

TITLE 3: TAXATION
CHAPTER 16: MOTOR VEHICLE FUEL TAXES
PART 102: SPECIAL FUELS TAX - EXCLUSION

3.16.102.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[12/31/96; 3.16.102.1 NMAC - Rn, 3 NMAC 20.3.1, 6/14/01]

3.16.102.2 SCOPE: This part applies to every person receiving or using special fuel in New Mexico.
[12/31/96; 3.16.102.2 NMAC - Rn, 3 NMAC 20.3.2, 6/14/01]

3.16.102.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[12/31/96; 3.16.102.3 NMAC - Rn, 3 NMAC 20.3.3, 6/14/01]

3.16.102.4 DURATION: Permanent.
[12/31/96; 3.16.102.4 NMAC - Rn, 3 NMAC 20.3.4, 6/14/01]

3.16.102.5 EFFECTIVE DATE: 12/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[12/31/96; 3.16.102.5 NMAC - Rn, 3 NMAC 20.3.5 & A, 6/14/01]

3.16.102.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Special Fuels Supplier Tax Act.
[12/31/96; 3.16.102.6 NMAC - Rn, 3 NMAC 20.3.6, 6/14/01]

3.16.102.7 DEFINITIONS: For the purposes of Part 3.16.102 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 Navajo 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.
- B. "tribe's 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.
[12/31/96; 3.16.102.7 NMAC - Rn, 3 NMAC 20.3.7 & A, 6/14/01]

3.16.102.8 "GALLON" DEFINED-REPORTING ELECTION:

- A. For the purposes of Parts 100 through 199, Chapter 3.16 NMAC, "gallon" means, at the election of a supplier or dealer selling liquid special fuels, either a standard United States gallon liquid measure (approximately 3.785 liters) or that same quantity adjusted to a temperature of sixty degrees fahrenheit.
- B. For the purposes of Parts 100 through 199, Chapter 3.16 NMAC for a supplier or dealer selling non-liquid special fuels, "gallon" is the equivalent of one-hundred and fourteen (114) cubic feet.
- C. The election of the definition of "gallon" to be used for reporting purposes is made with the filing of the initial return required under Section 7-16A-9 NMSA 1978 and must be used for a minimum of one calendar year. The election may not be changed without the prior written consent of the secretary.
[2/1/93, 12/31/96; 3.16.102.8 NMAC - Rn, 3 NMAC 20.3.8 & A, 6/14/01]

3.16.102.9 EXCLUSION WHEN RECEIPT OR USE IS SUBJECT TO GROSS RECEIPTS TAX:

- A. Receipts from the sale of special fuel for non-highway use is subject to gross receipts tax and not the special fuel excise tax.

B. Special fuel is sold for non-highway use when it is delivered into bulk storage in accordance with Section 3.16.107.12 NMAC for use in stationary equipment, for residential or commercial heating or cooling purposes or for use in a vehicle that is not a motor vehicle.

C. For the purposes of Section 3.16.102.9 NMAC, “stationary equipment” includes, but is not limited to, reefer units, generators, pumps and like equipment which have a separate fuel supply tank to operate the stationary equipment.

D. For the purposes of Section 3.16.102.9 NMAC, “a vehicle that is not a motor vehicle” includes, but is not limited to, vehicle mounted workover rigs, drilling rigs and like equipment not required to be registered under the Motor Vehicle Code.

E. Vehicles that may be required to be registered under the Motor Vehicle Code, including but not limited to, backhoes, tractors and road graders, but that are being transported on a trailer from one off-highway use location to another off-highway use location are vehicles that are not motor vehicles if the vehicles are not operated on the highways of this state.

F. Any special fuel supplier or dealer delivering special fuel for non-highway use must provide the purchaser with either a separate invoice for each such delivery or an invoice that separately states the amount and type of each delivery.

[2/1/93, 12/31/96, 12/31/97; 3.16.102.9 NMAC - Rn, 3 NMAC 20.3.9 & A, 6/14/01]

3.16.102.10 PREEMPTION OF TAX BY FEDERAL LAW:

A. Special fuel received by an Indian tribe on its own territory is not subject to the taxes imposed by the Special Fuels Supplier Tax Act if taxation of the special fuel received is prohibited by federal law.

B. If an Indian tribe is a supplier, it receives special fuel on its own territory when:

(1) the loading at the refinery or pipeline terminal of the special fuel sold to or on the account of the Indian tribe takes place on the tribe's territory; or

(2) the Indian tribe imports the special fuel on the tribe's territory.

C. If an Indian tribe is a supplier and it receives special fuel 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 special fuel excise tax. Example: Z is a member of an Indian tribe T and is registered as a supplier. Z hires tank trucks to pick up loads of special fuel at a rack which is not on T's territory. Z receives the special fuel at that rack. Z owes special fuel excise tax on the special fuel received.

D. Like any other supplier, an Indian tribe that is a registered supplier cannot receive special fuel previously received by another supplier.

E. Special fuel received by an Indian tribe on its own reservation but subsequently transported into any other part of New Mexico, other than by pipeline or in the fuel supply tank of a motor vehicle, becomes subject to the special fuel excise tax as soon as it leaves the tribe's territory, even if still owned by the Indian tribe.

[12/31/96, 12/31/97, 1/29/99; 3.16.102.10 NMAC - Rn, 3 NMAC 20.3.10, 6/14/01]

HISTORY OF 3.16.102 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: TRD Rule SFS-93, Regulations Pertaining to the Special Fuels Supplier Tax Act, Sections 7-16A-1 to 7-16A-20 NMSA 1978, filed 2/1/93.

History of Repealed Material: [RESERVED]

NMAC History:

3 NMAC 20.3, Special and Alternative Fuels Tax - Exclusion, filed 12/17/96

3.16.102 NMAC, Special Fuels Tax - Exclusion, filed 6/1/01.