

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 302: CREDIT - GROSS RECEIPTS TAX - SERVICE FOR RESALE

3.2.302.1 **ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[3.2.302.1 NMAC - N, 4/14/06]

3.2.302.2 **SCOPE:** This part applies to each person engaging in business in New Mexico.
[3.2.302.2 NMAC - N, 4/14/06]

3.2.302.3 **STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.
[3.2.302.3 NMAC - N, 4/14/06]

3.2.302.4 **DURATION:** Permanent.
[3.2.302.4 NMAC - N, 4/14/06]

3.2.302.5 **EFFECTIVE DATE:** 4/14/06, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[3.2.302.5 NMAC - N, 4/14/06]

3.2.302.6 **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
[3.2.302.6 NMAC - N, 4/14/06]

3.2.302.7 **DEFINITIONS:** [Reserved]

3.2.302.8 **SERVICE FOR RESALE TAX CREDIT**

A. **Qualifying sales conditions.** The seller of a service may qualify for the credit if the transaction meets these conditions:

- (1) the sale for which the credit is sought is subject to gross receipts tax or governmental gross receipts tax;
- (2) the service is sold for subsequent resale;
- (3) the subsequent resale is not subject to the gross receipts tax; and
- (4) the buyer of the service certifies to the seller in writing and in a form prescribed by the secretary that the subsequent resale is in the ordinary course of the buyer's business and will not be subject to gross receipts tax or governmental gross receipts tax.

B. **Amount of credit.** The amount of credit available for qualifying transaction is equal to 10% of the receipts from the sale multiplied by either 5%, if the taxpayer's business is located in the unincorporated area of the county or 3.775%, if the taxpayer's business is located in a municipality. Examples:

(1) A's business is located in a municipality. A sells engineering services to B. B resells the engineering services to C. C sells the services to the final consumer, D. B accepts an nttc pursuant to Section 7-9-48 NMSA 1978 from C because C's sale to D will be taxable. B, however, cannot execute an nttc to A, because B's sale to C is not taxable. B provides written documentation to A that the resale of the service (B's sale to C) is in the ordinary course of business and will not be subject to gross receipts tax. A pays gross receipts tax on the sale to B; but takes a credit of 10 percent of the gross receipts from the sale to B multiplied by 3.775 percent (gross receipts multiplied by .10 multiplied by .03775).

(2) A, located in Albuquerque, sells a service to B for \$10,000 on July 15, 2005. B provides documentation that the next sale is in the ordinary course of business and is not subject to gross receipts tax. A may claim a credit of \$37.75 (10,000 multiplied by .10 multiplied by .03775).

(3) X, a business located in the unincorporated part of a county, sells accounting services which are performed on tribal land to Y (not a tribal member) who resells those services (in connection with other services which are also performed on tribal land) to Z, a Native American residing on tribal land of which he is a member. Y's sale to Z is not subject to the gross receipts tax because the service was performed on tribal land for a tribal member. Y therefore may not execute an nttc pursuant to Section 7-9-48 NMSA 1978 to X, because a deduction for services sold for resale is only allowed if the next sale is taxable. X, however, may reduce his tax due on the sale to

Y by the amount of the credit -- 10 % of the gross receipts from the sale multiplied by 5% -- if Y provides written documentation that the resale (Y's sale to Z) is in the ordinary course of business and will not be subject to gross receipts tax.

C. **Claiming the sale of service for resale credit does not preclude executing an nttc.** A reseller who takes the sale-for-resale credit for the sale of a service may execute an nttc pursuant to Section 7-9-48 NMSA 1978 for the original purchase of that service.

D. **Example:** N purchases drafting services from M and resells them to O who resells them outside New Mexico for initial use outside New Mexico. N can reduce the tax due on his sale to O by the amount of the credit and N may execute an nttc to M for the purchase of the drafting services.

E. **Sale of service for resale credit; documentation.** In order to take the sale-for-resale credit, the seller must obtain from the buyer a completed form RPD-41305 *Declaration of Services Purchased for Resale* certifying that the service is purchased for resale in the ordinary course of business and stating the reason or reasons why the resale is not subject to gross receipts tax or governmental gross receipts tax.

[3.2.302.8 NMAC - N, 4/14/06]

History of 3.2.302 NMAC: [RESERVED]