

TITLE 3: TAXATION
CHAPTER 21: TELECOMMUNICATIONS TAXES
PART 6: 911

3.21.6.1 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; 3.21.6.1 NMAC - Rn, 3 NMAC 21.6.1, 1/15/01]

3.21.6.2 SCOPE: This part applies to all telecommunications service providers and all local exchange customers subject to the surcharges imposed by the Enhanced 911 Act.
[5/15/97; 3.21.6.2 NMAC - Rn, 3 NMAC 21.6.2, 1/15/01]

3.21.6.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[5/15/97; 3.21.6.3 NMAC - Rn, 3 NMAC 21.6.3, 1/15/01]

3.21.6.4 DURATION: Permanent.
[5/15/97; 3.21.6.4 NMAC - Rn, 3 NMAC 21.6.4, 1/15/01]

3.21.6.5 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; 3.21.6.5 NMAC - Rn & A, 3 NMAC 21.6.5, 1/15/01]

3.21.6.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the E 911.
[5/15/97; 3.21.6.6 NMAC - Rn, 3 NMAC 21.6.6, 1/15/01]

3.21.6.7 DEFINITIONS: [Reserved.]
[5/15/97; 3.21.6.7 NMAC - Rn, 3 NMAC 21.6.7, 1/15/01]

3.21.6.8 IMPOSITION BARRED BY FEDERAL LAW - LOCAL EXCHANGE ACCESS LINES IN INDIAN COUNTRY FOR TRIBE OR TRIBAL MEMBERS:

A. Neither the 911 emergency surcharge nor the network and database surcharge applies to local exchange access lines provided to an Indian tribe or member thereof on that tribe's territory if imposition of such surcharges is prohibited by federal law. For so long as imposition of such surcharges is prohibited by federal law, local exchange telephone companies shall not bill the surcharges to, or collect the surcharges from, an Indian tribe or member thereof. Local exchange access lines are provided on a tribe's territory when the local exchange access line provides local exchange access through an instrument located on the tribe's territory.

B. The local exchange telephone company must demonstrate that the local exchange access line is provided to an Indian tribe or member thereof. The local exchange telephone company must also demonstrate that the line provides local exchange access through an instrument located on the tribe's territory. The documents demonstrating that providing local exchange access lines are not subject to the surcharges imposed under the Enhanced 911 Act shall be retained in the local exchange telephone company's records.

(1) The first requirement may be met by obtaining a statement signed by the local exchange service customer that the customer 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 customer's official tribal or BIA census number or, when the customer's Indian tribe does not maintain an official census system, be attested to by an official of the customer's Indian tribe confirming this statement. This statement may also be provided to the local exchange telephone company 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 customer is an Indian tribe or member thereof.

(2) The second requirement may be met if the local exchange telephone company keeps records adequate to document that the local exchange access lines provide local exchange access to an instrument located on the customer's tribe's territory.

C. Local exchange access lines provided 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 3.21.6.8 NMAC to be a member of the spouse's Indian tribe.

D. Local exchange access lines provided in New Mexico in Indian country are subject to the surcharges imposed under the Enhanced 911 Act when the local exchange access line provides local exchange access to an instrument not located on the customer's tribe's territory.

E. For the purposes of Section 3.21.6.8 NMAC:

(1) the terms "Indian tribe" and "tribe's territory" have the meaning set forth for those terms in Section 3.2.4.7 NMAC; and

- (2) "instrument" does not include any mobile instrument.

F. Section 3.21.6.8 NMAC is retroactively applicable to transactions occurring on or after January 1, 1992.

[3/16/95, 5/15/97; 3.21.6.8 NMAC - Rn & A, 3 NMAC 21.6.8, 1/15/01]

HISTORY OF 3.21.6 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: TRD Regulation ENH 5:1, Regulations Pertaining to the Enhanced 911 Act, Section 63-9D-5 NMSA 1978, filed 3/16/95.

History of Repealed Material: [RESERVED]

NMAC History:

3 NMAC 21.6, 911, filed 5/1/97.
3.21.6 NMAC, 911, filed 1/4/01