

**TITLE 3: TAXATION**  
**CHAPTER 2: GROSS RECEIPTS TAXES**  
**PART 247: DEDUCTION - GROSS RECEIPTS TAX - SOLAR ENERGY SYSTEMS**

**3.2.247.1 ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630  
[3.2.247.1 NMAC - N, 3/14/08]

**3.2.247.2 SCOPE:** This part applies to each person engaging in business in New Mexico.  
[3.2.247.2 NMAC - N, 3/14/08]

**3.2.247.3 STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[3.2.247.3 NMAC - N, 3/14/08]

**3.2.247.4 DURATION:** Permanent.  
[3.2.247.4 NMAC - N, 3/14/08]

**3.2.247.5 EFFECTIVE DATE:** 3/14/08, unless a later date is cited at the end of a section, in which case the later date is the effective date.  
[3.2.247.5 NMAC - N, 3/14/08]

**3.2.247.6 OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.  
[3.2.247.6 NMAC - N, 3/14/08]

**3.2.247.7 DEFINITIONS:** The terms and phrases defined in 3.2.247.7 NMAC apply to the implementation of the deduction pursuant to Section 7-9-112 NMSA 1978.

A. **Equipment:** "Equipment" means an essential machine, mechanism, or a component or fitting thereof, used directly and exclusively in the installation or operation of a solar energy system. Equipment is included in the solar energy system when the cost can be included in the basis of the solar energy system as established under the applicable provisions of the Internal Revenue Code of 1986.

B. **Trombe wall:** A "trombe wall" is a sun-facing wall built from material that can act as a thermal mass, such as stone, concrete, adobe or water tanks, combined with an air space and glass to form a solar thermal collector.

C. **Solar panel:** A "solar panel" is a solar thermal collector, such as a solar hot water or air panel used to heat water, air or otherwise collect solar thermal energy. "Solar panel" may also refer to a photovoltaic system.

D. **Solar thermal collector:** A "solar thermal collector" means an energy system that collects or absorbs solar energy for conversion into heat for the purposes of space heating, space cooling or water heating.

E. **Solar thermal energy:** "Solar thermal energy" is a technology for harnessing solar power for practical applications from solar heating to electrical power generation.

F. **Photovoltaic system:** A "photovoltaic system" means an energy system that collects or absorbs sunlight for conversion into electricity.

G. **Installation of a solar energy system:** The "installation of a solar energy system" includes replacement of some part of the system, or a similar change to the system that would qualify as an adjustment to basis for federal income tax purposes. Labor for maintenance or service of a solar energy system does not qualify for the deduction in the absence of an installation of some part of the system. Labor to perform post-installation adjustments to the solar energy system qualifies for the deduction when the adjustments are performed to optimize the operation of the solar energy system as part of the initial installation and are performed within one year of the initial installation.

H. **Solar energy system:** A "solar energy system" as defined in Subsection B of Section 7-9-112 NMSA 1978, includes components or systems for collecting and storing energy, but does not include components or systems related to the use of the energy. Examples of use would include the pipes carrying heated water to a faucet or the electrical wire carrying electricity to an outlet.  
[3.2.247.7 NMAC - N, 3/14/08]

### **3.2.247.8 WRITTEN STATEMENT**

A. Receipts from selling equipment or installation services to persons who state in writing that they are purchasing the equipment or installation services for the exclusive use in installation and operation of a solar energy system pursuant Section 7-9-112 NMSA 1978, may be deducted from the seller's gross receipts pursuant to Section 7-9-112 NMSA 1978 if the statement:

- (1) contains a declaration that the purchaser-signer will be using the equipment or component part in a qualified solar energy system pursuant to Section 7-9-112 NMSA 1978;
- (2) that the equipment purchased or installed is an essential machine, mechanism, or a component or fitting thereof, used directly and exclusively in the installation or operation of a solar energy system;
- (3) that the equipment or component part can be included in the basis of the qualified solar energy system as established under the applicable provisions of the Internal Revenue Code of 1986;
- (4) is personally signed by the purchaser or the purchaser's agent who makes the statement, and
- (5) is accepted in good faith by the seller.

B. Receipts from selling or installing solar energy systems pursuant to Section 7-9-112 NMSA 1978 may not be deducted from gross receipts unless the sale is made to a person who makes a written statement which is in compliance with 3.2.247.8 NMAC, or can provide evidence acceptable to the department that the service or equipment is purchased solely for use in a qualified solar energy system.

C. For the purposes of Section 7-9-112 NMSA 1978 it is sufficient if the seller receives one written statement from each purchaser. The one written statement may cover multiple purchases of equipment or installation services used solely in a qualified solar energy system provided the seller maintains that statement on file.  
[3.2.247.8 NMAC - N, 3/14/08]

### **3.2.247.9 GOOD FAITH ACCEPTANCE OF BUYER'S WRITTEN STATEMENT**

A. When a seller accepts in good faith a person's written statement that the person is purchasing the service or equipment for the sole use of the sale and installation of a solar energy system pursuant to Section 7-9-112 NMSA 1978, the written statement shall be conclusive evidence that the proceeds from the transaction with the person having made this statement are deductible from the seller's gross receipts.

B. Example 1: X is installing a non-vented trombe wall in his home. Y sells adobe blocks to X for the trombe wall. X gives Y the proper written statement that the block is for the sole use of installing a solar energy system. X may deduct the gross receipts received from the sale of the adobe blocks.

C. Example 2: Same facts as example 1, but some of the adobe blocks being purchased from Y are to be used for the construction of a block wall around the perimeter of X's property. X is not using the adobe blocks solely to construct a non-vented trombe wall in his home. X gives Y the proper written statement that the block is for the sole use of installing a solar energy system. Y accepts the statement in good faith and may deduct the gross receipts received from the sale of the block. Because X is not using the block for the sole use of installing a solar energy system, X will be liable for the compensating tax on the value of the block and may be liable for making false statements.

D. Example 3: C buys a tractor from E, to haul materials used to construct a non-vented trombe wall in his personal residence. The equipment is not an essential machine, mechanism, or a component or fitting thereof, used directly and exclusively in the installation or operation of a solar energy system and is not includable in the basis of the solar energy system to which the equipment is installed under the provisions of the Internal Revenue Code of 1986; E may not take the deduction.

E. Example 4: S is a contractor who performs construction services which includes the sale and installation of solar energy systems. S purchases materials and services from T. S may provide T with a buyers written statement pursuant to 3.2.247.8 NMAC. T cannot substantiate the deduction for the solar energy system materials and installation services with a nontaxable transaction certificate for the sale of construction materials that will become ingredients or components of a construction project pursuant to Section 7-9-51 NMSA 1978, or for construction services performed on a construction project pursuant to 7-9-52 NMSA 1978, because the next sale is not subject to gross receipts tax upon completion of the construction project.

F. Example 5: Same facts as example 4. When S sells the completed construction project to home owner H, S may deduct the materials and installation costs of the solar energy system pursuant to Section 7-9-112 NMSA 1978, with sufficient documentation to include the written statement pursuant to 3.2.247.8 NMAC, or other evidence acceptable to the department that the service or equipment is sold for the sole use of the sale and installation of a qualified energy system.  
[3.2.247.9 NMAC - N, 3/14/08]

History of 3.2.247 NMAC: [RESERVED]