

TITLE 3: TAXATION
CHAPTER 21: TELECOMMUNICATIONS TAXES
PART 5: INTERSTATE TELECOMMUNICATIONS

3.21.5.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[5/15/97; 3.21.5.1 NMAC - Rn, 3 NMAC 21.5.1, 1/15/01]

3.21.5.2 SCOPE: Provisions of this part apply to all providers of intrastate telecommunications service.
[5/15/97; 3.21.5.2 NMAC - Rn, 3 NMAC 21.5.2, 1/15/01]

3.21.5.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[5/15/97; 3.21.5.3 NMAC - Rn, 3 NMAC 21.5.3, 1/15/01]

3.21.5.4 DURATION: Permanent.
[5/15/97; 3.21.5.4 NMAC - Rn, 3 NMAC 21.5.4, 1/15/01]

3.21.5.5 EFFECTIVE DATE: 5/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[5/15/97; 3.21.5.5 NMAC - Rn & A, 3 NMAC 21.5.5, 1/15/01]

3.21.5.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Interstate Telecommunications Gross Receipts Tax Act.
[5/15/97; 3.21.5.6 NMAC - Rn, 3 NMAC 21.5.6, 1/15/01]

3.21.5.7 DEFINITIONS: [Reserved.]
[5/15/97; 3.21.5.7 NMAC - Rn, 3 NMAC 21.5.7, 1/15/01]

3.21.5.8 IMPOSITION BARRED BY FEDERAL LAW - INTERSTATE TELECOMMUNICATIONS SERVICES IN INDIAN COUNTRY FOR TRIBE OR TRIBAL MEMBERS:

A. Receipts of a seller from selling interstate telecommunication services to a purchaser who is an Indian tribe or member thereof on the tribe's territory are not subject to the interstate telecommunications gross receipts tax if taxation of such receipts is prohibited by federal law. Interstate telecommunications service is provided on a tribe's territory when:

- (1) calls originate or terminate through an instrument on the tribe's territory; and
- (2) the service is billed to the Indian tribe or a member thereof.

B. The seller must demonstrate that the interstate telecommunications service is sold to an Indian tribe or member thereof. The seller must also demonstrate that the interstate telecommunications service originates or terminates through an instrument located on the tribe's territory and is billed to the Indian tribe or member thereof. The documents demonstrating that receipts from providing interstate telecommunications services are not subject to tax shall be retained in the seller's records.

(1) The first requirement may be met by obtaining a statement signed by the purchaser that the purchaser is an Indian tribe or member thereof. In the case of the Indian tribe itself, the statement must be attested to by a tribal official. In the case of an individual, the statement must also either specify the purchaser's official tribal or BIA census number or, when the purchaser's Indian tribe does not maintain an official census system, be attested to by an official of the purchaser's Indian tribe confirming this statement. This statement may also be provided to the seller by the Indian tribe on behalf of one or more of its members if attested to by a tribal official. Upon request, the secretary may approve additional methods. This documentation shall be conclusive evidence, and the only material evidence, that the purchaser is an Indian tribe or member thereof.

(2) The second requirement may be met for fixed location instruments if the seller keeps records adequate to document that interstate calls originate or terminate through instruments located on the purchaser's tribe's territory and that the call is billed to the Indian tribe or member thereof. The second requirement may be met for mobile instruments if the seller keeps adequate records to document that:

(a) with respect to charges billed regardless of volume of calls, the purchaser's address is within the purchaser's tribe's territory; and

(b) with respect to charges for calls, the call either originates or terminates within the purchaser's tribe's territory. Sellers of telecommunications services through mobile instruments may estimate the percentage of receipts for the report month from calls through such instruments which do not originate or terminate on the purchaser's tribe's territory. The estimate shall be the total receipts from calls from purchasers whose address is within the purchaser's tribe's territory for the reporting period multiplied by the percentage of actual receipts from calls by those purchasers originating or terminating off the purchaser's tribe's territory during the previous calendar year. The amount of actual receipts during the previous calendar year from off-territory calls shall be determined based upon evidence satisfactory to the department.

C. Receipts from selling interstate telecommunications services in New Mexico in Indian country to the following persons are subject to the gross receipts tax:

- (1) a person who is not an Indian tribe or member thereof;
- (2) a person who is an Indian tribe other than the Indian tribe on whose territory the sale takes place;

and

(3) a person who is a member of an Indian tribe other than the Indian tribe on whose territory the sale takes place except that, if the person is the spouse of a member of the Indian tribe on whose territory the sale takes place, that person will be considered for the purposes of Section 3.21.5.8 NMAC to be a member of the spouse's Indian tribe.

D. Receipts from selling interstate telecommunications services in New Mexico to an Indian tribe or member thereof are subject to the interstate telecommunications gross receipts tax when the instrument through which the calls originate or terminate is located outside the tribe's territory, even if the location is within the territory of another Indian tribe.

E. For the purposes of Section 3.21.5.8 NMAC, the terms "Indian tribe" and "tribe's territory" have the meaning set forth for those terms in Section 3.2.4.7 NMAC.

F. Section 3.21.5.8 NMAC is retroactively applicable to transactions occurring on or after July 1, 1992.

[3/16/95, 5/15/97; 3.21.5.8 NMAC - Rn & A, 3 NMAC 21.5.8, 1/15/01]

3.21.5.9 PERSONS ENGAGED IN PROVIDING INTERSTATE TELECOMMUNICATIONS SERVICES - HOTELS AND MOTELS PROVIDING INTERSTATE TELECOMMUNICATIONS SERVICE TO GUESTS:

A. Persons engaged in the business of providing interstate telecommunications in New Mexico are those persons licensed to do so by the federal communications commission or by any agency of the state of New Mexico having authority to license providers of interstate or intrastate telecommunications service.

B. Unless the establishment is licensed as required in Subsection 3.21.5.9A NMAC, hotels, motels and similar establishments offering interstate telecommunications service to guests in conjunction with the rental of rooms or other facilities are not "engaging in interstate telecommunications business" for purposes of the Interstate Telecommunications Gross Receipts Tax Act. Receipts of the establishment from providing such service are subject to the provisions of the Gross Receipts and Compensating Tax Act.

C. Section 3.21.5.9 NMAC applies retroactively to transactions on or after July 1, 1992.

[9/16/92, 5/15/97; 3.21.5.9 NMAC - Rn & A, 3 NMAC 21.5.9, 1/15/01]

HISTORY OF 3.21.5 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: TRD Rule TEL-92, Regulations Pertaining to the Interstate Telecommunications Gross Receipts Tax Act, Section 7-9C-1 to 7-9C-11 NMSA 1978, filed 9/16/92.

TRD Regulation ITG 3:1, Regulation Pertaining to the Interstate Telecommunications Gross Receipts Tax Act, Section 7-9C-3 NMSA 1978, filed 3/16/95.

History of Repealed Material: [RESERVED]

NMAC History:

3 NMAC 21.5, Interstate Telecommunications, filed 5/1/97.

3.21.5 NMAC, Interstate Telecommunications, filed 1/4/01