

**TITLE 3: TAXATION**  
**CHAPTER 2: GROSS RECEIPTS TAXES**  
**PART 249: DEDUCTION - GROSS RECEIPTS TAX - LEASING OF CONSTRUCTION EQUIPMENT**

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

[3.2.249.1 NMAC - N, 12/14/12]

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

[3.2.249.2 NMAC - N, 12/14/12]

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

[3.2.249.3 NMAC - N, 12/14/12]

**3.2.249.4 DURATION:** Permanent.

[3.2.249.4 NMAC - N, 12/14/12]

**3.2.249.5 EFFECTIVE DATE:** December 14, 2012, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.249.5 NMAC - N, 12/14/12]

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

[3.2.249.6 NMAC - N, 12/14/12]

**3.2.249.7 DEFINITIONS:** [Reserved]

**3.2.249.8 LEASE OF CONSTRUCTION EQUIPMENT - GENERAL:**

A. Receipts from leasing construction equipment, with or without operators, on or after January 1, 2013, to a person engaged in the construction business may be deducted from the lessor's gross receipts pursuant to Section 7-9-52.1 NMSA 1978.

B. Example 1: A is regularly engaged in the lease and rental of construction equipment. A enters into an agreement to lease a crane with an operator to a contractor engaged in the construction business to be used on a construction project. The contractor will direct all of the activity of the crane and operator on the construction site. A's receipts from the lease of the crane with an operator are receipts from leasing construction equipment pursuant to Section 7-9-52.1 NMSA 1978 and are deductible.

C. Example 2: X is a heating and air conditioning subcontractor on a construction project. X owns a crane which X regularly uses to lift equipment onto the roof of buildings on which X works. X's receipts for construction services includes payment for using the crane. X may deduct those receipts under Section 7-9-52 NMSA 1978. If, however, X agrees to lease the crane with an operator to the prime contractor for work unrelated to the subcontract, which work is performed at the direction of the prime contractor, X would not be able to deduct the receipts for the leasing of the crane under Section 7-9-52 NMSA 1978, but could deduct the receipts under Section 7-9-52.1 NMSA 1978 as receipts from the lease of construction equipment.

D. Example 3: C is engaged in the construction business. C hires S, a scaffolding-rental company, to deliver scaffolding to a specific construction project, erect the scaffolding, inspect the equipment daily for continued safety compliance, disassemble the scaffolding and transport it away from the construction site upon completion of the project. C may execute a nontaxable transaction certificate to S for the lease of the scaffolding pursuant to Section 7-9-52.1 NMSA 1978.

E. This version of 3.2.249.8 NMAC applies to transactions occurring on or after January 1, 2013.

[3.2.249.8 NMAC - N, 12/14/12]

**3.2.249.9 LEASE OF CONSTRUCTION EQUIPMENT - OIL FIELD:**

A. Receipts from the lease of construction equipment on or after January 1, 2013, may be deducted from gross receipts tax if the leased items are used on a construction project and the requirements of Section 7-9-52.1 NMSA 1978 are met. The following are some examples of items that if leased to a person engaged in the

construction business would be deductible under Section 7-9-52.1 NMSA 1978:

(1) drilling equipment, including derricks, blocks, substructures, draw-works, flooring, rotary tables, engines, mud pumps, pipe racks, tanks, doghouses, hoses, water and fuel lines, water well equipment, blowout preventers and other drilling equipment and tools;

(2) drill stems, drill collars, subs and kelly; and

(3) fishing tools.

B. Receipts from the lease of the above items that remain on the oil field after the completion of the construction project, once the well is operational, do not qualify for the deduction under Section 7-9-52.1 NMSA 1978.

C. This version of 3.2.249.9 NMAC applies to transactions occurring on or after January 1, 2013.  
[3.2.249.9 NMAC - N, 12/14/12]

History of 3.2.249 NMAC: [Reserved]