

TITLE 3: TAXATION
CHAPTER 16: MOTOR VEHICLE FUEL TAXES
PART 3: GASOLINE TAX - IMPOSITION AND RATE OF TAX

3.16.3.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[8/31/96; 3.16.3.1 NMAC - Rn, 3 NMAC 16.3.1, 6/14/01]

3.16.3.2 SCOPE: This part applies to all persons (including Indian nations, tribes and pueblos) receiving, selling or dealing in gasoline in New Mexico, including refineries, pipeline terminals, importers and persons registered as distributors, wholesalers or retailers.
[8/31/96; 3.16.3.2 NMAC - Rn, 3 NMAC 16.3.2, 6/14/01]

3.16.3.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[8/31/96; 3.16.3.3 NMAC - Rn, 3 NMAC 16.3.3, 6/14/01]

3.16.3.4 DURATION: Permanent.
[8/31/96; 3.16.3.4 NMAC - Rn, 3 NMAC 16.3.4, 6/14/01]

3.16.3.5 EFFECTIVE DATE: 8/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[8/31/96; 3.16.3.5 NMAC - Rn & A, 3 NMAC 16.3.5, 6/14/01]

3.16.3.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gasoline Tax Act.
[8/31/96; 3.16.3.6 NMAC - Rn, 3 NMAC 16.3.6, 6/14/01]

3.16.3.7 DEFINITIONS: For the purposes of Part 3.16.3 NMAC:

- A. "Indian tribe" means:
- (1) an Indian nation, tribe or pueblo, including:
 - (a) any political subdivision, agency or department of that Indian nation, tribe or pueblo;
 - (b) any incorporated or unincorporated enterprise of the Indian nation, tribe or pueblo or its political subdivisions, agencies or departments; and
 - (c) any corporation required to be considered an Indian and therefore a member of the Indian nation, tribe or pueblo under *Eastern Navaho Industries, Inc. v. Bureau of Revenue*, 552 P.2d 805 (N.M. Ct. App. 1976); and
 - (2) a member of the Indian nation, tribe or pueblo; and
- B. "tribe's territory" or "own tribal territory" means that part of Indian country in New Mexico reserved formally or informally for that Indian nation, tribe or pueblo, including its dependent Indian communities, and, with respect to a member of that tribe, any land in New Mexico allotted, reserved or held in trust by the United States for that member.

[8/31/96, 9/30/99; 3.16.3.7 NMAC - Rn & A, 3 NMAC 16.3.7, 6/14/01]

3.16.3.8 WHEN GASOLINE IS "RECEIVED" - FIRST INSTANCE:

- A. On or after July 1, 1999, gasoline is "received" in the first instance in the five circumstances specified in this subsection.
- (1) Gasoline produced, refined, manufactured, blended or compounded at a refinery or other facility in this state or stored at a pipeline terminal in this state by any person is "received" by that person when it is loaded at the refinery, other facility or the pipeline terminal into tank cars, tank trucks, tank wagons or other types of transportation equipment.
 - (2) Gasoline produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by any person is "received" by that person when it is placed into any tank or other container from which sales or deliveries not involving transportation are made.
 - (3) Except for gasoline imported by pipeline and stored at a pipeline terminal in New Mexico and gasoline imported in the fuel supply tanks of motor vehicles, gasoline imported into this state is "received" at the

time and place it is imported into this state; the person who is the owner of the gasoline at the time of importation is the person who has received the gasoline.

(4) When any substance other than gasoline is blended in New Mexico to produce gasoline and the blending takes place at a place other than a refinery or pipeline terminal, the product becomes gasoline and is “received” at the time and place the blending is completed. The person who owns the blended product at the time of blending is the person who has “received” the gasoline. Example: Gasoline is purchased at a pipeline terminal in New Mexico and brought to a blending facility. Ethanol is also purchased from an ethanol-producing plant and brought to the blending facility. The gasoline and ethanol are blended at the plant in a 9 to 1 ratio. The resultant mixture is “gasoline” for the purposes of the Gasoline Tax Act. The person who blended the product is the person who “received” the additional gallons of gasoline (representing the addition of the ethanol) at the time of blending. See Section 3.16.5.9 NMAC.

(5) When an Indian tribe receives gasoline within its own tribal territory and does not pay gasoline tax with respect to that gasoline because of federal preemption, the gasoline is again received at the time and place it leaves that tribe’s territory by any means other than in the fuel supply tank of a motor vehicle. The person who owns the gasoline at the time the gasoline leaves the tribe’s territory is the person who has “received” the gasoline and, for purposes of reporting and paying tax in this situation, is deemed to be a distributor.

B. This version of this subsection applies to transactions taking place on or after July 1, 1999.

C. Although a first receiver is the first person to receive gasoline, the incidence of the tax and the obligation to report and pay gasoline taxes can be shifted to registered distributors. See Section 3.16.3.9 NMAC. [8/31/96, 12/31/97, 9/30/99; 3.16.3.8 NMAC - Rn & A, 3 NMAC 16.3.8, 6/14/01]

3.16.3.9 WHEN GASOLINE IS “RECEIVED” - SHIFT TO REGISTERED DISTRIBUTOR:

A. The definition of “received” imposes the gasoline tax in the first instance on first receivers. If, however, gasoline is delivered at a pipeline terminal or refinery in New Mexico by an owner of stored gasoline or refiner to a distributor registered under the Gasoline Tax Act, the incidence of the tax shifts to the registered distributor. In this case the registered distributor has received the gasoline and is responsible for reporting and paying the gasoline tax with respect to the gasoline received. The distributor receiving the gasoline may not further shift the receipt of the gasoline and the obligation to report and pay gasoline tax to any other person, even if the gasoline is subsequently sold or otherwise transferred to another registered distributor.

(1) Example 1: At its refinery in New Mexico, refiner R loads 8,000 gallons of gasoline into a tank truck owned by distributor A. In this case A has received the gasoline at the refinery (the place of delivery) and is responsible for reporting and paying the gasoline tax.

(2) Example 2: Same facts as example 1, except that distributor A then sells some of the gasoline to distributor B and unloads it from the truck into a tank belonging to distributor B. Distributor A has received the gasoline and remains liable for the gasoline tax. Distributor B has not received the gasoline.

(3) Example 3: At the pipeline terminal in New Mexico, gasoline is loaded into a tank truck owned by T, a trucking company. T is not a registered distributor but picks up the gasoline for the account of, and delivers it to, 3 registered distributors. In this case, T has accepted delivery of the gasoline at the pipeline terminal as agent for the distributors. The three distributors have received gasoline and must report and pay gasoline tax in proportion to the gasoline each received.

B. If the first receiver delivers gasoline in this state and the person taking delivery of the gasoline is not a registered distributor and is not taking delivery for the account of any registered distributor, the incidence of the tax remains with the first receiver. The first receiver is responsible for reporting and paying the gasoline tax with respect to the gasoline received. Any person once registered as a distributor but who is no longer listed on the list of registered distributors promulgated by the department is not a registered distributor for any period after the person has been removed from the list.

C. When a first receiver is responsible for reporting and paying gasoline tax, that entity must report in the same time and manner as a registered distributor.

[8/31/96, 12/31/97, 9/30/99; 3.16.3.9 NMAC - Rn, 3 NMAC 16.3.9, 6/14/01]

3.16.3.10 PREEMPTION OF TAX BY FEDERAL LAW:

A. Gasoline received by an Indian tribe on its own territory is not subject to the taxes imposed by the Gasoline Tax Act if taxation of the gasoline received is prohibited by federal law.

B. On or after July 1, 1999, an Indian tribe that is a distributor receives gasoline on its own territory when:

- (1) the Indian tribe imports gasoline into New Mexico directly onto the tribe's territory without crossing any intervening ground in New Mexico that is not its own tribal territory;
- (2) the Indian tribe blends on its own tribal territory a substance other than gasoline to produce gasoline; or
- (3) the gasoline is loaded into the Indian tribe's tank trucks or other transportation equipment at a rack located on its own tribal territory.

C. If an Indian tribe is a distributor and it receives gasoline at any place in New Mexico other than on the tribe's territory, imposition of the tax is not barred by federal law and the Indian tribe must report and pay gasoline tax. Example: Z is a member of an Indian tribe T and is registered as a distributor. Z hires tank trucks to pick up loads of gasoline at a rack which is not on T's territory. Z receives the gasoline at that rack. Z owes gasoline tax on the gasoline received.

D. Like any other distributor, an Indian tribe that is a registered distributor cannot receive gasoline previously received by another distributor.

[8/31/96, 9/30/99; 3.16.3.10 NMAC - Rn, 3 NMAC 16.3.10, 6/14/01]

3.16.3.11 INVENTORY REPORT: On or before the twenty-fifth day of August for those years in which there is an increase or decrease in the tax rate, each gasoline distributor and wholesaler shall report on forms provided by the department the number of gallons of gasoline which that distributor or wholesaler has in inventory as of July 1. Reports are required even if no inventory exists.

[1/5/81, 8/31/96; 3.16.3.11 NMAC - Rn, 3 NMAC 16.3.11, 6/14/01]

3.16.3.12 EXCHANGES:

A. Exchanges of gasoline between one refiner or pipeline terminal operator and another are exempt deliveries of gasoline under Paragraph 2 of Subsection N of Section 7-13-2 NMSA 1978. When pipeline terminal operators or refiners exchange gasoline, the person to whom the gasoline is delivered takes the place of the person who delivered the gasoline.

B. Example: X is a pipeline terminal operator in New Mexico. Y is a refiner in another state and operates no refinery or pipeline terminal in New Mexico. Z is a registered distributor in New Mexico who distributes Y's brands of gasoline. Because Y does not operate a refinery or pipeline terminal in New Mexico from which it can supply its own distributors and retailers, Y arranges with X to exchange Y's gasoline stored at a pipeline terminal out of state with X's gasoline stored at a New Mexico pipeline terminal. Y then ships or delivers Y's New Mexico gasoline to Z. In this example, Y will be treated as a pipeline terminal operator in New Mexico. Because Y ships or delivers gasoline to Z, a registered distributor, Z has received the gasoline and the obligation to report and pay the tax, just as if X had shipped or delivered the gasoline to Z.

[8/31/96, 12/31/97; 3.16.3.12 NMAC - Rn & A, 3 NMAC 16.3.12, 6/14/01]

HISTORY OF 3.16.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: BOR 73-1, Regulations in Effect and Pertaining to the New Mexico Gasoline Tax Act, 1/1/73, filed 1/23/73.

R.D. 7-13-1, Regulations Pertaining to the Gasoline Tax Act, Sections 7-13-1 to 7-13-9, 7-13-11 to 7-13-16 NMSA 1978, 12/8/80, filed 1/5/81.

R.D. Rule No. 7-13-1, Regulation Pertaining to the Gasoline Tax Act, Chapter 7, Article 13 NMSA 1978, Laws of 1983, Chapter 204, filed 6/13/84.

TRD Rule 13-89, Regulations Pertaining to the Gasoline Tax Act, Chapter 7, Article 13 NMSA 1978, filed 12/4/89.

TRD Rule GAS-93, Regulations Pertaining to the Gasoline Tax Act, Chapter 7, Article 13 NMSA 1978, filed 12/13/93.

History of Repealed Material: [RESERVED]

NMAC History:

3 NMAC 16.3, Gasoline Tax - Imposition and Rate of Tax, filed 8/19/96.

3.16.3 NMAC, Gasoline Tax - Imposition and Rate of Tax, filed 6/1/01.