

**TITLE 3: TAXATION**  
**CHAPTER 16: MOTOR VEHICLE FUEL TAXES**  
**PART 109: SPECIAL FUELS TAX - CALCULATION OF EXCISE TAX**

**3.16.109.1 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; 3.16.109.1 NMAC - Rn, 3 NMAC 20.10.1, 6/14/01]

**3.16.109.2 SCOPE:** This part applies to every person receiving or using special fuel in New Mexico.  
[12/31/96; 3.16.109.2 NMAC - Rn, 3 NMAC 20.10.2, 6/14/01]

**3.16.109.3 STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[12/31/96; 3.16.109.3 NMAC - Rn, 3 NMAC 20.10.3, 6/14/01]

**3.16.109.4 DURATION:** Permanent.  
[12/31/96; 3.16.109.4 NMAC - Rn, 3 NMAC 20.10.4, 6/14/01]

**3.16.109.5 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; 3.16.109.5 NMAC - Rn, 3 NMAC 20.10.5 & A, 6/14/01]

**3.16.109.6 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; 3.16.109.6 NMAC - Rn, 3 NMAC 20.10.6, 6/14/01]

**3.16.109.7 DEFINITIONS:** [RESERVED]  
[12/31/96; 3.16.109.7 NMAC - Rn, 3 NMAC 20.10.7, 6/14/01]

**3.16.109.8 CALCULATION OF SPECIAL FUEL EXCISE TAX LIABILITY:** In computing the special fuel excise tax due, a special fuel excise tax taxpayer, in addition to the deductions provided in Section 7-16A-10 NMSA 1978, may deduct from the total amount of special fuel received in New Mexico during the tax period, the amount of special fuel sold or delivered when the receipt or use of the special fuel is subject to gross receipts tax under the provisions of 3.16.102.9 NMAC.  
[2/1/93, 12/31/96, 12/31/97; 3.16.109.8 NMAC - Rn, 3 NMAC 20.10.8 & A, 6/14/01; Repealed, 10/31/07; 3.16.109.8 NMAC - N, 9/15/08]

**3.16.109.9 PROOF SATISFACTORY TO THE DEPARTMENT:**

A. For exports on or after June 1, 1997, proof satisfactory to the department of the export of special fuel consists of a manifest or bill of lading showing the amount of special fuel, the name and address of the person to whom the special fuel is sold and delivered and the destination outside New Mexico. The person exporting special fuel must also comply with the requirements of Subsection A of Section 7-16A-10 NMSA 1978.

B. Proof satisfactory to the department of sale to the United States or any agency or instrumentality thereof, a NATO force, the state of New Mexico (including its agencies, instrumentalities and political subdivisions), or an Indian nation, tribe or pueblo or any agency or instrumentality thereof shall be furnished to the department on request. Proof includes contracts covering the gallons purchased, the federal contract number, purchase orders and invoices showing that the purchaser was the United States, a NATO force, the state of New Mexico, or an Indian nation, tribe or pueblo or an agency or instrumentality thereof and copies of warrants issued in payment and other documentation determined by the secretary to constitute proof of payment.

C. Receipts from sales of special fuel placed in the supply tank of United States, state of New Mexico or Indian nation, tribe or pueblo government vehicles are deductible from the distributor's special fuel excise tax when paid for by a credit or procurement card issued to the United States government, the state of New Mexico or an Indian government.

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 special fuel was sold.

[2/1/93, 12/31/96, 12/31/97; 3.16.109.9 NMAC - Rn, 3 NMAC 20.10.9 & A, 6/14/01; Repealed, 10/31/07;

3.16.109.9 NMAC - N, 9/15/08]

**3.16.109.10 DEDUCTION - SALES TO OTHER SUPPLIERS:**

A. Special fuel received by one supplier and sold to another supplier may not be deducted from the amount of special fuel received in New Mexico, even though the second supplier is registered, because the second supplier did not “receive” special fuel within the meaning of the act.

B. Example: A, a registered special fuel supplier in New Mexico, received one thousand (1,000) gallons of special fuel in June, 20xx. B, also a registered special fuel supplier, needed one thousand (1,000) gallons of special fuel and arranged to purchase the one thousand (1,000) gallons from A immediately after A had received the fuel. A may not deduct the one thousand (1,000) gallons from the amount of special fuel A received in June 20xx. B is not liable for tax on this special fuel because B did not receive it.

[2/1/93, 12/31/96; 3.16.109.10 NMAC - Rn, 3 NMAC 20.10.10 & A, 6/14/01; Repealed, 10/31/07; 3.16.109.10 NMAC - N, 9/15/08]

**3.16.109.11 INDIRECT SALES TO THE UNITED STATES, THE STATE OF NEW MEXICO, INDIAN NATIONS, TRIBES OR PUEBLOS OR FOR EXPORT:**

A. The tax consequences of sales of special fuel to the United States, the state of New Mexico, or Indian nations, tribes or pueblos or for export 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 special fuel 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 or change the legal incidence of tax.

B. Example 1. X, a supplier, received one thousand (1000) gallons of special fuel in May 20xx, reported the special fuel excise tax and resold the special fuel to Y, a wholesaler. Y sold the special fuel to the United States. If Y furnishes proof satisfactory to the department to X, X may either deduct the one thousand (1000) gallons from the amount of special fuel received in May, elect to take the deduction as a prior period adjustment in a subsequent reporting month in which special fuel excise tax is otherwise due, or if no special fuel excise tax is due, may claim a refund of the tax paid. Proof satisfactory to the department 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 special fuel was sold to the United States.

C. Example 2. X, a supplier, received and reported one thousand (1000) gallons of special fuel in May, 20xx, and sold the special fuel to Y, a retailer. Y sold twenty (20) gallons to a United States government vehicle using a government credit card. In May, 20xx, Y reports to X that this amount of special fuel has been sold to the United States government. If Y furnishes proof satisfactory to the department to X, X may deduct twenty (20) gallons from the amount of special fuel received in May, elect to take the deduction as a prior period adjustment in a subsequent reporting month in which special fuel excise tax is otherwise due, or if no special fuel excise tax is due, may claim a refund of the tax paid. Proof satisfactory to the department of Y's sale to the United States government is required to be retained by X and Y for at least three years from the end of the calendar year in which the special fuel was sold.

D. Example 3: X, a supplier, received and reported five thousand (5,000) gallons of special fuel in May 20xx and resold the special fuel to Y, another New Mexico supplier. Y delivers the five thousand (5,000) gallons of special fuel to a customer in another state. If Y furnishes proof satisfactory to the department to X, X may deduct five thousand (5,000) gallons from the amount of special fuel received in May, elect to take the deduction as a prior period adjustment in a subsequent reporting month in which special fuel excise tax is otherwise due, or if no special fuel excise tax is due, may claim a refund of the tax paid. Proof satisfactory to the department 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.

[2/1/93, 12/31/96; 3.16.109.11 NMAC - Rn, 3 NMAC 20.10.11 & A, 6/14/01; Repealed, 10/31/07; 3.16.109.11 NMAC - N, 9/15/08]

**3.16.109.12 DEDUCTION - SALES TO A NON-UNITED STATES SIGNATORY OF THE NORTH ATLANTIC TREATY:**

A. For purposes of 3.16.109.12 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, special fuel sold to a NATO force may be deducted from the total amount of special fuel received in New Mexico.

C. Pursuant to Article IX, Section 8 of the North Atlantic Treaty, special fuel 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 special fuel excise tax.

D. 3.16.109.12 NMAC is retroactively applicable to sales on or after July 1, 1995. [12/22/95, 12/31/96; 3.16.109.12 NMAC - Rn, 3 NMAC 20.10.12 & A, 6/14/01; Repealed, 10/31/07; 3.16.109.12 NMAC - N, 9/15/08]

**3.16.109.13 SPECIAL FUEL USED IN SCHOOL BUSES:** Receipts from the sale of special fuel dyed in accordance with federal regulations for use in school buses is subject to gross receipts tax and not the special fuel excise tax.

[3.16.109.13 NMAC - N, 10/15/02; Repealed, 10/31/07; 3.16.109.13 NMAC - N, 9/15/08]

**HISTORY OF 3.16.109 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 20.10, Special and Alternative Fuels Tax - Calculation of Excise Tax, filed 12/17/96

3.16.109 NMAC, Special Fuels Tax - Calculation of Excise Tax, filed 6/1/01.