

TITLE 3: TAXATION
CHAPTER 21: TELECOMMUNICATIONS TAXES
PART 7: LOCAL EXCHANGE

3.21.7.1 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; 3.21.7.1 NMAC - Rn, 3 NMAC 21.7.1, 1/15/01]

3.21.7.2 SCOPE: This part applies to all persons providing intrastate telephone services and all customers of local exchange companies.
[5/15/97; 3.21.7.2 NMAC - Rn, 3 NMAC 21.7.2, 1/15/01]

3.21.7.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[5/15/97; 3.21.7.3 NMAC - Rn, 3 NMAC 21.7.3, 1/15/01]

3.21.7.4 DURATION: Permanent.
[5/15/97; 3.21.7.4 NMAC - Rn, 3 NMAC 21.7.4, 1/15/01]

3.21.7.5 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; 3.21.7.5 NMAC - Rn & A, 3 NMAC 21.7.5, 1/15/01]

3.21.7.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Telecommunications Access Act.
[5/15/97; 3.21.7.6 NMAC - Rn, 3 NMAC 21.7.6, 1/15/01]

3.21.7.7 DEFINITIONS: [Reserved.]
[5/15/97; 3.21.7.7 NMAC - Rn, 3 NMAC 21.7.7, 1/15/01]

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

A. The telecommunications relay service surcharge does not apply to receipts of a telecommunications company from providing intrastate telephone services to an Indian tribe or member thereof on that tribe's territory if imposition of such a surcharge is prohibited by federal law. Intrastate telephone service is provided on a tribe's territory when:

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

B. The telecommunications company must demonstrate that the intrastate telephone service is provided to an Indian tribe or member thereof. The telecommunications company must also demonstrate that the intrastate telephone service is provided through an instrument located on the tribe's territory and is billed to the Indian tribe or member thereof. The documents demonstrating that providing intrastate telephone service is not subject to the telecommunications relay service surcharge shall be retained in the telecommunication company's records.

(1) The first requirement may be met by obtaining a statement signed by the intrastate telephone 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 telecommunications 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 telecommunications company keeps records adequate to document that the intrastate telephone service is provided through instruments located on the customer's tribe's

territory. 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. Telecommunications companies selling 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. Intrastate telephone service 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 3.21.7.8 NMAC to be a member of the spouse's Indian tribe.

D. Intrastate telephone service provided in New Mexico to an Indian tribe or member thereof is subject to the telecommunications relay service surcharge 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 3.21.7.8 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;

(2) "instrument" includes:

(a) any mobile instrument owned or leased by an Indian tribe; and

(b) any mobile instrument owned or leased by a member of an Indian tribe if the billing address for the mobile instrument is within the tribe's territory; and

(3) "telecommunications relay service surcharge" means the telecommunications relay service surcharge imposed under Section 63-9F-11 NMSA 1978.

F. Section 3.21.7.8 NMAC is retroactively applicable to transactions occurring on or after July 1, 1993.

[3/16/95, 5/15/97; 3.21.7.8 NMAC - Rn & A, 3 NMAC 21.7.8, 1/15/01]

HISTORY OF 3.21.7 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: TRD Regulation TRS 11:1, Regulations Pertaining to the Telecommunications Access Act, Section 63-9F-11 NMSA 1978, filed 3/16/95.

History of Repealed Material: [RESERVED]

NMAC History:

3 NMAC 21.7, Local Exchange, filed 5/1/97.

3.21.7 NMAC, Local Exchange, filed 1/4/01