implements and materials used by typical students of a general education curriculum. These include notebooks, paper, writing instruments, crayons, art supplies, paper clips, staples, staplers, scissors, and rulers valued at under \$30 per unit, book bags, backpacks, maps and globes valued at under \$100 per unit, and handheld calculators valued under \$200. The items that qualify as school supplies for the deduction under Section 7-9-95 NMSA 1978 do not have to be used for school; they only have to be items normally used by students in a standard classroom setting.

[3.2.242.7 NMAC - N, 8/15/05; A, 7/31/12]

**3.2.242.8 ITEMS NORMALLY SOLD AS A UNIT:** Articles normally sold as a unit must be sold that way during the time period specified in Section 7-9-95 NMSA 1978 to qualify for the deduction. They cannot be priced separately and sold as individual items to qualify for the deduction. For example, shoes normally sold in a pair for \$180 cannot be sold singly for \$90 each to qualify for the deduction.

[3.2.242.8 NMAC - N, 8/15/05; A, 7/31/12]

**3.2.242.9 PURCHASES USING A RAIN CHECK:** A “rain check” is an assurance to a customer that an item on sale that is sold out or out of stock may be purchased later at the sale price. Receipts from qualified purchases of tangible personal property made with a rain check during the time period specified in Section 7-9-95 NMSA 1978 are deductible. Purchases made after this time period with a rain check regardless of when the rain check was issued are not deductible.

[3.2.242.9 NMAC - N, 8/15/05; A, 7/31/12]

**3.2.242.10 LAYAWAY SALES:** A retailer performs a service when holding merchandise on a layaway plan at the request of the customer.

A. The initiation of a layaway plan does not constitute a sale even if the customer makes a deposit to the retailer. A sale of the merchandise under the layaway plan occurs only when the final payment is made and the merchandise is delivered to the customer.

B. If the final payment on a layaway plan and delivery of merchandise occur at a time other than during the time period specified in Section 7-9-95 NMSA 1978, the receipts from the sale are not deductible under Section 7-9-95 NMSA 1978.

C. If the final payment on a layaway plan and delivery of merchandise occur during the time period specified in Section 7-9-95 NMSA 1978, the receipts are deductible under Section 7-9-95 NMSA 1978 if the other requirements of the section are met.

[3.2.242.10 NMAC - N, 8/15/05; A, 7/31/12]

### **3.2.242.11 EXCHANGES AND REFUNDS:**

A. The exchange after the time period specified in Section 7-9-95 NMSA 1978 of tangible personal property that was purchased during the time period specified in Section 7-9-95 NMSA 1978 remains deductible if there is no additional charge for the exchange.

B. If an item of tangible personal property purchased during the time period specified in Section 7-9-95 NMSA 1978 and deductible under Section 7-9-95 NMSA 1978 is exchanged at a later time for an item of different value, the receipts from the subsequent sale are subject to gross receipts tax.

[3.2.242.11 NMAC - N, 8/15/05; A, 7/31/12]

**3.2.242.12 INTERNET, MAIL ORDER AND TELEPHONE SALES:** Qualified items sold to purchasers with a New Mexico billing address by mail, telephone, email and internet shall qualify for deduction under Section 7-9-95 NMSA 1978 if:

A. the item is both delivered to and paid for by the customer during the time period specified in Section 7-9-95 NMSA 1978; or

B. the customer orders and pays for the item and the retailer accepts the order during the time period specified in Section 7-9-95 NMSA 1978 for immediate shipment, even if delivery of the item is made after the exemption period.

[3.2.242.12 NMAC - N, 8/15/05; A, 7/31/12]

**3.2.242.13 DOCUMENTING DEDUCTIBLE SALES:** Retailers claiming the deduction under Section 7-9-95 NMSA 1978 are required to maintain in their records the type of item sold, the date sold and the sales price of deductible merchandise sold during the time period specified in Section 7-9-95 NMSA 1978.

[3.2.242.13 NMAC - N, 8/15/05; A, 7/31/12]

**3.2.242.14 ITEMS THAT DO NOT QUALIFY FOR THE DEDUCTION UNDER SECTION 7-9-95 NMSA 1978:** In addition to those items specifically excluded in the statute, the following are ineligible for the deduction:

A. e-readers that only have the ability to access the internet but that have no other computing functions such as word processing, spreadsheet capabilities, etc.;

B. personal digital assistants (PDAs), MP3 players, cassette players and recorders, cameras, books, magazines and other periodicals;

C. all computer and computer-related equipment not specifically deductible under Section 7-9-95 NMSA 1978 unless bundled with and included in the price of items that qualify for the deduction under Section 7-9-95 NMSA 1978;

D. all computer software unless bundled with and included in the price of items that qualify for the deduction under Section 7-9-95 NMSA 1978;

E. all games including video games, board games, computer games, and handheld gaming devices;

F. musical instruments;

G. materials and equipment used for making, repairing or altering clothing such as cloth, thread, yarn, needles, buttons, zippers, and patterns;

H. athletic and protective gloves, pads, supporters, and helmets;

I. swimwear, cover-ups, and caps;

J. specialized footwear not readily adaptable for wearing on the street, such as ski boots, riding boots, waders, bowling shoes and shoes with cleats or spikes; and

K. briefcases and luggage; prerecorded CDs, DVDs, and cassette tapes.

[3.2.242.14 NMAC - N, 8/15/05; A, 7/31/12]

**3.2.242.15 RECEIPTS THAT ARE NOT DEDUCTIBLE:** Receipts from the following transactions are not deductible under Section 7-9-95 NMSA 1978:

A. Receipts from performing services on tangible personal property that are deductible under Section 7-9-95 NMSA 1978, such as the alteration or repair of clothing.

B. Receipts from leasing or renting tangible personal property. In order for the deduction under Section 7-9-95 NMSA 1978 to apply the qualified items must be sold at retail.

[3.2.242.15 NMAC - N, 8/15/05; A, 7/31/12]

**3.2.242.16 ITEMS CONSIDERED TO BE COMPUTERS FOR PURPOSES OF THE DEDUCTION UNDER SECTION 7-9-95 NMSA 1978:** In addition to those computers that are specifically authorized in the statute, the following items are considered to be computers and qualify for the deduction as long as the cost of the item does not exceed the one thousand dollars (\$1,000) threshold set in statute:

A. e-readers that have computing functions such as word processing, spreadsheet capabilities, etc.;

and

B. tablet computers.

[3.2.242.16 NMAC - N, 7/31/12]

History of 3.2.242 NMAC: [RESERVED]