

TITLE 3: TAXATION
CHAPTER 16: MOTOR VEHICLE FUEL TAXES
PART 4: GASOLINE TAX - DEDUCTIONS

3.16.4.1 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; 3.16.4.1 NMAC - Rn, 3 NMAC 16.4.1, 6/14/01]

3.16.4.2 SCOPE: This part applies to all persons 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; 3.16.4.2 NMAC - Rn, 3 NMAC 16.4.2, 6/14/01]

3.16.4.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[8/31/96; 3.16.4.3 NMAC - Rn, 3 NMAC 16.4.3, 6/14/01]

3.16.4.4 DURATION: Permanent.
[8/31/96; 3.16.4.4 NMAC - Rn, 3 NMAC 16.4.4, 6/14/01]

3.16.4.5 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; 3.16.4.5 NMAC - Rn & A, 3 NMAC 16.4.5, 6/14/01]

3.16.4.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gasoline Tax Act.
[8/31/96; 3.16.4.6 NMAC - Rn, 3 NMAC 16.4.6, 6/14/01]

3.16.4.7 DEFINITIONS: [Reserved.]
[8/31/96; 3.16.4.7 NMAC - Rn, 3 NMAC 16.4.7, 6/14/01]

3.16.4.8 SATISFACTORY PROOF:

A. Satisfactory proof of the export of gasoline consists of a manifest or bill of lading showing the amount of gasoline, the name and address of the person to whom the gasoline is sent and the destination outside New Mexico. The person must also comply with the requirements of Subsection A of Section 7-13-4 NMSA 1978.

B. Proof of sale to the United States or any agency or instrumentality thereof or a NATO force shall be furnished to the department upon request. Proof includes documentation, such as contracts, purchase orders and invoices, showing that the purchaser was the United States or a NATO force.

C. Copies of all documents supporting deductible sales must be retained for at least three years from the end of the calendar year in which the gasoline was sold.

D. This section is applicable to exports or sales for export on or after June 1, 1997.
[1/23/73, 8/31/96, 12/31/97, 4/15/98; 3.16.4.8 NMAC - Rn & A, 3 NMAC 16.4.8, 6/14/01]

3.16.4.9 DEDUCTION - SALES TO OTHER DISTRIBUTORS:

A. Gasoline received by a distributor and sold to another distributor may not be deducted from the amount of gasoline received in New Mexico, even though the other distributor is bonded and registered, because the purchasing distributor did not "receive" gasoline within the meaning of the act.

B. The tax consequences of sales to other distributors and sales by them to the United States are illustrated by the following examples. These examples concern only the liability of the parties to the department and do not affect the obligation of any party to pay the price for the gasoline to the seller. The fact that the price may include an amount corresponding to the tax does not make that amount a tax on the purchaser.

C. Examples:

(1) A, a registered gasoline distributor in New Mexico, received one thousand (1,000) gallons of gasoline in June. B, also a registered distributor who is located in the same city as A, needed one thousand (1,000) gallons of gasoline of the type A had received and arranged to purchase the one thousand (1,000) gallons from A. A may not deduct the one thousand (1,000) gallons from the amount of gasoline A received in June. B is not liable for tax on this gasoline because B did not receive it.

(2) In addition to the facts in example 1, B delivered the one thousand (1,000) gallons of gasoline purchased from A to the United States. A must report the one thousand (1,000) gallons of gasoline as received. A may deduct one thousand (1,000) gallons from the amount of gasoline received as provided in Subsection B of Section 7-13-4 NMSA 1978 if A provides satisfactory proof as required in Section 3.16.4.8 NMAC. [1/23/73, 8/31/96; 3.16.4.9 NMAC - Rn & A, 3 NMAC 16.4.9, 6/14/01; A, 10/15/02]

3.16.4.10 INDIRECT SALES TO THE UNITED STATES OR FOR EXPORT:

A. The tax consequences of sales of gasoline to the United States or for export by a wholesaler or retailer are illustrated by the following examples. These examples concern only the liability of the parties to the department and do not affect the obligation of any party to pay the price for the gasoline to the seller. The fact that the price may include an amount corresponding to the tax does not make that amount a tax on the purchaser.

B. Examples:

(1) X, a distributor, received one hundred (100) gallons of gasoline in May, paid the gasoline tax and resold the gasoline to Y, a wholesaler. Y then sold the gasoline to the United States. Y reported this sale on the monthly report to the department as required by Section 7-13-6 NMSA 1978. If Y furnishes satisfactory proof to X, X may either deduct the one hundred (100) gallons from the amount of gasoline received for that month of May or may elect to take the deduction in any subsequent month in which gasoline is received. Satisfactory proof of Y's sale to the government is required to be retained by both X and Y for at least three years from the end of the calendar year in which the gasoline was sold.

(2) X, a distributor, received one hundred (100) gallons of gasoline in May, paid the gasoline tax and resold the gasoline to Y, a wholesaler, who resold it to Z, a retailer. Z sold ten (10) gallons to the United States when a United States government vehicle filled up at Z's station. Z reports to Y that this amount of gasoline had been sold to the United States. Y reported this sale on the monthly report to the department as required by Section 7-13-6 NMSA 1978. If Y furnishes satisfactory proof to X, X may deduct ten (10) gallons from the amount of gasoline received in that month of May or any subsequent month in which gasoline is received. Satisfactory proof of Z's sale to the United States is required to be retained by X and Y for at least three years from the end of the calendar year in which the gasoline was sold.

(3) X, a distributor, received one hundred (100) gallons of gasoline in May, paid the gasoline tax and resold the gasoline to Y, a wholesaler. Y delivers the one hundred (100) gallons of gasoline to a customer in Texas. Y reported this export sale on the monthly report pursuant to Section 7-13-6 NMSA 1978. If Y furnishes satisfactory proof to X, X may deduct one hundred (100) gallons from the amount of gasoline received in that month of May or any subsequent month in which gasoline is received. Satisfactory proof of Y's export is required to be retained by both X and Y for at least three years from the end of the calendar year in which the sale was made.

[1/23/73, 8/31/96; 3.16.4.10 NMAC - Rn & A, 3 NMAC 16.4.10, 6/14/01]

3.16.4.11 DEDUCTION - SALES TO A NON-UNITED STATES SIGNATORY OF THE NORTH ATLANTIC TREATY - PROOF OF SALE:

A. For purposes of Section 3.16.4.11 NMAC:

(1) "NATO signatory" means a nation, other than the United States, that is a contracting party to the North Atlantic Treaty;

(2) "NATO force" means any NATO signatory's military unit or force or civilian component thereof present in New Mexico in accordance with the North Atlantic Treaty; and

(3) "Member of a NATO force" means the military and civilian personnel of the NATO force and their dependents.

B. Pursuant to Article XI, Section 11 of the North Atlantic Treaty, gasoline sold to a NATO force may be deducted from the total amount of gasoline received in New Mexico.

C. [Reserved.]

D. Copies of all documents supporting deductible sales must be retained for at least three years from the end of the calendar year in which the gasoline was sold.

E. Pursuant to Article IX, Section 8 of the North Atlantic Treaty, gasoline sold to a member of a NATO force for the private use of that member and not for the use of the NATO force are not deductible and are subject to the gasoline tax.

F. Section 3.16.4.11 NMAC is applicable to sales made to a NATO force on or after July 1, 1995. [12/22/95, 8/31/96, 4/15/98; 3.16.4.11 NMAC - Rn & A, 3 NMAC 16.4.11, 6/14/01]

3.16.4.12 INDIRECT SALES TO REGISTERED INDIAN TRIBAL DISTRIBUTORS: Gasoline received and subsequently sold to a registered Indian tribal distributor may be deducted under Subsection E of Section 7-13-4 NMSA 1978 from the total amount of gasoline received in New Mexico if, for the reporting period in which the sale was made, the distributor's Indian nation, tribe or pueblo has in effect a tax on gasoline substantially equivalent to the gasoline tax. In that case the number of gallons of gasoline that may be deducted equals the product of the number of gallons sold times a fraction, the numerator of which is rate of the tribal tax, expressed in cents per gallon, and the denominator is the rate of the gasoline tax, in the same units. Proof that the tribal tax has been paid with respect to the gasoline must accompany the claim for deduction.
[9/30/99; 3.16.4.12 NMAC - Rn & A, 3 NMAC 16.4.12, 6/14/01]

3.16.4.13 INDIRECT SALES TO PERSONS ELIGIBLE FOR THE DEDUCTION PROVIDED UNDER SUBSECTION F OF SECTION 7-13-4 NMSA 1978:

A. The deduction provided by Subsection F of Section 7-13-4 NMSA 1978 is available only to those distributors certified by the secretary as meeting the qualifications of Subsection F of Section 7-13-4 NMSA 1978. Such distributors, for the purposes of Section 3.16.4.13 NMAC, may be referred to as "certified distributors".

B. Gasoline received and subsequently sold to a certified distributor may be deducted under Subsection F of Section 7-13-4 NMSA 1978 from the total amount of gasoline received in New Mexico, provided that the total amount deducted under this provision by all receivers of gasoline may not exceed 30,000,000 gallons per certified distributor in any calendar year. The certified distributors are responsible for informing each of their suppliers whenever the number of gallons purchased by the certified distributor exceeds 30,000,000 per calendar year; gasoline tax is due on all such excess gallons. The certified distributor shall be liable for paying gasoline tax with respect to any gallons received in excess of the 30,000,000 limit.

C. The deduction provided at Subsection F of Section 7-13-4 NMAC 1978 applies in the instance in which gasoline is received pursuant to Subsection D of Section 7-13-2.1 NMSA 1978. Once gasoline is properly deducted by a certified distributor pursuant to Subsection F of Section 7-13-4 NMSA 1978, that gasoline is not again subject to the gasoline tax as long as the gasoline does not leave New Mexico prior to retail sale.
[9/30/99; 3.16.4.13 NMAC - Rn & A, 3 NMAC 16.4.13, 6/14/01]

3.16.4.14 GASOLINE DYE: When gasoline is used in any manner other than those set forth in Subsection A of Section 7-13-17 NMSA 1978 or for propelling vehicles on the highways or propelling boats, it shall be dyed using the dye specified by instruction of the department. If gasoline is not dyed when it is required to be dyed, then no deduction under Subsection D of Section 7-13-4 NMSA 1978 may be claimed with respect to that gasoline.
[9/30/99; 3.16.4.14 NMAC - Rn & A, 3 NMAC 16.4.14, 6/14/01]

HISTORY OF 3.16.4 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 16.4, Gasoline Tax - Deductions, filed 8/19/96.

3.16.4 NMAC, Gasoline Tax - Deductions, filed 6/1/01.