

TITLE 3: TAXATION
CHAPTER 8: ESTATE TAX
PART 2: PERSONAL REPRESENTATIVE

3.8.2.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[7/15/96; 3.8.2.1 NMAC - Rn, 3 NMAC 8.2.1, 12/14/00]

3.8.2.2 SCOPE: Provisions of this part apply to every person subject to the Estate Tax Act.
[7/15/96; 3.8.2.2 NMAC - Rn, 3 NMAC 8.2.2, 12/14/00]

3.8.2.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act.
[7/15/96; 3.8.2.3 NMAC - Rn, 3 NMAC 8.2.3, 12/14/00]

3.8.2.4 DURATION: Permanent.
[7/15/96; 3.8.2.4 NMAC - Rn, 3 NMAC 8.2.4, 12/14/00]

3.8.2.5 EFFECTIVE DATE: 7/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date. The effective date of the Estate Tax Act was July 1, 1973. (Laws 1973, Ch. 345, Section 18) The Estate Tax Act and this Part apply to estates where decedent passed away after June 30, 1973. Pursuant to Section 7-1-5(H) NMSA 1978 of the Tax Administration Act, the Estate Tax Act regulations filed August 5, 1974 were declared to be effective July 1, 1973. The amendments to those regulations adopted by TRD Rule 7-88 were effective on September 15, 1988.
[7/15/96; 3.8.2.5 NMAC - Rn & A, 3 NMAC 8.2.5, 12/14/00]

3.8.2.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Estate Tax Act.
[7/15/96; 3.8.2.6 NMAC - Rn, 3 NMAC 8.2.6, 12/14/00]

3.8.2.7 DEFINITIONS: [Reserved]
[7/15/96; 3.8.2.7 NMAC - Rn, 3 NMAC 8.2.7, 12/14/00]

3.8.2.8 WHO IS PERSONAL REPRESENTATIVE

A. The term “personal representative” generally means the executor or administrator of the decedent's estate as a whole, such as one appointed by a court having jurisdiction of the estate.

B. If there is no such person appointed, qualified and acting, then every person in possession of any property of the decedent can be considered a “personal representative” for estate tax purposes. Consequently, in the absence of a duly qualified and acting executor, administrator, fiduciary or custodian, persons possessing property of the decedent are responsible for filing the estate tax return (Section 7-7-5 NMSA 1978) and paying the estate tax (Section 7-7-6 NMSA 1978). Such persons are also subject to the provisions of Section 7-7-11 NMSA 1978 and Subsection A of 7-7-12 NMSA 1978. It is not anticipated that every person in possession of any property of the decedent will file the estate tax return but that one among that group will take the responsibility.

C. “Possession” of property means actual or constructive possession and denotes physical dominion or control over the property coupled with an intent to exercise control and to exclude others from control. Persons who may have possession of a decedent's property include, but are not limited to, lessees or bailees, joint or co-owners (including an owner or owners in joint tenancy, tenancy in common, and community property), partners or joint venturers, trustees or other fiduciaries, and transferees or distributees of the estate. The term “possession” does not, however, signify mere physical custody of property, when such custody is for a limited purpose or when there is no intent to exercise control or to exclude others from control. Persons who do not have possession of a decedent's property (absent special circumstances) include mortgagees or pledgees, stockbrokers or stock transfer agents, bank and other depositories of checking or saving accounts, safe-deposit companies, and life insurance companies.

D. Example 1: D, a New Mexico domiciliary, and J own a joint bank account in B bank. D dies and no executor or administrator is appointed for D's estate. J is a personal representative; B is not.

E. Example 2: D, a New Mexico domiciliary, and S own as community property land which is

mortgaged to L savings and loan association. D carries life insurance with I insurance company; S is named as beneficiary. D dies and no executor or administrator is appointed for the estate. S collects the proceeds, pays off the loan and receives a release of mortgage from L. S is a personal representative (as co-owner, as recipient of the insurance proceeds and release of the mortgage); L and I are not.

F. Example 3: D, a New Mexico domiciliary, has an investment management agency account with C bank, under which C holds D's securities (registered in the name of its nominee) and invests and re-invests them in its discretion. The assets in this account are pledged to C to secure a loan to D. C places an order with broker B to sell certain stocks and to buy other stocks and then D dies. B executes the orders, forwards the sold securities to T¹ transfer agent, collects the proceeds and sends them to C, and has the purchased securities registered by T² transfer agent in the name of C's nominee. No executor or administrator is appointed for D's estate, all of which is inherited by X. X is a personal representative, as is C (as bailee, not as pledgee). Neither B, T¹ nor T² is a personal representative.

G. Example 4: D, a New Mexico domiciliary, is employed by E, a New Mexico employer. D dies and E pays to S, D's surviving spouse, \$1,000 wages E owed to D. Thereafter, an executor or administrator becomes appointed, qualified and acting for D's estate. E is not a personal representative.
[8/5/74, 9/15/88, 7/15/96; 3.8.2.8 NMAC - Rn & A, 3 NMAC 8.2.8, 12/14/00]

HISTORY OF 3.8.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: BOR 70-1, (Inheritance Tax Reg. 2-1), Accrual of Interest During Probate Court's Extension of Time for Payment of Inheritance Tax, filed 3/5/70.

BOR 71-6, Regulation for Inheritance Tax Act, filed 12/20/71.

BOR 73-2, Regulations in Effect and Pertaining to the New Mexico Inheritance Tax Act, filed 4/4/73.

BOR 74-3, Regulations in Effect and Pertaining to the New Mexico Estate Act, filed 8/5/74.

TRD Rule 7-88, Regulations Pertaining to the New Mexico Estate Tax Act, Sections 7-7-1 to 7-7-20 NMSA 1978, filed 9/15/88.

History of Repealed Material: [RESERVED]

NMAC History:

3 NMAC 8.2, Personal Representative, filed 7/2/96.

3.8.2 NMAC, Personal Representative, filed 12/1/00.