

TITLE 3: TAXATION
CHAPTER 8: ESTATE TAX
PART 12: PAYMENT OF ESTATE TAX

3.8.12.1 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; 3.8.12.1 NMAC - Rn, 3 NMAC 8.12.1, 12/14/00]

3.8.12.2 SCOPE: Provisions of this part apply to every person subject to the Estate Tax Act.
[7/15/96; 3.8.12.2 NMAC - Rn, 3 NMAC 8.12.2, 12/14/00]

3.8.12.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act.
[7/15/96; 3.8.12.3 NMAC - Rn, 3 NMAC 8.12.3, 12/14/00]

3.8.12.4 DURATION: Permanent.
[7/15/96; 3.8.12.4 NMAC - Rn, 3 NMAC 8.12.4, 12/14/00]

3.8.12.5 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; 3.8.12.5 NMAC - Rn & A, 3 NMAC 8.12.5, 12/14/00]

3.8.12.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Estate Tax Act.
[7/15/96; 3.8.12.6 NMAC - Rn, 3 NMAC 8.12.6, 12/14/00]

3.8.12.7 DEFINITIONS: [Reserved]
[7/15/96; 3.8.12.7 NMAC - Rn, 3 NMAC 8.12.7, 12/14/00]

3.8.12.8 LIABILITY OF PERSONAL REPRESENTATIVE: The primary liability for payment of the estate tax is on the personal representative of the estate, as defined in Section 7-7-2(I) NMSA 1978. The liability imposed by Section 7-7-12(B) NMSA 1978 is secondary.
[8/5/74, 9/15/88, 7/15/96; 3.8.12.8 NMAC - Rn & A, 3 NMAC 8.12.8, 12/14/00]

3.8.12.9 SECURING ANOTHER'S PAYMENT OF ESTATE TAX: "Securing another's payment of" the estate tax due requires that any tax which may be owed, actually be paid by any person other than the distributor or deliveror liable under Section 7-7-12 NMSA 1978.
[8/5/74, 9/15/88, 7/15/96; 3.8.12.9 NMAC - Rn & A, 3 NMAC 8.12.9, 12/14/00]

3.8.12.10 FURNISHING SECURITY FOR PAYMENT OF ESTATE TAX:

A. To be acceptable under the terms of Section 7-7-12 NMSA 1978, a surety bond must be underwritten by a corporate surety authorized to transact business in New Mexico.

B. Other acceptable security may be an assignment of a certificate of deposit or a savings account executed by a state or national bank or federally insured savings association authorized to do business in New Mexico, or by an irrevocable letter of credit issued by a state or national bank authorized to do business in New Mexico. Interest, if any, accumulating thereon shall accrue to the assignor or customer causing issuance of the letter of credit.

C. Example 1: The form of an acceptable surety bond is:

SURETY BOND FOR PAYMENT TO THE TAXATION AND REVENUE DEPARTMENT OF THE STATE OF NEW MEXICO OF ESTATE TAX LIABILITY.

Bond Number (_____)

KNOW ALL PERSONS BY THESE PRESENTS:

That (Principal's Name) as Principal, and (Surety's Name) , a corporate surety authorized to transact business in New Mexico, as Surety, are held and firmly bound unto the Taxation and Revenue Department of the State of New Mexico, as Oblige, in the sum of \$_____ lawful money of the United States, for the payment of which we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly, severally, and firmly by this document.

NOW, THEREFORE, the condition of this obligation is such that if the above Principal shall comply with the applicable statutes of the State of New Mexico and with all regulations and rulings of the Taxation and Revenue Department of the State of New Mexico for the estate of _____, decedent, concerning reporting and payment of estate tax liability, then the above obligations shall be void; otherwise they shall remain in full force and effect; and if the Principal fails to pay estate tax when due or becomes a delinquent taxpayer pursuant to Section 7-1-16 NMSA 1978, and the above statutes, regulations and rulings, the above Surety shall pay over to the Taxation and Revenue Department of the State of New Mexico the amount of the tax due up to the stated amount of this bond. It is understood that the aggregate liability of the Surety shall not exceed the sum of this bond, this bond is continuous in form, and if the Surety shall so elect, this bond may be cancelled by giving thirty days' notice in writing to said Oblige.

Witness/Attest

Surety

By

Attorney-In-Fact
Principal

By _____

NOTE: A POWER OF ATTORNEY SHOULD BE ATTACHED

D. Example 2: The form of an acceptable agreement of assignment is shown in the following letter:

MODEL LETTER TO BE FOLLOWED BY FINANCIAL
INSTITUTION IN TYPING LETTER ON THEIR LETTERHEAD

DATE:

Taxation and Revenue Department

P.O. Box 630
Santa Fe, New Mexico 87504-0630

Dear Secretary:

This is to certify that (Assignor's Name) has deposited with this institution (Dollar Amount of Deposit) in savings account number, or certificate of deposit number _____. This amount, exclusive of any interest which may accrue, is being held to meet the security requirements of Section 7-7-12 NMSA 1978. If the above named depositor fails to pay estate tax when due or at any time becomes a delinquent taxpayer under Section 7-1-16 NMSA 1978, this institution shall, upon demand of the Secretary of Taxation and Revenue, pay over the aforesaid amount to the Taxation and Revenue Department or so much thereof as the Secretary shall demand. No withdrawals from the account identified above will be permitted without the written permission of the Taxation and Revenue Department of the State of New Mexico.

Very truly yours,

BANK OFFICER
TITLE

[8/5/74, 9/15/88, 7/15/96; 3.8.12.10 NMAC - Rn, 3 NMAC 8.12.10, 12/14/00]

3.8.12.11 EXCEPTIONS TO LIABILITY FOR FAILURE TO PAY TAX BEFORE DISTRIBUTION OR DELIVERY:

A. No liability shall arise under Section 7-7-12 NMSA 1978 by reason of any payment made pursuant to Sections 58-1-8, 58-10-103 or 58-11-64 NMSA 1978, provided that all requirements of those sections are met and that the transferor has acted in good faith. Payments by a savings and loan association, credit union, or bank not in compliance with those sections, or above the amounts specified therein, may result in liability and are fully subject to the provisions of Section 7-7-12 NMSA 1978.

B. Liability is not imposed by Section 7-7-12 NMSA 1978 for the delivery or transfer of property into a New Mexico estate or to the personal representative of the decedent inside New Mexico. A personal representative who is not a resident of New Mexico but who is appointed by a New Mexico court having jurisdiction of an estate, and who is qualified and acting, is not "outside New Mexico" within the meaning of Section 7-7-12 NMSA 1978.
[8/5/74, 9/15/88, 7/15/96; 3.8.12.11 NMAC - Rn & A, 3 NMAC 8.12.11, 12/14/00]

3.8.12.12 CONTROL, CUSTODY OR POSSESSION OF PROPERTY--EXAMPLES: Persons who have control, custody or possession of any of a decedent's property may include the decedent's agents and representatives, safe-deposit companies, warehouse companies, brokers holding securities belonging to the decedent as collateral, debtors of the decedent, bankers, transferees or distributees, factors, joint owners or partners, fiduciaries or trustees, stock transfer agents, escrow agents, bailees, and persons holding any property as security for an outstanding obligation.

[8/5/74, 9/15/88, 7/15/96; 3.8.12.12 NMAC - Rn, 3 NMAC 8.12.12, 12/14/00]

3.8.12.13 WHO IS LEGAL REPRESENTATIVE: The term "legal representative" is not restricted to a "personal representative" of a decedent, but includes every person who, with respect to the decedent's property, stands in his place and represents his interests, whether the property is transferred by his act or by operation of law; heirs, next of kin, and distributees may be included in this category.

[8/5/74, 9/15/88, 7/15/96; 3.8.12.13 NMAC - Rn, 3 NMAC 8.12.13, 12/14/00]

HISTORY OF 3.8.12 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 8.12, Payment of Estate Tax, filed 7/2/96.

3.8.12 NMAC, Payment of Estate Tax, filed 12/1/00.