

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 301: CREDIT - COMPENSATING TAX

3.2.301.1 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; 3.2.301.1 NMAC - Rn, 3 NMAC 2.79.1.1, 6/14/01]

3.2.301.2 SCOPE: This part applies to each person engaging in business in New Mexico.
[11/15/96; 3.2.301.2 NMAC - Rn, 3 NMAC 2.79.1.2, 6/14/01]

3.2.301.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/96; 3.2.301.3 NMAC - Rn, 3 NMAC 2.79.1.3, 6/14/01]

3.2.301.4 DURATION: Permanent.
[11/15/96; 3.2.301.4 NMAC - Rn, 3 NMAC 2.79.1.4, 6/14/01]

3.2.301.5 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; 3.2.301.5 NMAC - Rn, 3 NMAC 2.79.1.5 & A, 6/14/01]

3.2.301.6 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; 3.2.301.6 NMAC - Rn, 3 NMAC 2.79.1.6, 6/14/01]

3.2.301.7 DEFINITIONS: [Reserved.]
[11/15/96; 3.2.301.7 NMAC - Rn, 3 NMAC 2.79.1.7, 6/14/01]

3.2.301.8 LIMIT ON CREDIT:

A. The credit under Section 7-9-79 NMSA 1978 cannot exceed the amount of compensating tax assessed by New Mexico on the property on which the out-of-state tax was paid, and excess amounts cannot be applied to other out-of-state purchases.

B. Example 1: Q, a New Mexico construction company, purchased a power unit in California for \$50,000 and a trenching implement in Texas for \$20,000. The sales tax rates applicable to the purchases were 5.5% in California and 3% in Texas. When bringing the equipment into New Mexico, a 5% compensating tax is imposed on Q. Q is allowed a credit for similar taxes paid in other states on the same property. The New Mexico compensating tax imposed on the California transaction is \$2,500 (\$50,000 x .05). Q paid \$2,750 (\$50,000 x .055) in California tax and therefore is entitled to a credit for the full amount of the New Mexico compensating tax. On the Texas transaction, the New Mexico compensating tax is \$1,000 (\$20,000 x .05). Q paid \$600 (\$20,000 x .03) in Texas tax and therefore the balance of the New Mexico tax liability on this transaction is \$400 (\$1,000 - \$600). Q cannot use the excess credit on the California transaction to offset the balance of the liability on the Texas transaction.

C. Example 2: B, a machine company, buys a lathe in Texas for \$50,000. The Texas sales tax is 6% at the time the purchase is made, and B pays \$3,000 Texas sales tax. B uses the lathe in Texas for six years and then brings it into New Mexico to use in a new shop it is opening. The value of the lathe at the time it enters New Mexico is \$25,000. The New Mexico compensating tax owed is \$1,250 (\$25,000 x .05). The maximum amount of tax credit allowed B will be \$3,000. B, therefore, does not owe New Mexico compensating tax on its use of the lathe.
[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.301.8 NMAC - Rn, 3 NMAC 2.79.1.8 & A, 6/14/01]

3.2.301.9 CREDIT FOR COMPENSATING TAX PAID ON CONSTRUCTION PROJECTS:

A. A credit, equal to the amount of compensating tax paid to the department on the value of a construction project by a person engaged in the construction business, is allowed against the gross receipts tax due from that person on the receipts from the sale.

B. Only the tax paid to the department by the person engaged in the construction business is

creditable under Section 7-9-79 NMSA 1978. Penalty and interest assessed by the department on compensating tax not reported and paid on time will not be credited.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.301.9 NMAC - Rn, 3 NMAC 2.79.1.9 & A, 6/14/01]

HISTORY OF 3.2.301 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 2.79.1, Credit - Compensating Tax, filed 11/4/96.

3.2.301 NMAC, Credit - Compensating Tax, filed 6/4/2001.