

TITLE 3: TAXATION
CHAPTER 16: MOTOR VEHICLE FUEL TAXES
PART 11: GASOLINE TAX - CLAIM FOR REFUND OR CREDIT OF GASOLINE TAX PAID ON GASOLINE DESTROYED BY FIRE, ACCIDENT OR ACTS OF GOD BEFORE RETAIL SALE

3.16.11.1 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; 3.16.11.1 NMAC - Rn, 3 NMAC 16.11.1, 6/14/01]

3.16.11.2 SCOPE: This part applies to all distributors, wholesalers or retailers of gasoline.
[8/31/96; 3.16.11.2 NMAC - Rn, 3 NMAC 16.11.2, 6/14/01]

3.16.11.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[8/31/96; 3.16.11.3 NMAC - Rn, 3 NMAC 16.11.3, 6/14/01]

3.16.11.4 DURATION: Permanent.
[8/31/96; 3.16.11.4 NMAC - Rn, 3 NMAC 16.11.4, 6/14/01]

3.16.11.5 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; 3.16.11.5 NMAC - Rn & A, 3 NMAC 16.11.5, 6/14/01]

3.16.11.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gasoline Tax Act.
[8/31/96; 3.16.11.6 NMAC - Rn, 3 NMAC 16.11.6, 6/14/01]

3.16.11.7 DEFINITIONS: "Destroyed" includes being rendered unusable as fuel or as a cleaning fluid in some manner other than a "use" as defined in Section 3.16.14.7 NMAC.
[1/23/73, 8/31/96; 3.16.11.7 NMAC - Rn & A, 3 NMAC 16.11.7, 6/14/01]

3.16.11.8 SATISFACTORY PROOF: Proof of the destruction of gasoline shall state the amount of gasoline in the person's possession immediately prior to the destruction and the amount remaining immediately after the destruction. The proof shall state the circumstances of the destruction and shall be attested by the claimant. The proof shall be on forms provided by the department and shall accompany the person's application for refund.
[1/23/73, 8/31/96; 3.16.11.8 NMAC - Rn, 3 NMAC 16.11.8, 6/14/01]

3.16.11.9 ACCIDENT:

A. An "accident" includes any event happening by chance, unexpectedly taking place or occurring not according to the usual course of events. An event may sometimes be termed accidental even though it results from ordinary negligence. The following examples illustrate the effect of this definition.

B. Examples:

(1) X is a distributor. X's driver while delivering to a service station negligently dumps diesel fuel into the gasoline storage tank (Tank A) and gasoline into the diesel fuel storage tank (Tank B). Each tank is nearly full. In order to return the station to operation, X pumps both tanks dry and dumps the resulting mixture into another tank (Tank C) which contains a small amount of gasoline. In this situation, the gasoline dumped into Tank B and the gasoline in Tank A into which diesel fuel was dumped are destroyed, because each becomes a mixture which does not satisfy the definition contained in Subsection H of Section 7-13-2 NMSA 1978. All this gasoline was destroyed by accident within the meaning of Section 3.16.11.9 NMAC, and X may obtain a refund for gasoline tax paid on the gasoline dumped into Tank B and the gasoline in Tank A upon submission of satisfactory proof. The gasoline in Tank C was also destroyed within the meaning of Section 3.16.11.7 NMAC. However, the gasoline in Tank C was not destroyed by accident because X knew there was some gasoline in the tank and knew it would be destroyed when the diesel fuel and gasoline mixture was dumped into it. X will not be granted a refund for gasoline tax paid on the gasoline in Tank C.

(2) Y is a distributor. An underground pipe develops a leak because of corrosion and some gasoline is

destroyed. The department will not grant a refund since corrosion is not an accident within the meaning of Section 7-13-11 NMSA 1978.

[1/23/73, 8/31/96; 3.16.11.9 NMAC - Rn & A, 3 NMAC 16.11.9, 6/14/01]

3.16.11.10 [RESERVED]

[3.16.11.10 NMAC - Rn, 3 NMAC 16.11.10, 6/14/01]

3.16.11.11 STATUTE OF LIMITATIONS: No refund may be made under Section 7-13-11 NMSA 1978 unless the person claiming the refund notifies the department of the destruction of the gasoline within thirty (30) days of the actual destruction, and the claim for refund is made within six (6) months of the date of destruction.

[1/5/81, 8/31/96; 3.16.11.11 NMAC - Rn & A, 3 NMAC 16.11.11, 6/14/01]

HISTORY OF 3.16.11 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 16.11, Gasoline Tax - Claim for Refund or Credit of Gasoline Tax Paid on Gasoline Destroyed by Fire, Accident or Acts of God Before Retail Sale, filed 8/19/96.

3.16.11 NMAC, Gasoline Tax - Claim for Refund or Credit of Gasoline Tax Paid on Gasoline Destroyed by Fire, Accident or Acts of God Before Retail Sale, filed 6/1/01.