TITLE 3: TAXATION

CHAPTER 1: TAX ADMINISTRATION

PART 1: GENERAL PROVISIONS

3.1.1.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[10/31/96; 3.1.1.1 NMAC - Rn, 3 NMAC 1.1.1, 12/29/00]

3.1.1.2 SCOPE:

This part applies to all taxpayers, their agents and representatives and all persons required to submit a return or information to the taxation and revenue department under any tax, tax act or other law administered and enforced pursuant to the Tax Administration Act.

[10/31/96; 3.1.1.2 NMAC - Rn, 3 NMAC 1.1.2, 12/29/00]

3.1.1.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[10/31/96; 3.1.1.3 NMAC - Rn, 3 NMAC 1.1.3, 12/29/00]

3.1.1.4 DURATION:

Permanent.

[10/31/96; 3.1.1.4 NMAC - Rn, 3 NMAC 1.1.4, 12/29/00]

3.1.1.5 EFFECTIVE DATE:

10/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[10/31/96; 3.1.1.5 NMAC - Rn & A, 3 NMAC 1.1.5, 12/29/00]

3.1.1.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Tax Administration Act.

10/31/96; 3.1.1.6 NMAC - Rn, 3 NMAC 1.1.6, 12/29/00]

3.1.1.7 DEFINITIONS: "SIGN" DEFINED:

As used in Section 7-1-71.1 NMSA 1978 and Section 3.1.1.18 NMAC the term "sign" means to affix a name or cause it to be attached using one of the following methods:

A. handwritten;

B. rubber stamp;

C. mechanical device (such as a mechanical pen);

D. computer software program; or

E. any other method of signature acceptable under the Internal Revenue Code.

[10/31/96; 3.1.1.7 NMAC - Rn, 3 NMAC 1.1.7, 12/29/00; A, 4/28/06]

3.1.1.8 CITATIONS OF STATUTES:

All statutory references in Chapter 3.1 NMAC are to the New Mexico Statutes Annotated 1978 (NMSA 1978) unless otherwise specified.

[10/31/96; 3.1.1.8 NMAC - Rn & A, 3 NMAC 1.1.8, 12/29/00]

3.1.1.9 INTERPRETATION, ENFORCEMENT AND COLLECTION OF CERTAIN MUNICIPAL AND COUNTY TAXES:

A. The municipal and county tax acts listed below, as they now exist or may hereafter be amended, shall be interpreted, administered and enforced by the secretary under the provisions of the Tax Administration Act.

B. All directives of the secretary shall apply to the administration and enforcement of municipal and county tax acts to the extent that such directives do not conflict with the provisions of the listed municipal and county tax acts:

(1) Supplemental Gross Receipts Tax Act [7-19-10 to 7-19-18 NMSA 1978]

(2) Special Municipal Gross Receipts Tax Act [repealed]

(3) Municipal Local Option Gross Receipts Taxes Act [Chapter 7, Article 19D NMSA 1978]

(4) Local Hospital Gross Receipts Tax Act [Chapter 7, Article 20C NMSA 1978]

(5) County Local Option Gross Receipts Taxes Act [Chapter 7, Article 20E NMSA 1978]

(6) County Correctional Facility Gross Receipts Tax Act [Chapter 7, Article 20F NMSA 1978]

(7) Local Liquor Excise Tax Act [7-24-8 to 7-24-16 NMSA 1978]

C. In addition to the tax acts enumerated in Subsection 3.1.1.9B NMAC, repealed local option gross receipts tax acts whose administration and enforcement were charged to the department are also interpreted, administered and enforced by the department insofar as payments, claims for refunds, assessments, other liabilities, litigation and other actions are received or initiated after, or are outstanding on, the effective date of the repeal of the tax act.

D. Section 3.1.1.9 NMAC applies to interpretation, enforcement or administration on or after July 1, 1993.

[7/19/67, 11/5/85, 8/15/90, 2/6/91, 10/28/94, 10/31/96; 3.1.1.9 NMAC - Rn & A, 3 NMAC 1.1.9, 12/29/00]

3.1.1.10 DELEGATION OF AUTHORITY - GENERAL:

A. The secretary may delegate authority only when specifically authorized to do so in the Tax Administration Act. Where the words "or secretary's delegate" or "or delegate" do not appear in any section, only the secretary may act.

B. Example: As provided in Subsection 7-1-4B NMSA 1978, the secretary alone is invested with the power to issue subpoenas and summonses. The secretary may not delegate the authority to issue subpoenas and summonses.

[7/19/67, 6/15/85, 11/5/85, 8/15/90, 10/31/96; 3.1.1.10 NMAC - Rn & A, 3 NMAC 1.1.10, 12/29/00]

3.1.1.11 DELEGATION OF AUTHORITY:- NOT REQUIRED TO BE IN WRITING:

A delegation of authority by the secretary to an "employee of the division" or "an employee of the department" as that term is defined in Section 7-1-3 NMSA 1978 is not required to be in writing.

[11/5/85, 8/15/90, 10/31/96; 3.1.1.11 NMAC - Rn & A, 3 NMAC 1.1.11, 12/29/00]

3.1.1.12 EMPLOYEE OF THE DEPARTMENT:

The following persons shall, for purposes of the Tax Administration Act, be considered to be "employees of the department" when acting as agents or authorized to represent or perform services for the department:

A. the secretary of the department or an employee of the department authorized by the secretary;

B. the New Mexico attorney general, the attorney general's deputies and assistants, district attorneys and the district attorneys' deputies and assistants;

C. persons employed by the multistate tax commission and performing duties under the Multistate Tax Compact, Sections 7-5-1 through 7-5-7 NMSA 1978; and

D. persons acting under professional service contracts with the department.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.1.12 NMAC - Rn & A, 3 NMAC 1.1.12, 12/29/00]

3.1.1.13 UNIDENTIFIED TAXPAYER:

A person who fits the definition of "taxpayer" under the provisions of Section 7-1-3 NMSA 1978 but who has not registered or been identified under provisions of Section 7-1-12 NMSA 1978 is nonetheless a "taxpayer" subject to the provisions of the Tax Administration Act.

[11/5/85, 8/15/90, 10/31/96; 3.1.1.13 NMAC - Rn & A, 3 NMAC 1.1.13, 12/29/00]

3.1.1.14 INFORMATION FROM PERSONS OTHER THAN TAXPAYER:

To establish or determine the liability of any taxpayer, to collect any tax or to enforce any statute administered by the department under the Tax Administration Act, the secretary or delegate is authorized to examine and require the production of any pertinent records, books, information or evidence by persons other than taxpayers. Such persons shall include but not be restricted to accountants, banks and financial corporations, lessors, vendors, buyers, corporate officers, corporate stockholders and general and limited partners.

[11/5/85, 8/15/90, 10/31/96; 3.1.1.14 NMAC - Rn, 3 NMAC 1.1.14, 12/29/00]

3.1.1.15 TAXPAYER REGISTRATION:

A. **TAXPAYER IDENTIFICATION:**

(1) The secretary shall cause to be developed and maintained multiple systems for the registration and identification of taxpayers who are subject to taxes or tax acts listed in Section 7-1-2 NMSA 1978 and taxpayers shall comply therewith. The

systems shall include application forms combining tax programs whenever feasible. The systems shall include an identification number for each individual taxpayer using a state assigned number, federal social security number, federal employer identification number or a combination of these numbers for cross-reference purposes. The systems shall be devised to facilitate the exchange of information with other states and the United States, and to aid in statistical computations. Nothing contained in Section 7-1-12 NMSA 1978 precludes the secretary from utilizing electronic data processing programs to manage registration and identification systems.

(2) The secretary shall include in registration and identification systems a dimension enabling the department to identify purchasers or lessees who, by reason of their status or the nature of their use of property or service purchased or leased, may be entitled to make nontaxable transactions and shall include a procedure for providing nontaxable transaction certificates (NTTCs) to persons not otherwise required to be registered but who, because of the nature of their transactions with New Mexico businesses, must provide NTTCs pursuant to the provisions of the Gross Receipts and Compensating Tax Act.

B. **REGISTRATION OF PERSONS FILING INCOME TAX AND ESTATE TAX:** Persons who file income or estate tax returns for the purpose of declaring tax payable or refunds or rebates due are not required to preregister with the department by application to secure an identification number. The filing of a tax return containing a federal social security number shall constitute registration for the purposes of Section 7-1-12 NMSA 1978 and Subsection 7-1-8Q NMSA 1978.

C. **AMENDMENT OF REGISTRATION BY SECRETARY:**

(1) When the secretary determines that a taxpayer registration incorrectly identifies the ownership or the type of ownership of a business by either omission or misinformation, the secretary shall amend the registration to show the correct information.

(2) Notice of such amendment shall be made by mail to the registered taxpayer, and in those cases where the secretary amends the ownership to add new parties, notice shall also be mailed to those new parties which have been registered pursuant to department action.

(3) Notice of such action shall contain information with respect to remedies available under Section 7-1-24 NMSA 1978.

D. **TAX IDENTIFICATION NUMBER ISSUED BY INTERNAL REVENUE SERVICE**: A tax identification number issued by the internal revenue service to individuals not qualified to be issued a social security number will be accepted by the department in lieu of the social security number in all cases in which reporting a social security number is required under the Tax Administration Act or any tax or tax act administered by the department in accordance with the Tax Administration Act.

[7/19/67, 11/5/85, 8/15/90, 10/31/96, 3/31/98; 3.1.1.15 NMAC - Rn & A, 3 NMAC 1.1.15, 12/29/00]

3.1.1.16 TAX DEFINED FOR PURPOSES OF SECTION 7-1-18 NMSA 1978:

A. The term "tax" as it is used in Section 7-1-18 NMSA 1978 means the amount of any tax imposed and required to be paid or collected and paid over by any tax act made subject to administration and enforcement under the Tax Administration Act pursuant to the provisions of Section 7-1-2 NMSA 1978 and includes the amount of any interest or civil penalty relating thereto.

B. If the return of a taxpayer includes reporting for two or more taxes imposed by separate tax programs, and if any of the separate taxes is understated by more than 25% of the amount of liability for the separate tax for the period to which the return relates, the secretary or secretary's delegate may make assessments for taxes imposed by any of the separate tax programs the liability for which was so understated at any time within six years from the end of the calendar year in which payment of the separate tax was due.

[7/19/67, 11/5/85, 1/4/88, 8/15/90, 10/31/96; 3.1.1.16 NMAC - Rn & A, 3 NMAC 1.1.16, 12/29/00]

3.1.1.17 "ACTION OR PROCEEDING" DEFINED FOR PURPOSES OF SECTION 7-1-19 NMSA 1978:

As used in Section 7-1-19 NMSA 1978, the term "action or proceeding" means any effort initiated by the secretary or secretary's delegate under the provisions of the Tax Administration Act and shall include the filing of a lien, seizure of property through service of a warrant of levy, demand for security to cover the liability, sale of security which has previously been posted, demand for payment, civil action in district court, injunction to enjoin the taxpayer from engaging in business or foreclosure of a lien. "Action or proceeding" does not include processing any payment made by a taxpayer when no other act has been initiated by the secretary or secretary's delegate after ten years from the date.

[8/22/88, 8/15/90, 10/31/96; 3.1.1.17 NMAC - Rn & A, 3 NMAC 1.1.17, 12/29/00]

3.1.1.18 REQUIREMENTS FOR TAX RETURN PREPARERS:

Every tax return preparer, as that term is defined in Section 7-1-3 NMSA 1978, shall furnish that preparer's identification number with, and sign, each income tax return or claim of refund with respect to income tax that the preparer completes. For the purposes of 3.1.1.18 NMAC, a tax return preparer’s identification number is one of the following: the preparer’s department-issued CRS identification number, the preparer’s social security number or the preparer’s internal revenue service-issued practitioner’s tax identification number (PTIN).

[11/5/85, 8/15/90, 10/31/96; 3.1.1.18 NMAC - Rn & A, 3 NMAC 1.1.18, 12/29/00; A, 5/15/01]

PART 2: PROMULGATION OF REGULATIONS

3.1.2.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[4/15/97; 3.1.2.1 NMAC - Rn, 3 NMAC 1.2.1, 12/29/00]

3.1.2.2 SCOPE:

This part applies to the taxation and revenue department and to every person subject to any statute the administration or enforcement of which is charged to the taxation and revenue department.

[4/15/97; 3.1.2.2 NMAC - Rn, 3 NMAC 1.2.2, 12/29/00]

3.1.2.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[4/15/97; 3.1.2.3 NMAC - Rn, 3 NMAC 1.2.3, 12/29/00]

3.1.2.4 DURATION:

Permanent.

[4/15/97; 3.1.2.4 NMAC - Rn, 3 NMAC 1.2.4, 12/29/00]

3.1.2.5 EFFECTIVE DATE:

4/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[4/15/97; 3.1.2.5 NMAC - Rn & A, 3 NMAC 1.2.5, 12/29/00]

3.1.2.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Taxation and Revenue Department Act.

[4/15/97; 3.1.2.6 NMAC - Rn, 3 NMAC 1.2.6, 12/29/00]

3.1.2.7 DEFINITIONS:

[Reserved.]

[4/15/97; 3.1.2.7 NMAC - Rn, 3 NMAC 1.2.7, 12/29/00]

3.1.2.8 RULINGS - GENERAL:

A. Persons may request a ruling from the secretary for clarification of the consequences of a specified set of circumstances or interpretation of any statute the administration or enforcement of which is charged to the taxation and revenue department. The request must be in writing. The department may require the requester to state whether the requester is under audit by the department, has an outstanding assessment related to the subject matter of the request or is involved in a protest or litigation with the department over the subject matter of the request. The secretary's ruling will be in writing addressed to the requesting party with an assigned ruling number, signed by the secretary and by counsel to show that it has been reviewed by the attorney general or other legal counsel of the department.

B. In a proceeding pursuant to the Tax Administration Act, the department shall be estopped pursuant to Section 7-1-60 NMSA 1978 from obtaining or withholding the relief requested if it is shown by the party adverse to the department that the party's action or inaction subject to dispute was in accordance with any ruling addressed to the party by the secretary, unless the ruling had been rendered invalid or had been superseded by regulation or by another ruling addressed to the party at the time the asserted liability for tax arose.

C. A person or persons requesting a ruling from the secretary must be subject to the statute for which an interpretation is requested or to which the set of circumstances relate. In particular the requester must be a taxpayer as defined in Section 7-1-3 NMSA 1978 for taxes and tax acts covered by the Tax Administration Act. A representative, such as an accountant or attorney, of the requester may request the ruling on behalf of the requester but must disclose the name of the requester. The secretary will not issue a ruling addressed to the requester's representative, whether or not the name of the requester is disclosed. A copy of a ruling addressed to the requester will be sent to a requester's representative when requested.

D. The secretary may modify or withdraw any previously issued ruling and shall withdraw or modify any ruling when subsequent legislation, regulations, final court decision or other rulings have invalidated a ruling or portions of a ruling.

E. Although the secretary is not required by statute to issue a ruling even if the request is in proper form, every ruling request shall be given careful and diligent consideration.

[11/17/95, 4/15/97, 3/31/99; 3.1.2.8 NMAC - Rn & A, 3 NMAC 1.2.8, 12/29/00]

3.1.2.9 HEARING FOR PROPOSED REGULATIONS:

A. For the purpose of obtaining comments of interested persons regarding issuance of regulations, the secretary shall schedule a public hearing on a date approximately 45 days from the day of issuing and filing a proposed regulation in the office of the secretary for public inspection. The hearing date shall be publicized in a manner so that individuals, professionals and industry groups who have an interest in the promulgation of proposed regulations will have an opportunity to attend the meeting and express their comments. The secretary or a designated hearing officer shall hear and weigh all comments and suggestions on the proposed regulation. The secretary may incorporate revisions into the proposed regulations including those derived from written or verbal comments of interested persons. The decision of the secretary on the substance and form of the regulation is final.

B. Revisions to a proposed regulation may be incorporated by the secretary at any time during the 60-day waiting period, and the modified regulation need not be reissued as proposed before becoming final.

[11/17/95, 4/15/97; 3.1.2.9 NMAC - Rn, 3 NMAC 1.2.9, 12/29/00]

3.1.2.10 COOPERATIVE AGREEMENT EFFECTIVE DATE:

A. A cooperative agreement or an amended cooperative agreement entered into pursuant to Section 9-11-12.1 NMSA 1978 or Section 9-11-12.2 NMSA 1978, shall become effective on July 1 or January 1, whichever date occurs first after the expiration of at least three months from the date the cooperative agreement or amended cooperative agreement is signed by both the pueblo or tribe and the secretary.

B. To be effective as of January 1, cooperative agreements or amendments to cooperative agreements must be executed by both the pueblo or tribe and the secretary on or before September 30 of the previous year. To be effective as of July 1, cooperative agreements or amendments to cooperative agreements must be executed by both the pueblo or tribe and the secretary on or before March 30 of the same year.

[3.1.2.10 NMAC - N, 6/15/04; A, 1/17/06]

3.1.2.11 SECRETARY MAY DESIGNATE REPORTING REQUIREMENTS OF SOME RECEIPTS:

The secretary may require receipts from sales that occur on the tribal land of a pueblo or tribe that has entered into a gross receipts tax cooperative agreement with the state of New Mexico pursuant to Section 9-11-12.1 NMSA 1978 to be reported as located on tribal land regardless of where the taxpayer’s place of business is maintained.

[3.1.2.11 NMAC - N, 1/17/06]

PART 3: DISCLOSURE OF TAXPAYER INFORMATION

3.1.3.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[10/31/1996; 3.1.3.1 NMAC - Rn, 3 NMAC 1.3.1, 12/29/2000]

3.1.3.2 SCOPE:

This part applies to all taxpayers, their agents and representatives and all persons required to submit a return or information to the taxation and revenue department under any tax, tax act or other law administered and enforced pursuant to the Tax Administration Act.

[10/31/1996; 3.1.3.2 NMAC - Rn, 3 NMAC 1.3.2, 12/29/2000]

3.1.3.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[10/31/1996; 3.1.3.3 NMAC - Rn, 3 NMAC 1.3.3, 12/29/2000]

3.1.3.4 DURATION:

Permanent.

[10/31/1996; 3.1.3.4 NMAC - Rn, 3 NMAC 1.3.4, 12/29/2000]

3.1.3.5 EFFECTIVE DATE:

October 31, 1996, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[10/31/1996; 3.1.3.5 NMAC - Rn & A, 3 NMAC 1.3.5, 12/29/2000]

3.1.3.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Tax Administration Act.

[10/31/1996; 3.1.3.6 NMAC - Rn, 3 NMAC 1.3.6, 12/29/2000]

3.1.3.7 DEFINITIONS:

[**RESERVED**]

[10/31/1996; 3.1.3.7 NMAC - Rn, 3 NMAC 1.3.7, 12/29/2000]

3.1.3.8 STATE WARRANTS FOR PAYMENT OF TAX REFUNDS AND TAX REBATES:

A. Generally, information contained on a state warrant issued in response to a tax return submitted by a taxpayer, including electronic data processing records relative to the warrant, is confidential information for purposes of Section 7-1-8 NMSA 1978. Warrants issued in response to a claim for a refund, the record of which is required to be available for public inspection under Section 7-1-29 NMSA 1978, are not confidential information.

B. Example: A loan company requests from an employee of the department the mailing address of a taxpayer and the dollar amount of a state warrant which was processed as a refund or rebate from an income tax return. The information requested was derived from information contained in the return of a taxpayer, and it is unlawful for the employee to reveal this information.

[11/5/1985, 8/15/1990, 10/31/1996; 3.1.3.8 NMAC - Rn & A, 3 NMAC 1.3.8, 12/29/2000]

3.1.3.9 RECIPROCAL AGREEMENTS WITH OTHER STATES OR TRIBES:

The secretary shall retain all reciprocal exchange-of-information agreements between the department and the authorized representatives of other states or of Indian nations, tribes or pueblos which permit designated employees of the department to reveal to the receiving state or Indian nation, tribe or pueblo, for tax purposes only, information contained in the return of a taxpayer or other information about a taxpayer.

[11/5/1985, 8/15/1990, 10/31/1996; 3.1.3.9 NMAC - Rn, 3 NMAC 1.3.9, 12/29/2000]

3.1.3.10 RECIPROCAL AGREEMENT - UNITED STATES SECRETARY OF THE TREASURY'S AUTHORIZED REPRESENTATIVE:

A. The secretary shall maintain a permanent record of the reciprocal agreement between the department and the representative of the secretary of the treasury for exchange of tax information. The proper representative of the secretary of the treasury shall be identified in the reciprocal agreement with the department. Identification of proper representatives may be made by job title or job description.

B. Example: A representative of the United States treasury department's alcohol, tobacco and firearms bureau (ATFB) requests from a department employee information contained in the return of a taxpayer. The representative explains that the organization is a branch of the treasury department, and the tax information requested will aid the state of New Mexico in collecting more tobacco taxes. Since the ATFB of the treasury

department is not the authorized representative of the secretary of the treasury under a reciprocal agreement, it is unlawful for any employee of the department to fulfill the ATFB representative's request.

[7/19/1967, 11/5/1985, 8/15/1990, 10/31/1996; 3.1.3.10 NMAC - Rn, 3 NMAC 1.3.10, 12/29/2000]

3.1.3.11 TAXPAYER "WAIVER" OF CONFIDENTIALITY:

A. For the purpose of Section 7-1-8 NMSA 1978, and except as provided in Subsection 7-1-24E NMSA 1978 for a taxpayer request for an administrative hearing to be open to the public, there is no provision in the Tax Administration Act for a taxpayer to "waive" the provisions of Section 7-1-8 NMSA 1978 as applied to an employee or former employee of the department. The provisions of Section 7-1-8 NMSA 1978 and the punitive provisions of Section 7-1-76 NMSA 1978 are imposed on an employee or former employee and cannot be released by a taxpayer. The secretary will not accept or approve a purported "waiver" of confidentiality under Section 7-1-8 NMSA 1978 from taxpayers who attempt to make lawful that which is unlawful for employees and former employees of the department.

B. Example: A taxpayer and the taxpayer's attorney attend an informal conference with the secretary and department attorneys to discuss the tax consequences of the taxpayer's activities as a seller of tangible personal property in New Mexico. The taxpayer's attorney announces that a buyer (who is also a taxpayer) of the client's property has no objections to information from the buyer's tax returns being revealed by the secretary to those present in the conference. The attorney, although not representing the buyer, has a signed letter from the buyer "waiving" confidentiality of information in the buyer's returns which are in the possession of the department. This "waiver" does not make it lawful for the secretary or any other department employee to act upon this request by revealing the buyer's tax records or to give any information about the buyer acquired as a result of employment by the department. The buyer can obtain the information from the department and make any use of it the buyer deems proper. Or, in the alternative, the buyer could appoint the attorney in question the buyer's "authorized representative" to receive this information.

[11/5/1985, 8/15/1990, 10/31/1996; 3.1.3.11 NMAC - Rn & A, 3 NMAC 1.3.11, 12/29/2000]

3.1.3.12 DISCLOSURE OF TAX INFORMATION TO A COURT:

A. The exception in Subsection 7-1-8D NMSA 1978, permitting disclosure in response to an order of a district court, an appellate court or a federal court, shall be restricted to those actions:

(1) relating to taxes, where the state is a party and where the information sought is material to the inquiry;

(2) where the department is attempting to collect a tax; or

(3) where the taxpayer has put the taxpayer's own tax liability at issue.

B. Unless the order of the court concerns an action that meets all three of the restrictions in Paragraph (1) of Subsection 3.1.3.12A NMAC, or the restrictions in Paragraphs (2) and (3) of Subsection 3.1.3.12A NMAC, it is unlawful for an employee of the department or any former employee of the department to breach taxpayer confidentiality.

C. No provision in Subsection 7-1-8D NMSA 1978 precludes any employee from making tax information available to the taxpayer or the taxpayer's authorized representative when a court orders the taxpayer to obtain such information for purposes of discovery. Nothing in Subsection 7-1-8E NMSA 1978 shall be construed to require any employee to testify in a judicial proceeding except as provided in Subsection 7-1-8D NMSA 1978.

D. Example: A taxpayer in the business of selling construction services files a civil suit in a district court against the owner of a construction project and seeks judgment against the owner for an increase in the contract price as reimbursement for gross receipts taxes. Upon the taxpayer's request the court issues a subpoena duces tecum to an employee of the department to appear as a witness in the court action and bring certain records of the defendant. Although the court action relates to taxes and the information sought is material to the inquiry, the state is not a party to the suit nor does the information sought concern a taxpayer who has put the taxpayer's own tax liability at issue. It is unlawful for the employee to reveal tax information as a witness. Should the employee comply with the court's order, the employee may be guilty of a misdemeanor under Section 7-1-76 NMSA 1978 and upon conviction suffer the penalties prescribed by law. The secretary, through counsel, normally will present a motion to the court asking that the subpoena duces tecum be quashed.

(1) If time does not permit a motion to quash to be prepared and presented before the court, the employee will appear at the appointed time and make the following statement to the court:

"Your honor, I respectfully decline to disclose the information upon the advice of the Secretary of Taxation and Revenue and my legal counsel. The information requested is privileged under Rule 11-502 of the New Mexico Rules of Evidence. Also, the disclosure of this information will subject me to possible criminal prosecution under Section 7-1-8 and Section 7-1-76, New Mexico Statutes Annotated 1978. The disclosure of this information might also subject me to criminal prosecution by the United States pursuant to Section 7213(a)(2) of the United States Internal Revenue Code. Since the disclosure of this information might tend to incriminate me in a later criminal proceeding, I hereby invoke my rights under the Fifth Amendment to the United States constitution and Article II, Section 15 of the constitution of New Mexico."

(2) The employee may further advise the court that the department may release the information to the taxpayer or the taxpayer's authorized representative and the court may then order the taxpayer to reveal the information as appropriate.

[7/19/1967, 11/5/1985, 8/15/1990, 10/31/1996; 3.1.3.12 NMAC - Rn & A, 3 NMAC 1.3.12, 12/29/2000]

3.1.3.13 AUTHORIZED REPRESENTATIVE:

A. The authorization of any person to be a representative of a taxpayer must be in writing, must contain sufficient information for the department to identify the taxpayer and the representative and must be signed by the taxpayer. The authorization must be in a form prescribed by the department, and renewed at an interval set by the department.

B. Upon presentation of a proper authorization from a taxpayer's representative, the secretary or employee may reveal information concerning the taxpayer and the taxpayer's return. If, however, the adversarial position of the representative or some change of circumstance in the relationship between the taxpayer and the taxpayer's authorized representative leads the secretary or employee to question the continued validity of the authorization, the secretary or employee may inquire of the taxpayer whether the authorization remains valid. A taxpayer may revoke an authorization of a person to be the taxpayer's representative by filing a document with the department so stating.

[11/5/1985, 8/15/1990, 10/31/1996; 3.1.3.13 NMAC - Rn & A, 3 NMAC 1.3.13, 12/29/2000; A, 9/25/2018]

3.1.3.14 BANKRUPTCY:

A. Whenever an order for relief is entered under Title 11 of the United States Code with respect to a taxpayer, the taxpayer shall be deemed to have put his liability for taxes at issue and the department shall be deemed to be a party to the bankruptcy proceeding. The bankruptcy court may enter an order allowing any other party in the bankruptcy case to obtain information from the department regarding the debtor-taxpayer upon the party showing relevance and need for the information. The department may release information pursuant to such an order.

B. The bankruptcy trustee serving in the case in which the taxpayer is the debtor, the United States trustee and any court-appointed examiner or liquidating agent in a Chapter 11 case will be deemed the taxpayer's authorized representative. The department may release information concerning the taxpayer and the taxpayer's tax liabilities to such a representative.

[2/9/1995, 10/31/1996; 3.1.3.14 NMAC - Rn, 3 NMAC 1.3.14, 12/29/2000]

PART 4: FILING

3.1.4.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.1.4.1 NMAC - Rp, 3.1.4.1 NMAC, 7/7/2021]

3.1.4.2 SCOPE:

This part applies to all taxpayers, their agents and representatives and all persons required to submit a return or information to the taxation and revenue department under any tax, tax act or other law administered and enforced pursuant to the Tax Administration Act.

[3.1.4.2 NMAC - Rp, 3.1.4.2 NMAC, 7/7/2021]

3.1.4.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.1.4.3 NMAC - Rp, 3.1.4.3 NMAC, 7/7/2021]

3.1.4.4 DURATION:

Permanent.

[3.1.4.4 NMAC - Rp, 3.1.4.4 NMAC, 7/7/2021]

3.1.4.5 EFFECTIVE DATE:

July 7, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.1.4.5 NMAC - Rp, 3.1.4.5 NMAC, 7/7/2021]

3.1.4.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Tax Administration Act.

[3.1.4.6 NMAC - Rp, 3.1.4.6 NMAC, 7/7/2021]

3.1.4.7 DEFINITIONS:

As used in 3.1.4 NMAC, "CRS liability" means the total of state gross receipts tax due for a period plus the amounts due for the same period for all other taxes collected with the state gross receipts tax, such as local option gross receipts taxes, governmental gross receipts tax, leased vehicle gross receipts tax, leased vehicle surcharge, compensating tax and withholding tax.

[3.1.4.7 NMAC - Rp, 3.1.4.7 NMAC, 7/7/2021]

3.1.4.8 FILING RETURNS - FORMS:

A. Information concerning the method of completing and filing a return, the filing date and the due date for paying taxes administered by the department may be found under the specific tax statutes, the secretary's regulations thereunder, on the prescribed forms and on the instructions accompanying the forms. Returns are considered complete and timely filed when the requirements of these documents, including requirements on obtaining extensions of time to file, are complied with by taxpayers.

B. Copies of return forms and instructions will be furnished by the department to taxpayers and to those persons filing returns for the purpose of securing refunds and rebates. The failure to receive a return form, however, does not relieve taxpayers from their duty to report and pay taxes. The forms and instructions may be obtained from the department and from district offices.

[3.1.4.8 NMAC - Rp, 3.1.4.8 NMAC, 7/7/2021]

3.1.4.9 THE REQUIREMENT OF A CORRECT MAILING ADDRESS:

A. All notices, returns or applications required to be made by the taxpayer must include the correct mailing address of the taxpayer and the taxpayer must promptly advise the department in writing of any change in mailing address. If the department has prescribed a form or format for reporting a change of address, the form or format must be followed provided that, if the required information is contained in a change of address form or notice of the United States postal service, the United States postal service change of address form or notice may be used in lieu of the department form.

B. If a taxpayer notifies the United States postal service of a change in the taxpayer’s mailing address and this information is given by the United States postal service to the department either voluntarily or upon the department’s request, the taxpayer shall have fulfilled the taxpayer’s obligation to notify the department of a change in mailing address. Unless the taxpayer specifically notifies the department that the change of mailing address does not apply to mailings from the department to the taxpayer, the notice by the taxpayer to the United States postal service of a change in the taxpayer’s mailing address and given by the United States postal service to the department applies to mailings from the department.

[3.1.4.9 NMAC - Rp, 3.1.4.9 NMAC, 7/7/2021]

3.1.4.10 DUE DATES AND TIMELINESS:

A. FILING RETURNS - DUE DATE:

A taxpayer becomes liable for tax as soon as the taxable event occurs; payment is not due, however, until on and after the date established by tax acts for the payment of tax. The statutory words "and after" used in the preceding sentence mean that taxes remain due until paid. A taxpayer becomes liable for interest if the tax is not paid when it becomes due. If the tax is not paid when it becomes due or if a report is not filed when due because of negligence of the taxpayer or taxpayer's representative, the taxpayer will also become liable for penalty. The fact that a taxpayer has not registered as a taxpayer is not material to the taxpayer's liability for payment of tax.

B. TIMELINESS OF ELECTRONIC TRANSMISSIONS:

(1) Notices, returns and applications authorized or required to be made or given by electronic transmission, are timely if the notice, return or application is electronically transmitted to the department and accepted on or before the last date prescribed for filing the notice, return or application. Accordingly, the sender who relies upon the applicability of Section 7-1-13 NMSA 1978 assumes the responsibility to provide the department proof that the electronic transmission to the department was initiated on or before the last date prescribed for filing the notice, return or application.

(2) Returns required by regulation or statute to be filed electronically shall not be considered filed until filed electronically if filed by any means other than as specified in that regulation or statute unless the taxpayer receives an exception or waiver to electronic filing in writing from the department, and taxpayer will be subject to penalties under Section 7-1-69 NMSA 1978 for a late filed return until an electronic return is filed.

C. DETERMINATION OF TIMELINESS:

(1) Notices, returns, applications and payments, other than payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by mail are timely if the postmark on the envelope made by the United States postal service bears the date on or before the last date prescribed for filing the notice, return or application or for making the payment. The date affixed on an envelope by a postage meter stamp will be considered the postmark date if it is not superseded by a postmark made by the United States postal service. If the postmark does not bear a date on or before the last date prescribed for filing the notice, return or application, or for making the payment, the notice, return, application or payment will be presumed to be late. Accordingly, the sender who relies upon the applicability of Section 7-1-9 NMSA 1978 assumes the responsibility that the postmark will bear a date on or before the last date prescribed for filing the notice, return or application, or for making the payment.

(2) If a mailing is not received by the department, the contents of the mailing are not timely. If an envelope is improperly addressed and is returned to the sender by

the post office, there has been no timely mailing within the meaning of the statute. The postmark date on the improperly addressed envelope will not be deemed the date of receipt by the department.

(3) A facsimile transmittal of a notice, return or application will be considered a timely filing of the notice, return or application only if:

(a) the facsimile is received by the due date for filing the notice, return or application; and

(b) the original is delivered by the due date or, if mailed, postmarked on or before the due date.

D. ILLEGIBLE POSTMARK:

(1) If the postmark on the envelope is not legible and the contents are received by the department by the second business day following the due date, filing of the return, payment or other action will be deemed timely. If the contents are received by the department after the second business day following the due date, the person who is required to file notices, returns or applications, or make payments, has the burden of proving the time when the postmark was made.

(2) The provisions of Subsection D of 3.1.4.10 NMAC apply only to actions required or permitted to be performed by mail.

(3) If the notice, return, application or payment other than payments specified by Section 7-1-13.1 NMSA 1978 is sent or delivered to the department by any means other than by mailing with the United States postal service, it must be received by the department on or before the due date for filing the notice, return or application or making the payment.

E. SATURDAY, SUNDAY OR HOLIDAY DUE DATE:

(1) If the last date for filing notices, returns or applications or for making payment of taxes falls on Saturday, Sunday or a state of New Mexico or national holiday, the filing of notices, returns and applications or the making of the payment of taxes, other than payments specified by Section 7-1-13.1 NMSA 1978, shall be considered timely if postmarked on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

(2) Example: The due date for taxpayers to file gross receipts tax returns for April receipts is May 25. If May 25th is a Saturday and the following Monday is Memorial Day, a legal holiday designated in Section 12-5-2 NMSA 1978, the due date for filing the gross receipts tax returns is Tuesday, May 28th. The first banking day preceding Tuesday, May 28th is Friday, May 24th.

F. STATE OBSERVANCE OF STATE HOLIDAY ON DAY OTHER THAN THAT DESIGNATED FOR PUBLIC OBSERVANCE:

(1) Whenever the New Mexico state government and its employees are directed by competent authority to observe a state legal public holiday on a day other than that specified in Section 12-5-2 NMSA 1978 for that holiday, the day upon which the holiday is observed by the New Mexico state government is deemed to be a "legal state holiday" for the purposes of the Tax Administration Act.

(2) Example: Section 12-5-2 NMSA 1978 designates the third Monday in February as a legal holiday, President's Day. Traditionally, state offices are open on the third Monday in February and the holiday is observed by state government on the Friday following Thanksgiving. Accordingly, when state government is closed on the Friday after Thanksgiving in a delayed observance of President's Day, the due date for any notices, returns, applications or payments to be made by taxpayers on the Friday after Thanksgiving is the following Monday. For purposes of making payment of tax in accordance with Section 7-1-13.1 NMSA 1978 in this situation, the first banking day preceding the due date is the Friday after Thanksgiving. Because the third Monday in February is observed by the United States postal service and by the national banks, any notices, returns, applications or payments to be made by taxpayers on that date are due the following day, even though state offices are open on President's Day.

G. "RECEIVED BY THE DEPARTMENT" DEFINED:

(1) Unless the secretary by instruction or other directive permits or requires otherwise, "received by the department" for the purposes of Section 7-1-13.1 NMSA 1978 means received at the Santa Fe headquarters of the department during the department's normal business hours.

(2) The secretary through instruction or other directive may permit or require payment by check of taxes subject to the provisions of Section 7-1-13.1 NMSA 1978 at any other location of the department or at the location of the state fiscal agent or other agent of the department or during times other than normal business hours of the department. When the secretary has so permitted or required payment by check at such locations or times, "received by the department" for the purposes of Section 7-1-13.1 NMSA 1978 includes such locations or times.

H. "BANKING DAY" DEFINED:

(1) A banking day is a day which is not a Saturday, Sunday, national bank holiday or a day deemed by regulation of the secretary to be a state legal holiday for purposes of making payment under Subsection 7-1-13.1B NMSA 1978.

(2) Examples:

(a) When Memorial Day falls on Monday, May 27th, the preceding banking day is Friday, May 24th.

(b) The Wednesday immediately prior to Thanksgiving is the first banking day preceding Thanksgiving.

I. TIMELINESS OF ELECTRONIC PAYMENTS:

(1) Payments, other than payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by electronic payment, are timely if the payment is electronically transmitted to the department and accepted, on or before the last date prescribed for making the payment. Accordingly, the sender who relies upon the applicability of Section 7-1-13.4 NMSA 1978 assumes the responsibility to provide the department proof that the electronic transmission to the department was initiated on or before the last date prescribed for making the payment.

(2) Payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by electronic payment, are timely if the result of the electronic payment is that the funds are available to the state of New Mexico on or before the last date prescribed for making the payment. The date that an electronic payment was transmitted to the department is not an indicator of whether the payment was timely. The sender who relies upon the applicability of Section 7-1-13.4 NMSA 1978 assumes the responsibility that the funds were available to the department on or before the last date prescribed for making the payment.

[3.1.4.10 NMAC - Rp, 3.1.4.10 NMAC, 7/7/2021]

3.1.4.11 SEMIANNUAL OR QUARTERLY FILING:

A. SEMIANNUAL OR QUARTERLY REPORTING - RESOURCES EXCISE AND SEVERANCE TAXES:

(1) Persons who are liable for reporting taxes under the Resources Excise Tax Act (Sections 7-25-1 to 7-25-9 NMSA 1978) or the Severance Tax Act (Sections 7-26-1 to 7-26-8 NMSA 1978) and whose anticipated aggregate tax liability for both of these taxes is less than $200 a month may report and pay these taxes at quarterly or semiannual intervals if the taxpayer applies for and obtains the prior approval of the secretary or secretary's delegate. The semiannual reporting and payment intervals shall be only for the periods of January through June and July through December of any calendar year and the quarterly intervals shall be only for the three-month periods ending March 31, June 30, September 30 and December 31 of any calendar year.

(2) The taxpayer may not change from one reporting interval to another without the prior written approval of the secretary or secretary's delegate.

(3) As a condition of approving semiannual or quarterly reporting, the secretary may require the posting of a surety bond or other acceptable security in an appropriate amount payable to the state of New Mexico guaranteeing payment to the state of New Mexico of the taxpayer's tax liability under the Resources Excise Tax Act or Severance Tax Act.

B. SEMIANNUAL OR QUARTERLY REPORTING - CRS LIABILITY:

(1) Any taxpayer with an anticipated CRS liability of less than $200 per month may report and pay these taxes at quarterly or semiannual intervals if the taxpayer applies for and obtains the prior approval of the secretary or secretary's delegate. Prior approval is also required when a taxpayer, having received permission to file on a quarterly or semiannual basis, wishes to change from quarterly to semiannual or semiannual to quarterly. Quarterly reporting and payment intervals shall be only the three-month periods ending March 31, June 30, September 30 and December 31. Semiannual reporting and payment intervals shall be only for the reporting periods of January through June and July through December. Approval, once granted, applies only so long as the taxpayer's actual average liability for the reporting periods does not exceed $200 per month.

(2) Any taxpayer who is registered to report and pay on a quarterly or semiannual basis and who subsequently has an average CRS liability over any one-year period of two hundred dollars or more per month must report and pay on a monthly basis, beginning with the first month following the close of the last quarterly or semi-annual reporting period within that year. In addition, when the department, upon examination of its records, discovers a taxpayer who is registered to report and pay on a quarterly or semiannual basis but who has an average monthly CRS liability of two hundred dollars or more over a one-year period may withdraw its approval and require the taxpayer to report and pay on a monthly basis, beginning with a month selected by the department.

(3) The secretary shall furnish the necessary forms to apply for filing tax returns at semiannual or quarterly intervals and to change the reporting interval. A taxpayer may change from quarterly or semiannual intervals to monthly without prior approval of the secretary or the secretary's delegate if the taxpayer begins monthly reporting with the first month following the end of a quarter or semiannual period.

(4) Except as otherwise provided in Paragraphs (2) and (3) of Subsection B of 3.1.4.11 NMAC, the taxpayer may not change from one reporting interval to another without the prior written approval of the secretary or secretary's delegate.

(5) As a condition of approving semiannual or quarterly reporting, the secretary may require the posting of a surety bond or other acceptable security in an appropriate amount payable to the state of New Mexico guaranteeing payment to the state of New Mexico of the taxpayer's CRS liability.

C. QUARTERLY OR SEMIANNUAL REPORTING - WATER CONSERVATION FEE:

(1) Persons who are liable for reporting the water conservation fee under Section 74-1-13 NMSA 1978 and whose anticipated aggregate liability for the fee is less than $200 a month may report and pay this fee at quarterly or semiannual intervals if the taxpayer applies for and obtains the prior approval of the secretary or the secretary's delegate. The semiannual reporting and payment intervals shall be only for the periods of January through June and July through December of any calendar year. The quarterly reporting and payment intervals shall be only for the three-month periods ending March 31, June 30, September 30 and December 31 of any calendar year.

(2) Persons who are liable for reporting the water conservation fee may not change from one reporting interval to another without the prior written approval of the secretary or the secretary's delegate except that the person may change without prior approval from quarterly or semiannual reporting to monthly if the person begins the monthly reporting with either the January or July reporting period.

(3) As a condition of approving quarterly or semiannual reporting, the secretary or the secretary's delegate may require the posting of a security bond or other acceptable security in an appropriate amount payable to the state of New Mexico guaranteeing payment to the state of New Mexico of the person's water conservation fee liability.

D. FILING PERIODS FOR ALTERNATIVE FUEL TAX DISTRIBUTORS:

(1) In anticipation that distributors who are required to file and pay the alternative fuel excise tax will have a tax liability of less than $200 per month, distributors are authorized to report and pay this tax on a quarterly basis without advance approval of the secretary. The quarterly reporting and payment intervals shall only be for the three-month periods ending March 31, June 30, September 30 and December 31.

(2) After December 31, 1996, any distributor reporting and paying on a quarterly basis whose alternative fuel excise tax liability averages more than $200 per month during a calendar quarter will be required to report and pay alternative fuel excise tax on a monthly basis. After December 31, 1996, any distributor reporting on a monthly basis but whose alternative fuel tax liability is less than $200 per month may report and pay the alternative fuel excise tax on a quarterly basis if the distributor obtains the prior approval of the secretary or the secretary's delegate.

(3) This regulation is retroactively applicable to tax periods beginning on or after January 1, 1996.

E. QUARTERLY REPORTING - WITHHOLDING BY FEDERAL AGENCIES: Agencies of the federal government responsible for withholding and

paying over state taxes pursuant to federal law, the Withholding Tax Act or any voluntary agreement between the agency and federal employees or retired federal employees may report and pay on a quarterly basis, regardless of the dollar limitation set in Section 7-1-15 NMSA 1978 because of the provisions of the Constitution of the United States.

[3.1.4.11 NMAC - Rp, 3.1.4.11 NMAC, 7/7/2021]

3.1.4.12 EXTENSIONS:

A. GOOD CAUSE FOR EXTENSIONS:

(1) "Good cause" for which the secretary or secretary's delegate may grant extensions is construed strictly. Such extensions for no more than a total of 12 months will be granted only in situations in which the taxpayer shows a good faith effort to comply with the statute.

(2) Example 1: If the taxpayer operates a multistate business and the filing of returns for New Mexico taxes at the statutory due date would cause the taxpayer unreasonable bookwork and recordkeeping, an extension will be given favorable consideration by the secretary or secretary's delegate.

(3) Example 2: If the taxpayer is temporarily disabled because of injury or prolonged illness and the taxpayer can show that the taxpayer is unable to procure the services of a person to complete the taxpayer's return, an extension will be given favorable consideration.

(4) Example 3: If the conduct of the taxpayer's business has been substantially impaired due to the disability of a principal officer of the taxpayer, physical damage to the taxpayer's business or other similar impairments to the conduct of the taxpayer's business causing the taxpayer an inability to compute taxes before the due date, an extension of time will be given favorable consideration.

(5) Example 4: If the taxpayer's accountant has suddenly died or has become disabled and unable to perform services for the taxpayer and the taxpayer can show that the taxpayer is unable either to complete the return or to procure the services of a person to complete the return before the due date, an extension will be given favorable consideration.

(6) Example 5: If the taxpayer is awaiting the outcome of a court or administrative proceeding or the action of the internal revenue service on a federal tax claim, an extension will be given favorable consideration provided that the extension does not contravene the time limits established by this statute or other New Mexico or federal statute.

B. PROCEDURE FOR OBTAINING EXTENSIONS - PERIOD OF EXTENSION:

(1) The procedures in Subsection B of 3.1.4.12 NMAC apply only to extensions which the applicant must request; these procedures do not apply to automatic extensions under Subsection E of 3.1.4.12 NMAC.

(2) Any taxpayer may request an extension of time in which to file a tax return. Such a request must be in writing and must be received by the department on or before the date that the tax is due. The application for extension must clearly set forth:

(a) the tax or tax return to which the extension, if granted, will apply;

(b) a clear statement of the reasons for the requested extension; and

(c) the signature of the taxpayer or the taxpayer's authorized representative.

(3) The extension will not be granted unless a reason satisfactory to the secretary or secretary's delegate appears in the request.

(4) An approved extension will ordinarily be granted for a period of 30 days. A request for longer extensions must state the reason why the 30 days is insufficient. Additional 30-day extensions or a longer extension may be granted by the secretary or secretary's delegate for up to a maximum aggregate extension of 12 months.

(5) Example 1: P is in the business of preparing tax returns. P realizes that, because of the great volume of business, P will be unable to complete all of P's customers' tax returns before the due date. P submits to the secretary a request for an extension of time on behalf of each customer whose return P is unable to complete. The request will be denied. It is irrelevant to consider whether or not P's request states a good cause because an extension will not be granted unless the taxpayer's personal necessity is the basis of the request. In this case, each of the taxpayers must request an extension and give "good cause" for this privilege.

(6) Example 2: On April 20, 20XX, T is granted a 30-day extension for payment of March, 20XX, taxes due April 25, 20XX. On May 20, 20XX, T, showing good cause, requests a further extension of the March taxes for 12 months. A 12-month extension will not be granted because the payment or filing date for any tax liability may not be extended for more than 12 months after the date on which the taxes were due and no series of extensions exceeding 12 months when aggregated will be granted to any taxpayer. The maximum extension that could be granted to T is until April 25 of the year following 20XX.

C. EXTENSIONS GRANTED WHEN NO LIABILITY HAS ARISEN:

(1) An extension may be granted even though the tax liability has not yet arisen. The following examples illustrate the application of Subsection E of Section 7-1-13 NMSA 1978.

(2) Example 1: B's business is destroyed by flood on June 1, 20XX. B, a cash-basis taxpayer, is expecting to receive payment in July for items sold in May. In June B requests a six-month extension for those taxes for which B will be liable in July and which will become due August 25, 20XX. Upon a showing of good cause, the request may be granted notwithstanding that the liability for the tax has not yet arisen.

(3) Example 2: Under the same facts as in Example 1, in January of the following year, B, showing good cause, requests a further extension of the July, 20XX taxes for a period of nine months to September 25 of the year following 20XX. The nine-month extension will not be granted because the reporting period for any tax liability may not be extended for an aggregate period of more than 12 months after the date the taxes were due. The maximum extension which could have been granted was until August 25 of the year following 20XX.

D. AUTOMATIC EXTENSION FOR REPORT OF FEDERAL FORM 990-T INCOME: A taxpayer who is required to file a New Mexico corporate income and franchise tax return to report taxable income from unrelated activities included in a federal Form 990-T is hereby granted an automatic extension to the 15th day of the fifth month following the close of the taxable year to file a return reporting that income. Interest will accrue during the period of the automatic extension.

E. AUTOMATIC FEDERAL INCOME TAX EXTENSIONS - GENERAL:

(1) An automatic extension of time to file a federal income tax return as provided in the Internal Revenue Code shall be considered to be an approved federal extension of time and shall be sufficient to extend the time for filing the New Mexico income tax return. If it is necessary to submit a form to the internal revenue service to claim an automatic extension for filing the federal income tax return, then a copy of the federal form claiming the automatic extension for federal tax purposes shall be attached to the taxpayer's New Mexico income tax return and shall serve as the basis for extending the time for filing the New Mexico return to the date of filing the federal return under the automatic extension provided by the Internal Revenue Code. If it is not necessary to submit a form to the internal revenue service to claim an automatic extension for filing the federal income tax return, then the due date for filing the New Mexico income tax return shall be extended automatically to the same date as the extension for the federal return unless the federal extended date is more than six months from the original due date, in which case the extended due date for the New Mexico return shall be six months after the original due date.

(2) If the taxpayer desires additional time beyond the automatic extension for filing the New Mexico income tax return, a written request for the additional time must be made by the taxpayer prior to the expiration of the extended federal date. If it is necessary to submit a form to the internal revenue service to claim an automatic extension for filing the federal return, then a copy of the federal form requesting the automatic extension for filing the federal return must accompany the taxpayer's request for additional time to file the New Mexico income tax return beyond the extended federal

date. The total combined extension for filing the New Mexico return shall not exceed 12 months beyond the actual due date for that return.

F. INVALIDATION OF FEDERAL EXTENSION: If an extension of time to file a federal income tax return is invalidated for any reason for federal income tax purposes, it is also invalidated for New Mexico income tax purposes.

G. FAILURE TO FILE, PAY OR PROTEST BY EXTENDED DUE DATE:

(1) The term "extended due date" means:

(a) for income tax returns, the latest date to which the due date for filing the New Mexico income tax return has been extended by either an extension granted by the internal revenue service with respect to the taxpayer's federal income tax return or by an extension granted by the department; and

(b) for all other tax returns, the latest date to which the due date for filing the tax return has been extended by the department.

(2) A taxpayer becomes a delinquent taxpayer if the taxpayer fails by the extended due date either to file the required return and, if a tax is due, to pay the tax due or to protest in accordance with Section 7-1-24 NMSA 1978 the payment or filing requirement.

H. AUTOMATIC EXTENSION FOR CERTAIN INFORMATION RETURNS: The due date for Form 1099-MISC or *pro forma* 1099-MISC information returns that are required to be electronically filed pursuant to 3.3.5.19 NMAC is automatically extended to the first day of April of the year following the year for which the statement is made. This extended due date conforms to the federal due date for electronic filings of Form 1099-MISC.

[3.1.4.12 NMAC - Rp, 3.1.4.12 NMAC, 7/7/2021]

3.1.4.13 REPORTING ACCORDING TO BUSINESS LOCATION (Applicable to periods beginning July 1, 2021):

A. DEFINITIONS: As used in 3.1.4.13 NMAC, these terms have the following definitions:

(1) **"Gross receipts."** Under Section 7-1-14 NMSA 1978, "gross receipts" is defined as that term is used in the Gross Receipts and Compensating Tax Act, the Leased Vehicle Gross Receipts Tax Act, or the Interstate Telecommunications Gross Receipts Tax Act, as applicable. As used in 3.1.4.13 NMAC, the term "gross receipts from" or similar terms indicates that under the applicable tax acts, the gross receipts would be treated as derived from a particular source or characterized as relating to a particular activity such as the lease or property or the sale of services.

(2) **"In-person service."** Under Section 7-1-14 NMSA 1978 "professional service," as defined, "does not include an in-person service." The term "in-person service" means a service physically provided in person by the service provider, where the customer or the customer's real or tangible personal property upon which the service is performed is in the same location as the service provider at the time the service is performed. If the service is not generally provided, or does not generally need to be provided, physically in the presence of or upon the customer or upon the customer's property, it is not an "in-person service" simply because it may be or sometimes is performed in the presence of the customer or at the location of the customer's property.

(a) Examples of services that will generally be treated as in-person services include, but are not limited to:

(i) Services provided by healthcare workers that are generally performed or required to be performed on or in the presence of the patient.

(ii) Mental health services, unless the provider generally provides the particular service either only in-person, or with limited exceptions.

(iii) Services provided by athletic trainers or physical therapists for clients.

(iv) Services provided by barbers and cosmetologists.

(v) Home healthcare services.

(b) Examples of services that will generally not be treated as in-person services include, but are not limited to:

(i) Architectural and engineering services. Note, however, that when performed as part of or billed to a construction project, these services are considered "construction-related services" rather than professional services pursuant to Subsection C of Section 7-9-3.4 NMSA 1978, and the reporting location for gross receipts from these services is the construction site per Paragraph (2) of Subsection F of Section 7-1-14 NMSA 1978.

(ii) Legal services.

(iii) Accounting, auditing, and tax preparation services.

(iv) Real estate appraisal services.

(3) **"Professional service."** The term "professional service" as defined in Section 7-1-14 NMSA 1978 means a service, other than an in-person service or construction-related service, that requires either an advanced degree from an

accredited post-secondary educational institution or a license from the state to perform. As provided in Paragraph (2) of Subsection A of 3.1.4.13 NMAC, just because a service is provided in person by the service provider does not make it an "in-person" service if the service is not generally provided, or does not generally need to be provided, physically in the presence of or upon the customer or upon the customer's property.

(4) **"Reporting location."** 3.1.4.13 NMAC uses the term "reporting location" in place of the term "business location," the term that is used in Sections 7-1-3 and 7-1-14 NMSA 1978 as well as local option taxes to refer to the location code designated by the department and required to be used to report the gross receipts and related deductions subject to gross receipts tax or the value of items whose taxable use is subject to the compensating tax. Like the term "business location," the term "reporting location" refers to the location code and applicable tax rate for reporting gross receipts tax and compensating tax, as designated by the department.

(5) **"Seller's location"** or **"place of performance."** This regulation may use the terms "seller's location" or "place of performance" or similar terms to refer to the general facts that may be essential for determining the reporting location. In general, a seller's location may include a particular building, including a store or office, or other physical location maintained or operated by or for the seller, or used by the seller, where some designated activity giving rise to gross receipts takes place. If the seller uses no such physical location in New Mexico, and if the seller's domicile is not in New Mexico, then the "seller's location" as used in this regulation is deemed to be outside the state.

B. REPORTING ACCORDING TO REPORTING LOCATION - GENERAL:

(1) Reporting location and rate of tax for gross receipts and taxable use. Section 7-1-14 NMSA 1978, amended effective July 1, 2021, determines the proper reporting jurisdiction and rate of tax that apply under the Gross Receipts and Compensating Tax Act, Interstate Telecommunications Gross Receipts Tax Act, Leased Vehicle Gross Receipts Tax Act and any act authorizing the imposition of a local option gross receipts or compensating tax.

(2) Effect of the substantive tax provisions on the rules for reporting location. Unless otherwise indicated, the provisions of 3.1.4.13 NMAC should be read consistently with the provisions of the Gross receipts and Compensating Tax Act, Interstate Telecommunications Gross Receipts Tax Act, Leased Vehicle Gross Receipts Tax Act, as appropriate, and any acts authorizing imposition of local option gross receipts or compensating tax, and any regulations issued under these acts. No provisions of 3.1.4.13 NMAC should be read as subjecting to tax items that are not subject to tax, or excluding from tax items that are subject to tax, under these substantive tax provisions.

(3) State reporting location and application of the state rate. In some cases, taxable gross receipts or the value of items whose taxable use is subject to the

compensating tax may not be required to be reported to a particular reporting location in this state. In those cases, the reporting location is the state reporting location and only the state tax rate will apply.

(a) Example: Gross receipts from a professional service performed outside New Mexico, the product of which is delivered to a New Mexico customer for initial use in the state, are taxable in the state. Because Paragraph (9) of Subsection C of 3.1.4.13 NMAC provides that the reporting location of gross receipts from professional services is the location where the services are performed or sold, the gross receipts would be reported to the reporting location for the state and taxed at the state rate.

(b) Example: A nonresident individual with no regular place of business in the state is hired by an out-of-state seller to represent the seller. In order to perform this service, the individual obtains tangible personal property in a tax-free transaction outside the state, which would have been subject to the gross receipts tax had it been acquired inside the state. After acquiring the property, the individual brings that property into New Mexico, using the property in the service performed at various locations throughout the state. The compensating tax on the value of this property would be reported to the reporting location for the state and taxed at the state rate. See Item (ii) of Subparagraph (e) of Paragraph (5) of Subsection C, and Subsection E of 3.1.4.13 NMAC.

(c) Example: Under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, a seller that does not have access to sufficient information for reporting sales of tangible personal property to the location where the customer receives that property may report to the gross receipts from those sales to the seller’s location. So an out-of-state seller may have certain sales that would be reported to the reporting location for the state and taxed at the state rate. As explained under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, however, sellers who have access to reliable information from which they can determine an estimate of receipts by reporting location must use that information.

(4) Gross receipts tax not required to be charged or collected. Nothing in Section 7-1-14 NMSA 1978 or 3.1.4.13 NMAC requires the person that engages in activity or transactions resulting in taxable gross receipts to charge or collect the tax from purchasers. The gross receipts tax is a tax on the seller and under Section 7-9-6 NMSA 1978, the taxpayer need only affirmatively state on the billing to its purchaser whether gross receipts tax is included in the amount billed. Furthermore, 3.2.6.8 NMAC provides that the amount of gross receipts tax owed may be "backed out" of the total charged to the customer.

(5) Gross receipts of commissioned sales agents versus consignors/consignees and marketplace sellers/providers.

(a) Commissioned sales agents. Under Subparagraph (a) of Paragraph (2) of Subsection A of Section 7-9-3.5 NMSA 1978 and applicable regulations, commissioned

sales agents report only their commission or fee when the property or services which they promote for sale are those of a third party. Under Section 7-1-14 NMSA 1978, the commission is gross receipts from the performance of a service by the sales agent and the reporting location of those receipts is determined in accordance with Paragraph (9) of Subsection C of 3.1.4.13 NMAC.

(b) Gross receipts of consignors/consignees and marketplace sellers/providers. Under Subparagraphs (b) and (g) of Paragraph (2) of Subsection A of Section 7-9-3.5 NMSA 1978 and applicable regulations, the gross receipts and related deductions for sales on consignment and for sales facilitated by marketplace providers are generally defined as all amounts paid or collected from the sale, lease, or licensing of property or services even where a third party consignor or marketplace seller also has gross receipts from selling the related property or service provided. The reporting location of gross receipts and related deductions of the consignor/consignee or the marketplace seller/provider is determined under 3.1.4.13 NMAC as follows:

(i) By looking to the nature of the transaction or activity from which the gross receipts are derived, as though the consignor and consignee, or the marketplace seller and marketplace provider, is each the seller or provider of that transaction or activity to the customer; and, except as provided in Items (ii) and (iii) of this Subparagraph (b), imputing to both parties information known by either party that may be relevant in properly determining the reporting location of the gross receipts.

(ii) In a case where the consignor or marketplace seller may properly claim a deduction under the Gross Receipts and Compensating Tax Act and applicable regulations on account of the transaction with the consignee or marketplace provider, respectively, the consignor or marketplace seller may report these deductions and related gross receipts to the reporting location based on information available to them, without imputing of information known by the consignee or marketplace provider.

(iii) In a case where the marketplace provider, in determining the reporting location of gross receipts reasonably relies on erroneous information provided by the marketplace seller as provided in Subsection C of Section 7-9-5 NMSA 1978, the correct information that may be known to the marketplace seller will not be imputed to the marketplace provider.

(c) Examples:

(i) Commissioned sales agent X works for business y to sell tangible personal property owned by y to customers in New Mexico. Agent X receives a commission based on the amount of the sale made on behalf of business Y to a customer. Business Y will have gross receipts from selling tangible personal property. The reporting location of Y’s gross receipts from the sale of the property is the location of Y’s customer, determined under the provisions of Paragraph (5) of Subsection C of 3.1.4.13 NMAC. Agent X is performing a service sourced under Subparagraph (e) of Paragraph (9) of Subsection C of 3.1.4.13 NMAC. The product of the service performed

by agent X is the completion of the order and sale to a customer of Y's products. Therefore, the reporting location of agent X's gross receipts from commissions paid by Y for services performed is also the location of Y's customer and this location should be determined consistent with the provisions of Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(ii) Same facts as Item (i) of Subparagraph (c) of Paragraph (5) of Subsection B of 3.1.4.13 NMAC, except that, rather than a commissioned sales agent, X is a consignee and Y is a consignor. Under the consignment arrangement, X receives receipts from customers for Y's tangible personal property and agrees to pay Y a portion of those receipts. Under the Gross Receipts and Compensating Tax Act and applicable regulations, both X and Y have gross receipts from selling tangible personal property. The reporting location for the gross receipts and any related deductions of both X and Y is the location of the customer determined under the provisions of Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(iii) Same facts as Item (ii) of Subparagraph (c) of Paragraph (5) of Subsection B of 3.1.4.13 NMAC, except that rather than the consignee/consignor relationship described, X is a marketplace provider and y is a marketplace seller. Under the Gross Receipts and Compensating Tax Act and applicable regulations, both X and Y have gross receipts from selling or facilitating the sale of tangible personal property. The reporting location for the gross receipts and any related deductions of both X and Y is the location of the customer determined under the provisions of Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(iv) Same facts generally as Items (ii) and (iii) of Subparagraph (c) of Paragraph (5) of Subsection B of 3.1.4.13 NMAC. In addition, while the consignee or marketplace provider offers the tangible personal property for sale to the customer and collects the payment, it is the consignor or marketplace seller that ships the tangible personal property to the customer. Information as to the customer's location is imputed to the consignee or marketplace provider when determining reporting location of its gross receipts, but the marketplace provider is also allowed to reasonably rely on information provided by the marketplace seller, even if erroneous, in determining the reporting location.

(v) Same facts generally as Items (ii) and (iii) of Subparagraph (c) of Paragraph (5) of Subsection B of 3.1.4.13 NMAC. In addition, the consignee or marketplace provider offers the tangible personal property for sale to the customer, collects the payment, and also ships the tangible personal property to the customer. The consignor or marketplace seller may report gross receipts for which a proper deduction can be taken on account of the sale by the consignee or marketplace seller based on information known by the consignor or marketplace seller, without imputing information known by the consignee or marketplace provider.

C. GENERAL RULES FOR DETERMINING REPORTING LOCATION:

(1) Meaning of certain terms. Unless otherwise defined in Subsection A of 3.1.4.13 NMAC, Section A or otherwise indicated by the context, the terms used in these rules have the same meaning as under the Gross Receipts and Compensating Tax Act.

(2) Effect of the reporting location. A person that has gross receipts and a person making taxable use of property or services in New Mexico subject to the compensating tax shall report the gross receipts or compensating tax to the proper reporting location as provided in this section. The gross receipts and compensating taxes imposed by the Gross Receipts and Compensating Tax Act may include both a state rate of tax as well as applicable local option rates authorized by state law and imposed by county and municipal governments. The reporting location, as that term is used in 3.1.4.13 NMAC, determines the local jurisdiction to which the tax will be reported as well as the gross receipts or compensating tax rate that applies.

(3) Reporting to multiple locations. Any person that must report gross receipts or taxable use of items to more than one reporting location under one identification number is required to report gross receipts, deductions, and the value of items used for each location on the tax return and in accordance with the reporting location codes as designated by the Secretary under Section 7-1-14 NMSA 1978 and 3.1.4.13 NMAC.

(4) Gross receipts from transactions involving real property. If the gross receipts are from the sale, lease or granting of a license to use real property located in New Mexico, then the reporting location for those gross receipts and any related deductions is the location of the real property.

(5) Gross receipts from sale or license of tangible personal property and from certain licenses and other services. If the gross receipts are from the sale or license of tangible personal property, or if the receipts are from activity described in Subparagraph (e) of Paragraph (9) or Paragraph (6) of Subsection C, of 3.1.4.13 NMAC the reporting location for the gross receipts and related deductions is determined as follows:

(a) If the gross receipts are from the property or the product of a service that is delivered by the seller and received by the purchaser from the seller at the seller’s location, then the reporting location of the gross receipts and any related deductions, is the seller’s location.

(b) If the gross receipts are from property or the product of a service that is not delivered by the seller and received by the purchaser at the seller’s location as described in Subparagraph (a) of Paragraph (5) of Section C of 3.1.4.13 NMAC, the reporting location is the location indicated by instructions for delivery to the purchaser, or the purchaser’s donee, when known to the seller.

(c) If Subparagraphs (a) and (b) do not apply, the reporting location is the location indicated by an address for the purchaser available from the business records

of the seller that are maintained in the ordinary course of business; provided that use of the address does not constitute bad faith.

(d) If Subparagraphs (a) through (c) do not apply, the reporting location is the location for the purchaser obtained during consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available; provided that use of this address does not constitute bad faith.

(e) If Subparagraphs (a) through (d) do not apply, including a circumstance in which the seller is without sufficient information to apply those provisions, then the reporting location for the gross receipts and related deductions is the location from which the property or product of the service was shipped or transmitted to the purchaser.

(i) Except as provided in provision in Item (ii) of Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC below, the seller is not considered to be without sufficient information to apply provisions of Subparagraphs (a) through (d) if it obtains or has access to sufficient information at the time of the sale, or subsequently, but simply fails to maintain that information in its records; or it has access to sufficient information from other reliable sources to make a reasonable estimate of the reporting location under Subsection F of this regulation at the time the gross receipts are required to be reported. Examples of information from other reliable sources includes population or market-penetration information that may be used to develop a reasonable estimate of the location of consumers of certain products.

(ii) If gross receipts are derived from a single sale or transaction where the property or the product of a service provided is determined to be delivered simultaneously at multiple locations throughout the state, the seller is deemed not to have sufficient information to determine the reporting location under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(iii) Example: Company X provides an advertising service to Customer Y that will be distributed or displayed to persons in New Mexico through general access to particular media. The product of the advertising service is delivered to the location of the person accessing or viewing the advertising. Under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, the reporting location of the gross receipts and related deductions from this service is the location of Company X as determined by the location from which the advertising service was primarily provided.

(iv) Example: Company x provides customer Y with a license to use digital goods by customer Y at various locations throughout the state. The license is delivered to customer Y throughout the state. Under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, the reporting location of the gross receipts and related deductions of company X from providing the license to use digital goods is the location of company X as determined by the location from which the digital goods were primarily provided. A person may report different gross receipts and deductions to

different reporting locations under the rules of this Paragraph (5) of Subsection C of 3.1.4.13 NMAC, as applicable.

(v) Example: Company X provides a digital advertising service to customer Y that can be viewed in New Mexico, and is intended to be viewed only in New Mexico, through access to company X's digital platform, as that term is defined in Subsection D of 3.2.213.13 NMAC. The product of the digital advertising service is delivered to the locations of all persons in New Mexico viewing or accessing the advertising. Under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, the reporting location of the gross receipts and related deductions from this service is the location of company X as being the location from which the product of the digital advertising service was transmitted to the purchaser.

(6) If the gross receipts are from the sale of a license of digital goods, or any other sale of a license not otherwise specifically addressed in these regulations, the reporting location of the gross receipts and related deductions is determined consistent with Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(7) If the gross receipts are from the lease of tangible personal property, including vehicles, other transportation equipment, and other mobile tangible personal property, then the reporting location for the gross receipts any related deductions is the location of primary use of the property, as indicated by the address for the property provided by the lessee that is available to the lessor from the lessor's records maintained in the ordinary course of business; provided that use of this address does not constitute bad faith. The primary reporting location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(8) If the gross receipts are from the sale, lease or license of franchises, then the reporting location for the gross receipts and any related deductions is where the franchise is used. The location where the franchise is used may be determined from the franchise agreement or from other facts and circumstances related to the exercise of the franchise.

(9) The reporting location of gross receipts and related deductions from the sale of services is determined as follows:

(a) If the gross receipts are from professional services, whether performed in New Mexico or performed outside the state where the product of the service is initially used in New Mexico, the reporting location of the gross receipts and related deductions is the location of the performance of the service. Gross receipts from a service performed outside the state that are taxable in New Mexico because the buyer makes initial use of the product of the service in this state are reported to the state reporting location and taxed at the state rate.

(b) If the gross receipts are from construction services and construction-related services, as those terms are defined under the Gross Receipts and Compensating Tax Act and applicable regulations, performed for a construction project in New Mexico, the reporting location of the gross receipts and related deductions is the location of the construction site.

(c) If the gross receipts are from the service of selling of real estate located in New Mexico, the reporting location of the gross receipts and related deductions is the location of the real estate.

(d) If the gross receipts are from transportation of persons or property in, into or from New Mexico, the reporting location of the gross receipts and related deductions is the location of where the person or property enters the vehicle.

(e) If the gross receipts are from services other than those described in Subparagraphs (a) through (d) of Paragraph (9) of Section C of 3.1.4.13 NMAC, including in-person services, the reporting location of those gross receipts and related deductions is the location where the product of the service is delivered. In general, the location of delivery of the product of the service is determined under rules consistent with Paragraph (5) of Subsection C of 3.1.4.13 NMAC. The "product of the service" is determined under applicable provisions of the Gross Receipts and Compensating Tax Act and related regulations.

(i) Advertising services. An advertising service involves an agreement with a client to communicate or to place advertisements before an intended audience, on behalf of the client. The product of an advertising service is the ad which is capable of being heard or viewed by the intended audience. The reporting location for gross receipts from an advertising service is determined under Paragraph (5) of Subsection C of 3.1.4.13 NMAC based on delivery of the product of the service, which is the location where the ad may be heard or seen by the intended audience.

(ii) Services ancillary to advertising. Services ancillary to advertising include design of the advertisement, creation of data processing or information technology to capture of customer related information, etc., which the seller may treat as a separate service under Section D of 3.1.4.13 NMAC and which are provided to a client. The reporting location of gross receipts from a service ancillary to advertising under Paragraph (5) of Subsection C of 3.1.4.13 NMAC depends on the product of the service and where it is delivered, but will generally be the location of delivery of that product of the service to the client.

(f) The reporting location of gross receipts from in-person services is the location of the performance of the service, which is also the location of the customer or the customer’s property on which the service is performed.

D. MIXED TRANSACTIONS: Where a single transaction gives rise to gross receipts that would have different reporting locations under Paragraphs (4) through (9) of

Subsection C of 3.1.4.13 NMAC if they were provided to the customer in the form of separate transactions, the reporting location for those gross receipts shall be determined as follows:

(1) If the billing to the customer does not break out the charges for the separate items, then the reporting location will be determined based on how the gross receipts for the transaction would be treated under the Gross Receipts and Compensating Tax Act and applicable regulations, and applying Paragraphs (4) through (9) of Subsection C of 3.1.4.13 NMAC.

(2) If the billing to the customer breaks out the separate charges for the items and one or more items would be treated as incidental charge or an element of the sales price of other items under the Gross Receipts and Compensating Tax Act and applicable regulations, then the reporting location of those incidental receipts will be the reporting location as determined for the gross receipts from the remaining related item or items.

(3) If the billing to the customer breaks out the separate charges for the items and one or more items would not be treated as an incidental charge or an element of the sales price of other items under the Gross Receipts and Compensating Tax Act, and if the reporting location for the gross receipts from two or more such items would be different under Paragraphs (4) through (9) of Subsection C of 3.1.4.13 NMAC, then the gross receipts and related deductions reported to each reporting location will be determined as follows:

(a) the separate gross receipts for each item will be reported to the separate reporting locations, based on the separate charges in the bill to the customer; or

(b) all of the gross receipts may be reported to the single reporting location properly determined for the item or items from which the majority of the gross receipts result as properly determined under Subsection C of 3.1.4.13 NMAC.

(4) Example: Taxpayer sells a professional service along with tangible personal property delivered to the buyer. The billing to the buyer includes a separate charge of $100 for the service, $100 for the tangible personal property, and $5 for shipping. Assume that under the Gross Receipts and Compensating Tax Act and applicable regulations, the taxpayer would be treated as having $100 of gross receipts from the sale of a service and $105 (the charge for the property and the incidental charge for shipping) from the sale of tangible personal property. Assume also that the reporting location of the gross receipts from the sale of the service under 3.1.4.13 NMAC is the location where the service is performed but the reporting location for the gross receipts from the sale of the tangible personal property is the location of the delivery to the customer. The taxpayer may report the gross receipts from the service to the reporting location as properly determined under Subparagraph (a) of Paragraph (9) of Subsection C of 3.1.4.13 NMAC and the gross receipts from the sale of property to the reporting location as properly determined under Subparagraphs (b) through (d) of

Paragraph (5) of Subsection C of 3.1.4.13 NMAC. Alternatively, the taxpayer may report all of the gross receipts to the reporting location as determined for the sale of the property.

E. REPORTING LOCATION FOR COMPENSATING TAX:

(1) Except as provided in Paragraphs (2) and (3) of Subsection E of 3.1.4.13 NMAC, the value of an item that is subject to compensating tax under Section 7-9-7 NMSA 1978 is generally reported to the same reporting location to which gross receipts from the transaction in which the item was acquired would have been reported under Subsections C or D of 3.1.4.13 NMAC, had the transaction been subject to gross receipts tax. In applying Subsections C or D to determine the reporting location to report the value of items for compensating tax, the taxpayer should assume that the person providing those items would have had information on the taxpayer's location at the time of the transaction.

(2) In the case of an individual who owes compensating tax for non-business use of items acquired in a transaction with a person that did not have nexus in New Mexico, the reporting location for reporting that compensating tax is the individual's residence or primary place of abode in the state at the time of the transaction.

(3) In the following cases, the reporting location for reporting compensating tax on purchases, other than professional services, is the location of first use in the state:

(a) purchases made by a business that were not subject to the gross receipts tax solely because they were made outside the state, where the later use inside New Mexico is subject to the compensating tax; or

(b) where the taxpayer has information that can show that first use upon which compensating tax is imposed occurred at a different time and place than would be determined under Paragraphs (1) or (2) of Subsection G of 3.1.4.13 NMAC.

(4) Examples:

(a) A business acquires tangible personal property in a transaction with a person that lacks nexus in New Mexico. The business uses the property in a manner that would have rendered the transaction subject to the gross receipts tax, had the person had nexus. The reporting location for purposes of reporting the compensating tax is the reporting location to which the gross receipts would have been reported by the person if the person had had nexus and assuming, for this purpose, that the person would have had information on the location of the business that acquired the property.

(b) A business with offices both inside and outside New Mexico purchases tangible personal property at its office outside the state and later ships that property to its New Mexico office for use. The use of the property in New Mexico was such that the

property would have been subject to the gross receipts tax had it been acquired in New Mexico. The reporting location for purposes of reporting the compensating tax is the office in New Mexico at which the property is first used.

(c) A business purchases tangible personal property for resale from a New Mexico seller and takes delivery of that property at the seller's place of business in Location X, using a nontaxable transaction certificate to purchase the property tax-free. Subsequent to the purchase, the business uses the property, rather than reselling it, at its own place of business in location Y. The reporting location for purposes of reporting the compensating tax is location Y.

(d) A business with offices both inside and outside New Mexico obtains a license to use digital goods which will be used at its offices inside and outside the state. In the transaction with the provider of the license, the provider knows only the purchaser's out-of-state office and conducts the transaction with that office. The reporting location for the portion of the value of the license used in New Mexico is the location of the office in New Mexico.

(e) A business purchases a service from an out-of-state person who lacks nexus in New Mexico. The product of the service is initially used in New Mexico. The reporting location of the value of the service for purpose of compensating tax is the location of the initial use by the business in New Mexico.

(f) A nonresident individual with a place of abode in New Mexico purchases tangible personal property for use in New Mexico from a seller who lacks nexus in New Mexico. The transaction would not otherwise be exempt or deductible from gross receipts tax had it occurred in New Mexico. The reporting location of the compensating tax owed by the individual is that individual's place of abode.

F. USE OF REASONABLE ESTIMATES:

(1) Use of reasonable estimates allowed. Where a person subject to the gross receipts or compensating tax maintains records or has access to other reliable information that would allow that person to determine or estimate the reporting location for those gross receipts or the compensating tax under the rules of Subsections C and D of 3.1.4.13 NMAC, those records or other information may be used to establish reasonable estimates of the amounts reported to be reported by reporting location. Provided that the taxpayer's reporting of gross receipts or compensating tax otherwise complies with provisions of the Gross Receipts and Compensating Tax Act and applicable regulations, the department will not assess the taxpayer for additional tax if the taxpayer uses reasonable estimates, applied consistently and in good faith to determine the reporting location, so long as there is no obvious distortion. Obvious distortion shall be presumed whenever the method used to estimate the reporting location treats similar transactions inconsistently. Any method which intentionally credits sales to a location with a lower combined tax rate primarily for the purpose of reducing the taxpayer's total tax liability shall be presumed to contain obvious distortion.

(2) Use of reasonable estimates required. Where a person has gross receipts that would generally be sourced under the rules of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, and where the person has records or information that would allow a reasonable estimate of the reporting location of those receipts applying Subparagraphs (a) through (d) of Paragraph (5) of Section C of 3.1.4.13 NMAC, the taxpayer shall use a reasonable estimate before applying Subparagraph (e) of Paragraph (5) of Section C of 3.1.4.13 NMAC.

G. REPORTING LOCATION - RECEIPTS SUBJECT TO THE INTERSTATE TELECOMMUNICATIONS GROSS RECEIPTS TAX:

Notwithstanding anything in Section 7-1-14 NMSA 1978, or provisions of 3.1.4.13 NMAC, the reporting location for gross receipts subject to the interstate telecommunications gross receipts tax is the state location and rate. The following telecommunications services are subject to the tax:

(1) interstate telecommunications services (other than mobile telecommunications services) that originate or terminate in New Mexico and are charged to a telephone number or account in New Mexico; and

(2) mobile telecommunications services that originate in one state and terminate in any location outside it, to a customer with a place of primary use in New Mexico as defined under Subsection E of Section 7-9C-2 NMSA 1978.

H. TRANSACTIONS ON TRIBAL TERRITORY: A person selling or delivering goods or performing services on the tribal land of a tribe or pueblo that has entered into a gross receipts tax cooperative agreement with the state of New Mexico pursuant to Section 9-11-12.1 NMSA 1978 is required to report those receipts based on the tribal location of the sale or delivery of the goods or performance of the service.

[3.1.4.13 NMAC - Rp, 3.1.4.13 NMAC, 7/7/2021; A, 12/19/2023]

3.1.4.14 PRESCRIBED FORMAT OF NON-PAPER RETURNS MUST BE FOLLOWED:

Whenever the secretary permits or requires returns to be filed electronically or in electromagnetic media, such as tapes or disks, the return information must be in the format prescribed by the department. Failure to follow the prescribed format may result in non-acceptance of an attempted filing. If a return is not accepted because of formatting errors and re-submission of the return occurs after the due date, the return has not been timely filed.

[3.1.4.14 NMAC - Rp, 3.1.4.14 NMAC, 7/7/2021]

3.1.4.15 REPORTING PERIOD - PERMISSION REQUIRED FOR USE OF NON-STANDARD "MONTH":

For purposes of reporting taxes due on a monthly basis, the reporting period is a calendar month unless the taxpayer has obtained the secretary's permission to use another period, such as reporting based on standardized calendar quarters of 4 weeks, 4 weeks and 5 weeks or thirteen months of 4 weeks. Because of complications introduced by deviations from the calendar month reporting, the secretary may require substantial justification before approving any significant departure from the calendar month reporting cycle.

[3.1.4.15 NMAC - Rp, 3.1.4.15 NMAC, 7/7/2021]

3.1.4.16 PRIVATE DELIVERY SERVICE POSTMARKS:

Delivery to a private delivery service designated by the secretary of the treasury under 26 USCA 7502 during the time the designation is in effect will be considered a timely mailing for purposes of the Tax Administration Act if the date recorded or marked by the private delivery service is on or before the date by which mailing is required. Section 3.1.4.16 NMAC applies to deliveries to a designated private delivery service after June 30, 1999.

[3.1.4.16 NMAC - Rp, 3.1.4.16 NMAC, 7/7/2021]

3.1.4.17 APPROVED ELECTRONIC MEDIA:

Department approved electronic media includes an electronic transmission of the personal income tax return data submitted in an approved format using a computer language designated by the department.

[3.1.4.17 NMAC - Rp, 3.1.4.17 NMAC, 7/7/2021]

3.1.4.18 ELECTRONIC FILING:

A. This regulation is adopted pursuant to the secretary’s authority in Section 9-11-6.4 NMSA 1978.

B. The secretary or secretary delegate will publish on the department’s public website a full list of all tax programs that have an electronic filing or payment mandate. This website will also include information on how to obtain an electronic filing or payment exception or waiver.

C. Once a taxpayer is required to file returns or make payments electronically pursuant to this regulation, the taxpayer may not file future returns or make future payments by mail or any method other than electronically unless they receive an exception or waiver. An exception or a waiver may be granted if the taxpayer has shown a good faith attempt to comply with the electronic filing and payment requirements but is unable to do so due to a reason listed in Subsections D or E below. If a taxpayer is granted an exception or, the taxpayer must file a paper return and make a payment by the due date unless an extension pursuant to 3.1.4.12 NMAC has been

granted. If a return is not filed and a payment is not made timely, interest will be due, and penalty may be due.

D. A taxpayer may request in writing an exception to the requirement of electronic filing or making electronic payments for a year at a time. The request must be on the form prescribed by the department and must be received by the department at least 30 days before the taxpayer's electronic return or payment is due. An exception may be granted for the following reasons.

(1) if the taxpayer shows a hardship including but not limited to no reasonable access to internet in the taxpayer's community;

(2) if the taxpayer does not have reasonable access to a computer or technology required to electronically file;

(3) if the taxpayer does not have the knowledge or expertise to file a return electronically; or

(4) if the taxpayer is unable to utilize technology or the internet for religious reasons.

E. A taxpayer may request in writing a waiver to the requirement of electronic filing for a single tax return or for a single payment. The request for a waiver must be on a form prescribed by the department and received by the department on or before the date that the tax return is due. A waiver may be granted for the following reasons:

(1) if the taxpayer is temporarily disabled because of injury or prolonged illness and the taxpayer can show that the taxpayer is unable to procure the services of a person to complete and file the taxpayer's return electronically or make the necessary payment electronically.

(2) if the conduct of the taxpayer's business has been substantially impaired due to the disability of a principal officer of the taxpayer, physical damage to the taxpayer's business or other similar impairments to the conduct of the taxpayer's business causing the taxpayer an inability to electronically file or pay;

(3) if the taxpayer's accountant, agent, or employee who routinely electronically files for taxpayer has suddenly died, has become disabled, or sick and is unable to perform services for the taxpayer and the taxpayer can show that the taxpayer is unable either to electronically file the return, electronically pay the tax due or to procure the services of a person to electronically file the return or make the electronic payment before the due date; or

(4) if the taxpayer's accountant, agent, or employee who routinely electronically files for taxpayer is no longer employed with the taxpayer and the

taxpayer has been unable to gain access to their method of electronically filing and making payment of tax due in time to file electronically before the due date.

[3.1.4.18 NMAC - Rp, 3.1.4.18 NMAC, 7/7/2021, A; 5/24/2022]

3.1.4.19 [RESERVED]

[3.1.4.19 NMAC - Rp, 3.1.4.19 NMAC, 7/7/2021; Repealed, 5/24/2022]

PART 5: RECORDS

3.1.5.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[10/31/96; 3.1.5.1 NMAC - Rn, 3 NMAC 1.5.1, 12/29/00]

3.1.5.2 SCOPE:

This part applies to all taxpayers, their agents and representatives and all persons required to submit a return or information to the taxation and revenue department under any tax, tax act or other law administered and enforced pursuant to the Tax Administration Act.

[10/31/96; 3.1.5.2 NMAC - Rn, 3 NMAC 1.5.2, 12/29/00]

3.1.5.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[10/31/96; 3.1.5.3 NMAC - Rn, 3 NMAC 1.5.3, 12/29/00]

3.1.5.4 DURATION:

Permanent.

[10/31/96; 3.1.5.4 NMAC - Rn, 3 NMAC 1.5.4, 12/29/00]

3.1.5.5 EFFECTIVE DATE:

10/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[10/31/96; 3.1.5.5 NMAC - Rn & A, 3 NMAC 1.5.5, 12/29/00]

3.1.5.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Tax Administration Act.

[10/31/96; 3.1.5.6 NMAC - Rn, 3 NMAC 1.5.6, 12/29/00]

3.1.5.7 DEFINITIONS:

Reserved.

[10/31/96; 3.1.5.7 NMAC - Rn, 3 NMAC 1.5.7, 12/29/00]

3.1.5.8 SUFFICIENCY OF RECORDS:

A. Books of account, documents and other records shall be kept and maintained by a taxpayer in a manner that will permit the accurate computation of state taxes and provide information required by the statutes under which the taxpayer is required to keep records. The Tax Administration Act sets no time requirement for taxpayer retention of books of account or other records but Section 7-1-18 NMSA 1978 sets the statute of limitations for the assessing of tax asserted to be due. If state taxes cannot be accurately or readily computed by the secretary or secretary's delegate from the records, the records are not sufficient or adequate for the purpose of Section 7-1-10 NMSA 1978. The adequacy or inadequacy of taxpayer records is a matter of fact to be determined by the secretary or secretary's delegate. Taxpayers have a duty to provide the secretary or secretary's delegate, upon request, with books of account and other records upon which to establish a basis for taxation.

B. Failure of a taxpayer to keep adequate books of account or other records will cause the department to use alternative methods to determine or estimate taxes due.

C. Alternative methods which may be used by the department include, but are not limited to:

(1) bank deposit method;

(2) documents and records of persons other than the taxpayer;

(3) federal returns and other government reports;

(4) cost of sales markup -- weighted percentage;

(5) net worth analysis;

(6) industry comparison; and

(7) provisional assessment of taxes based on best available information and allowing for any increase which may have occurred due to inflation, increased economic activity or other reasons.

D. Any one, or a combination, of the methods listed above or other methods may be used for taxpayer records reconstruction or verification.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.5.8 NMAC - Rn & A, 3 NMAC 1.5.8, 12/29/00]

3.1.5.9 RECORDS RECONSTRUCTION:

A. The secretary or secretary's delegate is authorized to reconstruct records of a person to establish or determine the extent of tax liability. The nonexistence or inadequacy of the records, for whatever reason, is the pertinent fact permitting reconstruction.

B. Example: A taxpayer's records for one audit year were destroyed accidentally. The department auditor is permitted to use the bank deposit method to reconstruct sales and income for that year.

[11/5/85, 8/15/90, 10/31/96; 3.1.5.9 NMAC - Rn, 3 NMAC 1.5.9, 12/29/00]

3.1.5.10 CONSISTENCY IN METHOD OF ACCOUNTING:

The method of accounting used by taxpayers for state tax computation or for accumulating information required by state tax statutes shall be consistent for the same business. There is no requirement that the method of accounting for one type of state tax be the same method of accounting for another type of state tax. For example, a taxpayer may account for and report the taxpayer's gross receipts tax on the cash basis, while accounting for and reporting the taxpayer's income tax on an accrual basis. But a taxpayer may not account for and report January's gross receipts on the cash accounting method, and then account for and report February's gross receipts on the accrual accounting method without first securing the consent of the secretary or secretary's delegate.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.5.10 NMAC - Rn, 3 NMAC 1.5.10, 12/29/00]

3.1.5.11 ACCOUNTING FOR GOVERNMENTAL GROSS RECEIPTS TAX:

Agencies, institutions, instrumentalities and political subdivisions of the state of New Mexico which are subject to the governmental gross receipts tax may treat different taxable activities as different lines of business. Accordingly, one or more activities may be accounted for and reported on a cash basis and one or more other activities may be accounted for and reported on an accrual or modified accrual basis. Once the cash basis, accrual or modified accrual basis has been selected as the method of accounting for and reporting receipts from a particular activity, the activity must continue to be

accounted for and reported on the same basis in subsequent periods unless prior permission is received from the department to change the method of accounting or reporting.

[9/17/91, 10/31/96; 3.1.5.11 NMAC - Rn, 3 NMAC 1.5.11, 12/29/00]

3.1.5.12 RECORDS INCLUDE GOVERNMENTAL RETURNS, DOCUMENTS, REPORTS:

AND OTHER ATTACHMENTS: For the purpose of inspection or audit of taxpayers' records and books of account by the secretary or secretary's delegate, "records" shall include, but not be restricted to, all copies of returns or reports filed by taxpayers with agencies of the federal government, agencies of the state of New Mexico and agencies of any sovereign state or Indian nation, tribe or pueblo located nationally or worldwide. Records shall include all returns, documents and reports, as well as any attachments thereto, to any political subdivision of any state.

[11/5/85, 8/15/90, 10/31/96; 3.1.5.12 NMAC - Rn, 3 NMAC 1.5.12, 12/29/00]

3.1.5.13 ENFORCEMENT BY SUBPOENA:

The secretary may serve or cause to be served a subpoena duces tecum upon a taxpayer or other person having custody of the taxpayer's records and books of account.

[11/5/85, 8/15/90, 10/31/96; 3.1.5.13 NMAC - Rn, 3 NMAC 1.5.13, 12/29/00]

3.1.5.14 REASONABLE HOURS:

Reasonable hours for taxpayers to make their records and books of account available for inspection means any time during taxpayer's business hours but not less than between the hours of 8:00 a.m. and 5:00 p.m. of any day except Saturday, Sunday and state and federal holidays.

[11/5/85, 8/15/90, 10/31/96; 3.1.5.14 NMAC - Rn, 3 NMAC 1.5.14, 12/29/00]

3.1.5.15 RECORDKEEPING AND RETENTION REQUIREMENTS:

A. **RECORDKEEPING REQUIREMENTS - DEFINITIONS:** For purposes of Section 3.1.5.15 NMAC, these terms shall be defined as follows:

(1) "Database management system" means a software system that controls, relates, retrieves and provides accessibility to data stored in a database.

(2) "Electronic data interchange" or "EDI technology" means the computer to computer exchange of business transactions in a standardized structured electronic format.

(3) "Hardcopy" means any documents, records, reports or other data printed on paper.

(4) "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hardcopy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche or storage-only imaging systems.

(5) "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hardcopy or as an optical image.

B. **RECORDKEEPING REQUIREMENTS - GENERAL:**

(1) A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability under the taxes and tax acts the administration and enforcement of which is governed by the Tax Administration Act. All required records must be made available on request by the department or its authorized representatives as provided for in Section 7-1-11 NMSA 1978. Such records shall include, but not be necessarily limited to the records required under Section 7-1-10 NMSA 1978.

(2) If a taxpayer retains records required to be retained under Section 3.1.5.15 NMAC in both machine-sensible and hardcopy formats, the taxpayer shall make the records available to the department in machine-sensible format upon request of the department.

(3) Nothing in Section 3.1.5.15 NMAC shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hardcopy documents or reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with Section 3.1.5.15 NMAC. However, this paragraph shall not relieve the taxpayer of the obligation to comply with Paragraph 3.1.5.15B(2) NMAC.

C. **RECORDKEEPING REQUIREMENTS - MACHINE SENSIBLE RECORDS:**

(1) General Requirements.

(a) Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the department upon request.

A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under Section 3.1.5.15 NMAC are met.

(b) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

(c) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document or store the information in machine-sensible records in the ordinary course of business is not required to construct a machine-sensible record for tax purposes.

(2) Electronic Data Interchange Requirements.

(a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the department to interpret the coded information.

(b) The taxpayer may capture the information necessary to satisfy Paragraph 3.1.5.15C(1) NMAC at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the department. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(3) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing accounting system are similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of Section 3.1.5.15 NMAC.

(4) Business Process Information.

(a) Upon the request of the department, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(b) The taxpayer shall be capable of demonstrating:

(i) the functions being performed as they relate to the flow of data through the system;

(ii) the internal controls used to ensure accurate and reliable processing, and;

(iii) the internal controls used to prevent unauthorized addition, alteration or deletion of retained records.

(c) The following specific documentation is required for machine sensible records retained pursuant to Section 3.1.5.15 NMAC:

(i) record formats or layouts;

(ii) field definitions (including the meaning of all codes used to represent information);

(iii) file descriptions (e.g., data set name); and

(iv) detailed charts of accounts and account descriptions.

D. **RECORDKEEPING REQUIREMENTS - RECORDS MAINTENANCE REQUIREMENTS:**

(1) The department recommends but does not require that taxpayers refer to the national archives and record administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 Code of Federal Regulations, Part 1234.

(2) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

E. **RECORDKEEPING REQUIREMENTS - ACCESS TO MACHINE-SENSIBLE RECORDS:**

(1) The manner in which the department is provided access to machine-sensible records as required in Paragraph 3.1.5.15C(2) NMAC may be satisfied through

a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following manners:

(a) the taxpayer may arrange to provide the department with the hardware, software and personnel resources to access the machine sensible records;

(b) the taxpayer may arrange for a third party to provide the hardware, software and personnel resources necessary to access the machine sensible records;

(c) the taxpayer may convert the machine sensible records to a standard record format specified by the department, including copies of files, on a magnetic medium that is agreed to by the department;

(d) the taxpayer and the department may agree on other means of providing access to the machine sensible records.

F. **RECORDKEEPING REQUIREMENTS - TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY:**

(1) In conjunction with meeting the requirements of Subsection 3.1.5.15C NMAC, a taxpayer may create files solely for the use of the department. For example, if a database management system is used, it is consistent with Section 3.1.5.15 NMAC for the taxpayer to create and retain a file that contains the transaction-level detail from the database management system and that meets the requirements of Subsection 3.1.5.15C NMAC. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under Section 3.1.5.15 NMAC.

G. **RECORDKEEPING REQUIREMENTS - ALTERNATIVE STORAGE MEDIA:**

(1) For purposes of storage and retention, taxpayers may convert hardcopy documents received or produced in the normal course of business and required to be retained under Section 3.1.5.15 NMAC to microfilm, microfiche or other storage-only imaging systems and may discard the original hardcopy documents, provided the conditions of Section 3.1.5.15 NMAC are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers and supporting records of details, such as sales invoices, purchase invoices, exemption certificates and credit memoranda.

(2) Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements.

(a) Documentation establishing the procedures for converting the hardcopy documents to microfilm, microfiche or other storage only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(b) Procedures must be established for the effective identification, processing, storage and preservation of the stored documents and for making them available for the period they are required to be retained under Subsection 3.1.5.15I NMAC.

(c) Upon request by the department, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche or other storage-only imaging system.

(d) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(e) All data stored on microfilm, microfiche or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

(f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

H. **RECORDKEEPING REQUIREMENTS - EFFECT ON HARDCOPY RECORDKEEPING REQUIREMENTS:**

(1) Except as otherwise provided in Subsection 3.1.5.15H NMAC, the provisions of Section 3.1.5.15 NMAC do not relieve taxpayers of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a recordkeeping medium as provided in Subsection 3.1.5.15G NMAC.

(2) If hardcopy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the

taxpayer in accordance with Section 3.1.5.15 NMAC. Such details include those listed in Subparagraph 3.1.5.15C(2)(a) NMAC.

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(5) Nothing in Section 3.1.5.15 NMAC shall prevent the department from requesting hardcopy printouts in lieu of retained machine-sensible records at the time of examination.

I. **RECORDKEEPING REQUIREMENTS - RECORDS RETENTION PERIOD:** All records required to be retained under Section 3.1.5.15 NMAC shall be preserved pursuant to Section 7-1-10 NMSA 1978 unless the department has provided in writing that the records are no longer required.

[4/30/97; 3.1.5.15 NMAC - Rn & A, 3 NMAC 1.5.15, 12/29/00]

3.1.5.16 TAXPAYER'S RECORDS IN POSSESSION OF ANOTHER:

Section 7-1-11 NMSA 1978 applies to records of a taxpayer in the possession, whether permanent or temporary, of another person. Except for possessors who are banks, savings and loan associations, credit unions or similar financial institutions, the possessor is required to allow the inspection or audit by the department of the records upon written request of the department just as if the records were in the possession of the taxpayer. Failure of the possessor to allow inspection or audit of the records by the department upon a reasonable request of the department is a violation of Section 7-1-74 NMSA 1978. Requests by the department to inspect or audit records of a taxpayer in the possession of a bank, savings and loan association, credit union or similar financial institution will be made in accordance with Sections 14-7-1 and 14-7-2 NMSA 1978.

[3.1.5.16 NMAC - N, 12/29/00]

PART 6: ASSESSMENT

3.1.6.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[10/31/96; 3.1.6.1 NMAC - Rn, 3 NMAC 1.6.1, 1/15/01]

3.1.6.2 SCOPE:

This part applies to all taxpayers, their agents and representatives and all persons required to submit a return or information to the taxation and revenue department under

any tax, tax act or other law administered and enforced pursuant to the Tax Administration Act.

[10/31/96; 3.1.6.2 NMAC - Rn, 3 NMAC 1.6.2, 1/15/01]

3.1.6.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[10/31/96; 3.1.6.3 NMAC - Rn, 3 NMAC 1.6.3, 1/15/01]

3.1.6.4 DURATION:

Permanent.

[10/31/96; 3.1.6.4 NMAC - Rn, 3 NMAC 1.6.4, 1/15/01]

3.1.6.5 EFFECTIVE DATE:

10/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[10/31/96; 3.1.6.5 NMAC - Rn & A, 3 NMAC 1.6.5, 1/15/01]

3.1.6.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Tax Administration Act.

[10/31/96; 3.1.6.6 NMAC - Rn, 3 NMAC 1.6.6, 1/15/01]

3.1.6.7 DEFINITIONS:

[Reserved.]

[10/31/96; 3.1.6.7 NMAC - Rn, 3 NMAC 1.6.7, 1/15/01]

3.1.6.8 PAYMENT OF UNPROTESTED AMOUNTS:

Any taxpayer who protests under the provisions of Section 7-1-24 NMSA 1978 only a portion of an assessment and either does not pay the portion of the assessment not protested within 30 days after the date of assessment or does not post security covering the unprotested amount pursuant to Section 7-1-54 NMSA 1978 shall be a delinquent taxpayer until the unprotested amount has been paid or security covering the unprotested amount has been posted.

[7/19/67, 11/5/85, 8/22/88, 8/15/90, 10/31/96; 3.1.6.8 NMAC - Rn & A, 3 NMAC 1.6.8, 1/15/01]

3.1.6.9 [RESERVED]

[11/5/85, 8/15/90, 10/31/96; 3.1.6.1 NMAC - Rn & A, 3 NMAC 1.6.1, 1/15/01; Repealed, 12/30/10]

3.1.6.10 SELF-ASSESSMENT:

When a tax return has been submitted by a taxpayer and received by the department, this self-assessment constitutes an effective assessment under Section 7-1-17 NMSA 1978. Self-assessments by taxpayers are not, however, presumed to be correct under Subsection 7-1-17C NMSA 1978.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.6.10 NMAC - Rn & A, 3 NMAC 1.6.10, 1/15/01]

3.1.6.11 TAXPAYER'S REMEDIES:

The remedies available to taxpayers upon the delivery of notice of assessment of taxes shall be included with the document entitled "Notice of Assessment of Taxes".

[11/5/85, 8/15/90, 10/31/96; 3.1.6.11 NMAC - Rn, 3 NMAC 1.6.11, 1/15/01]

3.1.6.12 PRESUMPTION OF CORRECTNESS OF ASSESSMENT:

A. Once a "Notice of Assessment of Taxes" has been mailed or personally delivered to a taxpayer, the statutory presumption of the correctness of the assessment will apply. The effect of the presumption of correctness is that the taxpayer has the burden of coming forward with some countervailing evidence tending to dispute the factual correctness of the assessment made by the secretary. Unsubstantiated statements that the assessment is incorrect cannot overcome the presumption of correctness.

B. The presumption exists even if the secretary has issued assessments using alternative methods of reconstruction of a tax or has estimated the tax.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.6.12 NMAC - Rn, 3 NMAC 1.6.12, 1/15/01]

3.1.6.13 PRESUMPTION OF CORRECTNESS OF INTEREST AND PENALTY:

The presumption of correctness also applies to any interest imposed under Section 7-1-67 NMSA 1978 and any penalty imposed under Section 7-1-69 NMSA 1978.

[11/5/85, 8/15/90, 10/31/96; 3.1.6.13 NMAC - Rn & A, 3 NMAC 1.6.13, 1/15/01]

3.1.6.14 SECRETARY'S GOOD FAITH DOUBT OF LIABILITY:

A. The secretary may compromise the assessed liability of a taxpayer by entering into a written closing agreement only if and when there is a good faith doubt as to the liability. The written agreement must adequately protect the interests of the state and be approved by the attorney general. The secretary may not compromise a taxpayer's liability because of the taxpayer's inability to pay. The secretary may not compromise a taxpayer's liability solely because of the threat of litigation or as an expedient means of disposing of a controversy unless the secretary has a good faith doubt as to the liability.

B. Each written closing agreement entered into by the secretary must address the factual aspects of the liability that has created a good faith doubt in the mind of the secretary. The specific periods of assessed liabilities must be detailed in the written agreement.

C. The burden is upon the taxpayer to convince the secretary that a good faith doubt exists by presenting evidence sufficient to overcome the presumption of correctness of an assessed liability. A written closing agreement is conclusive only as to liability covered by the agreement.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.6.14 NMAC - Rn, 3 NMAC 1.6.14, 1/15/01]

3.1.6.15 CANCELLATION OF ASSESSMENT:

Pursuant to Section 7-1-17 NMSA 1978, a document denominated "Notice of Assessment of Taxes" is not effective until mailed or delivered to the taxpayer. At any time before this action occurs, an assessment document can be cancelled by the secretary or secretary's delegate. A cancellation is an accounting process and is not an abatement of an assessment as defined by Section 7-1-28 NMSA 1978.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.6.15 NMAC - Rn & A, 3 NMAC 1.6.15, 1/15/01]

3.1.6.16 [RESERVED]

[10/31/96; 3.1.6.16 NMAC - Rn and Repealed, 3 NMAC 1.6.16, 1/15/01]

PART 7: PROTEST

3.1.7.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe, NM 87504-0630.

[10/31/96; 3.1.7.1 NMAC - Rn, 3 NMAC 1.7.1, 1/15/01]

3.1.7.2 SCOPE:

This part applies to all taxpayers, their agents and representatives and all persons required to submit a return or information to the taxation and revenue department under any tax, tax act or other law administered and enforced pursuant to the Tax Administration Act.

[10/31/96; 3.1.7.2 NMAC - Rn, 3 NMAC 1.7.2, 1/15/01]

3.1.7.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[10/31/96; 3.1.7.3 NMAC - Rn, 3 NMAC 1.7.3, 1/15/01]

3.1.7.4 DURATION:

Permanent.

[10/31/96; 3.1.7.4 NMAC - Rn, 3 NMAC 1.7.4, 1/15/01]

3.1.7.5 EFFECTIVE DATE:

10/31/96, unless a later date is cited at the end of a section in which case the later date is the effective date.

[10/31/96; 3.1.7.5 NMAC - Rn & A, 3 NMAC 1.7.5, 1/15/01]

3.1.7.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Tax Administration Act.

[10/31/96; 3.1.7.6 NMAC - Rn, 3 NMAC 1.7.6, 1/15/01]

3.1.7.7 DEFINITIONS:

[RESERVED]

[10/31/96; 3.1.7.7 NMAC - Rn, 3 NMAC 1.7.7, 1/15/01]

3.1.7.8 TAXPAYER ELECTION OF REMEDIES:

A. The election provided for in Section 7-1-23 NMSA 1978 is made when a taxpayer files a timely protest to an assessment or makes a timely claim for refund with the department. The taxpayer may not withdraw a protest, pay the assessment and then claim a refund without permission from the secretary or delegate.

B. There is no provision in the Tax Administration Act for a taxpayer to "Pay Under Protest".

C. Example 1: A taxpayer files a timely protest to a notice of assessment of taxes. Prior to the time for the administrative hearing under Section 7-1-24 NMSA 1978, the taxpayer realizes that, if the taxpayer had paid the assessment and claimed a refund, under Section 7-1-26 NMSA 1978 after the denial by the secretary of the claim for refund the taxpayer would be able to commence a civil action in the district court instead of having an administrative hearing on the protest. The taxpayer therefore commences the civil action and asks that the administrative proceedings be discontinued. The secretary will move to dismiss the action brought in district court on the grounds that the taxpayer has made an election to pursue the administrative remedy by filing the protest and is, therefore, precluded by Section 7-1-23 NMSA 1978 from pursuing a district court action.

D. Example 2: A taxpayer writes a letter to the department objecting to paying an assessment. The taxpayer does not state in the letter the nature of the complaint or the affirmative relief requested, nor is the complaint received within 30 days of the date of the assessment by the secretary. The taxpayer has not filed a protest as provided by Section 7-1-24 NMSA 1978. The taxpayer still has the right, however, to pay the assessment and claim a refund. Any one of the three defects noted above in the taxpayer's written objection would disqualify the document from being a valid protest.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.7.8 NMAC - Rn & A, 3 NMAC 1.7.8, 1/15/01]

3.1.7.9 ACCEPTANCE OF PAYMENT OF ASSESSMENT AFTER PROTEST:

Tender by a taxpayer and acceptance by the secretary or secretary's delegate of payment of a protested assessment prior to resolution of the protest constitutes an agreement:

A. by the secretary to waive the taxpayer's election of remedies under Section 7-1-23 NMSA 1978 upon a resolution of the protest favorably to the taxpayer so as to permit the taxpayer to file a claim for refund for the portion of the protested assessment resolved in favor of the taxpayer; and

B. by the taxpayer to waive the accrual of interest on any refund arising from the portion of the protested assessment resolved in favor of the taxpayer.

[11/5/85, 8/15/90, 11/17/95, 10/31/96; 3.1.7.9 NMAC - Rn & A, 3 NMAC 1.7.9, 1/15/01]

3.1.7.10 DEFINITION OF "PROTEST" - PAYMENT OF UNPROTESTED AMOUNTS REQUIRED:

A. To be effective, a protest must be in writing, must be filed with the secretary within the time required and must the taxpayer, identify the tax or taxes involved, state the grounds for the taxpayer's protest and state the affirmative relief requested.

B. If a notice of assessment of taxes includes taxes due under more than one tax program, taxes assessed in that portion of the assessment not being disputed by a taxpayer are due and payable. The secretary may proceed to enforce collection of any tax which the taxpayer has not protested and which is otherwise delinquent within the meaning of Section 7-1-16 NMSA 1978.

C. Any purported protest which does not comply with the requirements of Section 7-1-24 NMSA 1978 will not be accepted as a "protest" within the meaning of Section 7-1-24 NMSA 1978. The secretary may require the taxpayer to state with greater particularity the nature and basis of a protest and the relief sought.

[7/19/67, 11/5/85, 8/15/90, 10/28/94, 10/31/96; 3.1.7.10 NMAC - Rn & A, 3 NMAC 1.7.10, 1/15/01]

3.1.7.11 TIME FOR PROTEST:

Ordinarily, a protest must be made by a taxpayer within 30 days of the date of mailing by the department of the notice of assessment, or mailing or service upon the taxpayer of other notice or demand, or the date of filing or mailing of a tax return. As provided in Section 7-1-24 NMSA 1978, the secretary may, in the secretary's discretion, grant an extension of up to 60 days additional time to file a protest. Failure by a taxpayer to file a protest within a maximum of 90 days is jurisdictional, and the secretary is without authority to consider any protest filed after that period.

[7/19/67, 11/5/85, 8/15/90, 10/28/94, 10/31/96; 3.1.7.11 NMAC - Rn & A, 3 NMAC 1.7.11, 1/15/01]

3.1.7.12 STATEMENT OF GROUNDS OF A PROTEST:

A. A statement of the grounds for a protest must include an explanation of the law and facts supporting the protest. It should include for each ground asserted the legal basis under the constitution, statute, regulation, or case law for the challenge to the assessment or other action of the department and a summary of the evidence expected to be produced. A summary of the evidence to be produced means the facts expected to be proven by testimony and documentary evidence surrounding the taxpayer's transactions that support relief under the cited legal standards. It is the facts alleged, not the evidence to prove them, that must be stated. If the taxpayer changes the legal theory or facts supporting the protest, the taxpayer must file a supplemental statement of grounds for the protest prior to the date of the hearing or, if a scheduling order has been issued, by the date set in the scheduling order. For protests filed on or after July 1, 2000, the statement of grounds for the protest must be supplemented no later than ten (10) days prior to the date of the hearing or, if a scheduling order has been issued, by the date set in

the scheduling order. A prehearing statement filed in conformance with a scheduling order issued by the hearing officer will qualify as a supplemental statement of grounds for the protest.

B To accelerate the processing and review of the protest, copies of the evidence may be included with the statement of the grounds for protest. Evidence included with a protest still must be introduced and admitted at the formal hearing on the protest before it will be considered by the hearing officer.

C. Example: A taxpayer's protest of penalty and interest for late payment of gross receipts tax would be valid if it stated "Taxpayer, I.D. No. 00-123456-00-0, protests Assessment No. 1234567 issued December 14, 1993, imposing interest and penalty pursuant to Sections 7-1-67 and 7-1-69 NMSA 1978 (allegedly for late payment) on the grounds that taxpayer's payment of gross receipts tax for August, 1993, was timely delivered to the department on September 24, 1993". It would be helpful, but not necessary, to specify with submission of the statement of grounds what documentary or testimonial evidence will prove the facts alleged by the taxpayer, such as, "The date of delivery of the payment will be shown by the date of deposit on the canceled check." It would be even more helpful to attach a copy of the canceled check, which, in this circumstance, would probably permit the department to resolve the matter in the taxpayer's favor without even a hearing. The taxpayer may choose to submit the evidence at a later time, but not later than the hearing.

[3/11/94, 10/31/96; 3.1.7.12 NMAC - Rn, 3 NMAC 1.7.12, 1/15/01; A, 8/30/01]

3.1.7.13 INFORMAL CONFERENCES:

A. Upon the taxpayer’s written request or the department’s own initiative, the department will provide for an informal conference before setting a hearing on the protest. When requested, an informal conference will be scheduled at a time and place agreed to by both parties.

The secretary may attend or designate a delegate to attend. Both parties may bring representatives of their own choosing to the conference, and both parties may bring any records or documents that are pertinent to the issues to be discussed. An informal conference will be vacated if the parties resolve the protest prior to the scheduled date.

B. The purpose of the informal conference is to discuss the facts and the legal issues. The result of an informal conference will usually be one of the following:

(1) an agreement that the taxpayer will withdraw all or part of the protest;

(2) an agreement that the department will abate all or part of the assessment protested, or will refund all or part of the amount of refund claimed;

(3) an agreement to enter into a closing agreement;

(4) an agreement that one or more issues will be litigated upon stipulated facts or a statement of the case;

(5) an agreement to schedule a formal hearing; or

(6) any combination of the above agreements.

C. The taxpayer or the department may be given the opportunity to provide more facts if the situation warrants. There is no statutory restriction on the number of informal conferences that may be scheduled with a taxpayer but, after the initial informal conference, additional informal conferences will be scheduled only if the secretary believes that the additional informal conferences will be useful in resolving the issues. In the event that the taxpayer fails to appear at the informal conference without reasonable notice to the secretary, the protest may be scheduled for a formal hearing without further opportunity for an informal conference.

[11/5/85, 8/15/90, 10/31/96; 3.1.7.13 NMAC - Rn & A, 3 NMAC 1.7.13, 1/15/01, A, 8/30/01; A, 4/30/07]

PART 8: HEARINGS

3.1.8.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe, NM 87504-0630.

[10/31/96; 3.1.8.1 NMAC - Rn, 3 NMAC 1.8.1, 1/15/01]

3.1.8.2 SCOPE:

This part applies to all taxpayers, their agents and representatives and all persons required to submit a return or information to the taxation and revenue department under any tax, tax act or other law administered and enforced pursuant to the Tax Administration Act.

[10/31/96; 3.1.8.2 NMAC - Rn, 3 NMAC 1.8.2, 1/15/01]

3.1.8.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[10/31/96; 3.1.8.3 NMAC - Rn, 3 NMAC 1.8.3, 1/15/01]

3.1.8.4 DURATION:

Permanent.

[10/31/96; 3.1.8.4 NMAC - Rn, 3 NMAC 1.8.4, 1/15/01]

3.1.8.5 EFFECTIVE DATE:

10/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[10/31/96; 3.1.8.5 NMAC - Rn &A, 3 NMAC 1.8.5, 1/15/01]

3.1.8.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Tax Administration Act.

[10/31/96; 3.1.8.6 NMAC - Rn, 3 NMAC 1.8.6, 1/15/01]

3.1.8.7 DEFINITIONS:

[RESERVED]

[10/31/96; 3.1.8.7 NMAC - Rn, 3 NMAC 1.8.7, 1/15/01]

3.1.8.8 [RESERVED]

[7/19/1967, 11/5/1985, 8/15/1990, 10/31/1996; 3.1.8.8 NMAC - Rn, 3 NMAC 1.8.8, 1/15/2001, A, 8/30/2001; A, 4/30/07; Repealed, 5/24/2022]

3.1.8.9 [RESERVED]

[11/5/1985, 1/4/1988, 5/24/1990, 8/15/1990, 10/31/1996; 3.1.8.9 NMAC - Rn, 3 NMAC 1.8.9, 1/15/2001; A, 8/30/2001; Repealed, 5/24/2022]

3.1.8.10 [RESERVED]

[7/19/1967, 11/5/1985, 8/15/1990, 10/31/1996; 3.1.8.10 NMAC - Rn, 3 NMAC 1.8.10, 1/15/2001; A, 8/30/2001; Repealed, 5/24/2022]

3.1.8.11 [RESERVED]

[11/5/1985, 5/24/1990, 8/15/1990, 10/31/1996, 1/15/98; 3.1.8.11 NMAC - Rn, 3 NMAC 1.8.11, 1/15/2001; A, 8/30/2001; Repealed, 5/24/2022]

3.1.8.12 [RESERVED]

[11/5/1985, 8/15/1990, 10/31/1996; 3.1.8.12 NMAC - Rn, 3 NMAC 1.8.12, 1/15/2001; Repealed, 5/24/2022]

3.1.8.13 [RESERVED]

[11/5/1985, 1/4/1988, 5/24/1990, 8/15/1990, 10/31/1996, 1/15/98; 3.1.8.13 NMAC - Rn, 3 NMAC 1.8.13, 1/15/2001; Repealed, 5/24/2022]

3.1.8.14 [RESERVED]

[11/5/1985, 8/15/1990, 10/31/1996; 3.1.8.14 NMAC - Rn & A, 3 NMAC 1.8.14, 1/15/2001; A, 8/30/2001; Repealed, 5/24/2022]

3.1.8.15 [RESERVED]

[7/19/1967, 11/5/1985, 8/15/1990, 10/31/1996; 3.1.8.15 NMAC - Rn, 3 NMAC 1.8.15, 1/15/2001; A, 8/30/2001; Repealed, 5/24/2022]

3.1.8.16 [RESERVED]

[11/5/1985, 8/15/1990, 10/31/1996; 3.1.8.16 NMAC - Rn, 3 NMAC 1.8.16, 1/15/2001; A, 8/30/2001; Repealed, 5/24/2022]

3.1.8.17 DATE OF MAILING OR DELIVERY:

Use of the phrase "date of mailing or delivery" in Subsection 7-1-25A NMSA 1978 authorizes the department to choose between mailing and hand-delivering the written decision and order of the hearing officer. "Date of mailing" means the time that the hearing officer's decision and order enclosed in properly addressed envelope or wrapper was postmarked by the U.S. postal service. "Delivery" means time of hand delivery of the written decision and order to the taxpayer's business or residence.

[11/5/85, 8/15/90, 10/31/96; 3.1.8.17 NMAC - Rn & A, 3 NMAC 1.8.17, 1/15/01]

3.1.8.18 TIMELY FILING:

The filing of an appeal from the hearing officer's decision and order is governed by the Supreme Court Rules of Appellate Procedure.

[11/5/85, 8/15/90, 10/31/96; 3.1.8.18 NMAC - Rn, 3 NMAC 1.8.18, 1/15/01]

3.1.8.19 ISSUES ON APPEAL:

Only issues raised before the hearing officer may be heard on appeal. A party may appeal from a decision only on the same theory as presented to the hearing officer.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.8.19 NMAC - Rn, 3 NMAC 1.8.19, 1/15/01]

PART 9: REFUND

3.1.9.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[10/31/96; 3.1.9.1 NMAC - Rn, 3 NMAC 1.9.1, 1/15/01]

3.1.9.2 SCOPE:

This part applies to all taxpayers, their agents and representatives and all persons required to submit a return or information to the taxation and revenue department under any tax, tax act or other law administered and enforced pursuant to the Tax Administration Act.

[10/31/96; 3.1.9.2 NMAC - Rn, 3 NMAC 1.9.2, 1/15/01]

3.1.9.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[10/31/96; 3.1.9.3 NMAC - Rn, 3 NMAC 1.9.3, 1/15/01]

3.1.9.4 DURATION:

Permanent.

[10/31/96; 3.1.9.4 NMAC - Rn, 3 NMAC 1.9.4, 1/15/01]

3.1.9.5 EFFECTIVE DATE:

10/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[10/31/96; 3.1.9.5 NMAC - Rn & A, 3 NMAC 1.9.5, 1/15/01]

3.1.9.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Tax Administration Act.

[10/31/96; 3.1.9.6 NMAC - Rn, 3 NMAC 1.9.6, 1/15/01]

3.1.9.7 DEFINITIONS:

[Reserved.]

[10/31/96; 3.1.9.7 NMAC - Rn, 3 NMAC 1.9.7, 1/15/01]

3.1.9.8 CLAIM FOR REFUND - GENERAL:

A. Any person may submit a written claim for refund to the department when the person believes the person: 1) has made payment of or had withheld from that person any tax in excess of that for which the person was liable; 2) has been denied any credit or rebate claimed; or 3) has a claim of prior right to property possessed by the department pursuant to a levy. The secretary has not been given statutory authority to initiate action in the circumstances specified in numbers 1), 2) and 3) above. The person affected must initiate the claim for refund. The filing of a fully completed income, corporate income and franchise, estate or special fuel excise tax return or a fully completed amended income, corporate income and franchise, estate or special fuel excise tax return showing an overpayment of tax, a credit or rebate claimed will constitute the filing of a claim for refund and no separate claim for refund is required.

B. "Fully completed" means a return which complies with all the instructions for the return and contains all attachments required by those instructions.

C. A written claim for refund is timely if it meets the requirements for validity of 3.1.9.8 NMAC and is transmitted, delivered or mailed to the department prior to the expiration of the statutory time limits in Section 7-1-26 NMSA 1978.

D. A claim for refund is valid if it states the nature of the complaint and affirmative relief requested and if it contains information sufficient to allow the processing of the claim.

E. Information sufficient to allow processing of a claim includes:

(1) taxpayer's name, address and identification number;

(2) the type or types of tax for which the refund is being claimed;

(3) the sum of money being claimed;

(4) the period for which the overpayment was made;

(5) the basis for the refund; and

(6) a copy of the appropriate, fully completed amended return for each period for which a refund is claimed.

F. A claim that does not include the information required by Subsections D and E of 3.1.9.8 NMAC is invalid. The department may return any invalid claim to the taxpayer. Alternatively the department may advise the taxpayer of the missing information and that the claim is invalid without submission of the missing information. If the taxpayer re-

submits the claim with the required information or, when the return is not returned, submits all required information, the claim becomes valid only at the time the claim is re-submitted or the required information is supplied.

G. Example: A taxpayer submits an income tax return showing an amount due the taxpayer. The taxpayer either omits entering a social security account number or enters an obviously incorrect number. In either case, the income tax return is not fully completed and the taxpayer has failed to provide a proper identification number. The return is not a valid claim for refund.

H. Effective January 1, 2012, an information return is not a claim for refund.

[7/19/67, 11/5/85, 8/15/90, 10/28/94, 10/31/96, 1/15/99; 3.1.9.8 NMAC - Rn & A, 3 NMAC 1.9.8, 1/15/01; A, 12/15/10]

3.1.9.9 REMEDIES OF CLAIMANT:

A. A person who has been denied a claim for refund or who has submitted a valid claim for refund upon which the department has taken no action within 120 days may submit to the secretary a written protest against the denial of, or failure to either allow or deny, the claim pursuant to Section 7-1-26 NMSA 1978. The protest must be received by the department either:

(1) on or before 90 days after the date that the department has mailed to the claimant a written denial of the claim for refund; or

(2) within 90 days after the expiration of 120 days after the mailing of a claim to the department on which no action has been taken by the department.

B. A person who has been denied a claim for refund or who has submitted a valid claim for refund upon which the department has taken no action within 120 days may commence a civil action against the secretary pursuant to Paragraph 7-1-26C(2) NMSA 1978. The civil action must be commenced within 90 days of the denial by the department or within 90 days after the expiration of 120 days after the mailing of the claim to the department upon which no action has been taken by the department.

C. A claimant may not refile a claim which has been denied in whole or in part. If the claimant wishes to challenge the department's denial, the claimant must pursue one of the two remedies specified above. A claimant may, however, refile a claim within the statutory period if the department has not denied the claim in whole or in part and has taken no action on that claim within 120 days from the filing of the claim.

D. For the purposes of Section 3.1.9.9 NMAC, a request for additional information by the department does not constitute "action".

E. This version of Section 3.1.9.9 NMAC is retroactively applicable to protests on refund claims denied by the department or upon which the department has taken no action within 120 days on or after July 1, 1993.

[7/19/67, 11/5/85, 8/15/90, 10/28/94, 10/31/96; 3.1.9.9 NMAC - Rn & A, 3 NMAC 1.9.9, 1/15/01]

3.1.9.10 CLAIM FOR REFUND OF CORPORATE INCOME TAX BASED ON ADJUSTMENT TO FEDERAL INCOME TAX:

A. The department may require that a claim for refund of state corporate income tax resulting from an adjustment to or claim for refund of federal income tax include proof of the approval and/or payment of such claim by the United States treasury department as a prerequisite to approval and payment of such claim by the state of New Mexico.

B. The supporting documentation requested may include copies of the internal revenue service revenue agent report (RAR); IRS form 1139, corporation application for tentative refund; and IRS form 1120X, amended u.s. corporation income tax return.

[5/8/87, 8/15/90, 10/31/96; 3.1.9.10 NMAC - Rn, 3 NMAC 1.9.10, 1/15/01]

3.1.9.11 CLAIM FOR REFUND OF INCOME TAXES OR BANKING AND FINANCIAL CORPORATIONS TAXES BASED ON A NET OPERATING LOSS CARRYBACK OR CARRYFORWARD - 1990 AND PRIOR INCOME TAX YEARS:

A. For the 1990 and prior income tax years, New Mexico tax law had no provision for net operating loss carrybacks or carryforwards. The only way the federal Internal Revenue Code provisions concerning net operating loss carrybacks and carryforwards can affect New Mexico taxes for the 1990 and prior income tax years is through the fact that New Mexico taxes are based on federal tax computations and federal net operating loss carryback or carryforward provisions change those federal tax computations.

B. The New Mexico individual income tax, corporate income tax and banking and financial corporations taxes are based on either adjusted gross income of individuals or federal taxable income of corporations, subject to various modifications. Application of federal law concerning net operating loss carrybacks may thus result in a reduction of adjusted gross income or federal taxable income for a past tax year. This reduction in federal adjusted gross income or taxable income for that past year will then result in a reduction of the New Mexico tax owed under one of those tax acts. In such case, a taxpayer may claim a refund on those taxes within one year of the date on which the adjustment of federal tax became fixed or within the period limited by Subsection 7-1-26D NMSA 1978, whichever expires later. No other provision for a net operating loss carryback exists under New Mexico tax law for the 1990 and prior income tax years.

C. Example: X Bank is permitted under federal law to carryback a net operating loss for ten years. In 1986 X has a net operating loss of $10,000. In 1976 X had federal taxable income reflecting a net loss. Under federal law, the net operating loss cannot be carried back to a previous loss year. Thus, even though the add-back provision under Subsection 7-6-2F NMSA 1978 of the New Mexico Banking and Financial Corporation Tax Act produced net income resulting in state tax liability in 1976, no modification is permitted to the state tax in the 1976 tax year. If X had federal taxable income of $10,000 in 1977, federal tax law does allow X to carry back the 1986 net operating loss to 1977, thereby reducing the 1977 federal taxable income to $0. X could then recompute its 1977 state tax under the Banking and Financial Corporations Tax Act by starting with a federal taxable income of $0 instead of $10,000 and completing its computation using the appropriate add backs for that year. The result would be a lessened state tax liability for 1977. X would then have one year from the adjustment in the federal tax to file a claim for refund of the excess New Mexico bank tax paid in 1977.

[5/8/87, 8/15/90, 10/31/96; 3.1.9.11 NMAC - Rn & A, 3 NMAC 1.9.11, 1/15/01]

3.1.9.12 PERIODS FOR WHICH CERTAIN REFUNDS MAY BE CLAIMED:

A. When the department has assessed tax for any part of a period covered by a waiver signed on or after July 1, 1993, by the taxpayer pursuant to Subsection 7-1-18F NMSA 1978, the taxpayer may submit a claim for refund for any part of the waiver period with respect to the taxes covered by the waiver, regardless of whether tax is assessed for that part of the waiver period. Any such claim for refund must be submitted within one year of the date of the assessment.

B. When the department has assessed tax for periods specified in Subsections 7-1-18 B, C or D NMSA 1978 and the assessment applies to a period ending at least three years prior to the beginning of the year in which the assessment is made, the taxpayer may submit a claim for refund with respect to those periods for which an assessment is made. Any such claim for refund must be submitted within one year of the date of the assessment.

C. Example: Taxpayer, a monthly filer, underreported by more than 25% gross receipts taxes due in the period November 1988 through December 1991. The department audits Taxpayer in 1993. On May 1, 1993, the department assessed Taxpayer with respect to underreported taxes for the entire period. In May 1993, the November 1988 through December 1989 portion of the period is beyond the time described in Subsection 7-1-18A NMSA 1978. The taxpayer may claim a refund at any time until April 30, 1994 with respect to gross receipts taxes paid in the period November 1988 through December 1989.

[6/3/94, 10/31/96; 3.1.9.12 NMAC - Rn & A, 3 NMAC 1.9.12, 1/15/01]

3.1.9.13 CONDITIONS FOR REFUND OR CREDIT:

A. A refund or credit of tax may be granted to a taxpayer by the secretary or secretary's delegate only if all the following conditions are satisfied:

(1) the tax has been erroneously paid and payment has been verified from the department's or taxpayer's records;

(2) the taxpayer has submitted a proper claim for refund pursuant to Section 7-1-26 NMSA 1978 and the regulations thereunder; and

(3) the secretary has secured the prior approval of the attorney general for any refund of tax and interest erroneously paid when such approval is required in Subsection A of Section 7-1-29 NMSA 1978.

B. The secretary or secretary's delegate, in response to a claim for refund for one type of tax, may credit the amount to be refunded against the amount of any other tax due from the taxpayer. The secretary or secretary's delegate shall give a full accounting of the crediting transaction to the claimant.

C. A taxpayer may not create a credit for a discovered overpayment of tax by understating the amount due on current tax returns to offset amounts paid on prior returns.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.9.13 NMAC - Rn, 3 NMAC 1.9.13, 1/15/01; A, 12/15/11]

3.1.9.14 INTEREST ON REFUNDS OF TAXES SELF-ASSESSED BY THE TAXPAYER:

A. When an overpayment results from a self-assessment of taxes based on a return filed by the taxpayer, interest on a refund of that overpayment of taxes shall be computed from the date of filing of the claim for refund when the refund is not paid within the appropriate 60, 75 or 120 day limit specified in Subsection 7-1-68D NMSA 1978 and when the overpayment results from a self-assessment of taxes based on a return filed by the taxpayer. The fact that a subsequent notice of assessment is issued by the department due to failure of the taxpayer to accompany the return with full payment does not change the date from which interest is computed.

B. The determinative factor in deciding whether an overpayment is an "overpayment arising from an assessment by the department" - requiring interest on a refund to be computed from the date of overpayment rather than the date of a claim for refund - is whether the action establishing the amount of liability for taxes was initiated by the taxpayer or by the department. Actions initiated by the taxpayer include, but are not limited to, the filing of a tax return reporting a tax liability, whether or not payment accompanies the return. Actions initiated by the department include, but are not limited to, an audit of the taxpayers books and records or the issuance of a provisional assessment as a result of a taxpayer's failure to file any return or returns.

[7/19/67, 11/5/85, 1/14/86, 8/15/90, 10/28/94, 10/31/96; 3.1.9.14 NMAC - Rn & A, 3 NMAC 1.9.14, 1/15/01]

3.1.9.15 INTEREST ON REFUNDS BASED ON ADJUSTMENT TO FEDERAL INCOME TAX:

Interest on refunds based on an adjustment to federal tax pursuant to Subsection 7-1-26F NMSA 1978 shall be allowed from the date 120 days after the claim is filed until the date the final authorizing signature approves the claim.

[5/20/94, 10/31/96; 3.1.9.15 NMAC - Rn & A, 3 NMAC 1.9.15, 1/15/01]

3.1.9.16 REFUND OF CERTAIN INTEREST OR PENALTY PAID:

A. When a taxpayer has paid interest with respect to an amount of tax that is paid after the time it is due to be paid and the taxpayer subsequently becomes entitled to a refund of part or all of the tax, the taxpayer is also entitled to a refund of a proportionate amount of the interest paid by the taxpayer whether or not the taxpayer specifically requests refund of the interest.

B. When a taxpayer has paid penalty pursuant to Section 7-1-69 NMSA 1978 with respect to an amount of tax that is paid after the time it is due to be paid and the taxpayer subsequently becomes entitled to a refund of part or all of the tax, the taxpayer is also entitled to a proportionate refund of the penalty paid by the taxpayer whether or not the taxpayer specifically requests refund of the penalty.

[3.1.9.16 NMAC - N, 1/15/01]

PART 10: COLLECTIONS

3.1.10.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[10/31/96; 3.1.10.1 NMAC - Rn, 3 NMAC 1.10.1, 1/15/01]

3.1.10.2 SCOPE:

This part applies to all taxpayers, their agents and representatives and all persons required to submit a return or information to the taxation and revenue department under any tax, tax act or other law administered and enforced pursuant to the Tax Administration Act.

[10/31/96; 3.1.10.2 NMAC - Rn, 3 NMAC 1.10.2, 1/15/01]

3.1.10.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[10/31/96; 3.1.10.3 NMAC - Rn, 3 NMAC 1.10.3, 1/15/01]

3.1.10.4 DURATION:

Permanent.

[10/31/96; 3.1.10.4 NMAC - Rn, 3 NMAC 1.10.4, 1/15/01]

3.1.10.5 EFFECTIVE DATE:

10/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[10/31/96; 3.1.10.5 NMAC - Rn & A, 3 NMAC 1.10.5, 1/15/01]

3.1.10.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Tax Administration Act.

[10/31/96; 3.1.10.6 NMAC - Rn, 3 NMAC 1.10.6, 1/15/01]

3.1.10.7 DEFINITIONS:

[Reserved.]

[10/31/96; 3.1.10.7 NMAC - Rn, 3 NMAC 1.10.7, 1/15/01]

3.1.10.8 SEIZURE OF REAL PROPERTY BY LEVY:

A levy on real property is made by personal service of a copy of the warrant of levy on the taxpayer-owner of the property, and by recording a copy of the levy in the county in which the property is located. The secretary or delegate shall make every reasonable effort to send notice of the levy to each party with a recorded interest in the property. Real property seized under warrant of levy shall be sold pursuant to the provisions of Sections 7-1-44 through 7-1-51 NMSA 1978.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.10.8 NMAC - Rn & A, 3 NMAC 1.10.8, 1/15/01]

3.1.10.9 SURRENDER OF PROPERTY UPON SERVICE OF LEVY ON A FINANCIAL INSTITUTION:

A. If a warrant of levy is served upon a financial institution in New Mexico, the financial institution must survey all checking accounts, savings accounts, escrows for collection, safety deposit boxes, trusts, certificates of deposit and all other accounts or places in which it may possess or hold any property or rights to property belonging to the taxpayer as of the date of service of the warrant of levy.

B. The financial institution upon which a warrant of levy is served must immediately surrender to the department any property or rights to property of the taxpayer which that institution possesses or holds as of the date of service of the warrant. Failure to do so makes the financial institution liable to the state of New Mexico in a sum equal to the value of the property or rights not surrendered. If a financial institution upon which a warrant of levy is served knows of property or rights to property of the taxpayer in the possession of another as of the date of the service of the warrant of levy, it must immediately report this fact to the agent of the department. A mere expectation that funds of the taxpayer will come into the possession of the institution, however, absent a contractual or other legal obligation between the taxpayer, the financial institution or any third parties, is not required to be revealed by the financial institution since the mere expectation does not constitute possession of funds by the institution.

C. If a financial institution upon which a levy has been served complies with all of the requirements of Sections 7-1-31 and 7-1-34 NMSA 1978, and the taxpayer subsequently deposits funds or property with the institution, the institution is not required to reveal this fact to the department until a new warrant of levy is served.

D. For the purposes of Section 3.1.10.9 NMAC, the term "financial institution" shall mean any bank, savings and loan association, credit union, pawn shop or any other similar entity which acts as a depository for another person's funds.

E. Example: X Bank is served with a warrant of levy in an amount of $2,000 by the department pursuant to Sections 7-1-31 and 7-1-32. The bank is required by the warrant of levy to reveal the amount of property in its possession that belongs to D, a delinquent taxpayer, and to surrender the property up to $2,000, if available. D's account at X Bank contains a balance of $100 on the date the warrant of levy is served on X. X also knows that D makes a deposit of $1,000 every month and receives a $50 royalty check every month; but on the date the warrant of levy is served, these deposits have not been made and will not be made for another week. X Bank is not required to reveal or surrender the $1,050 which will come into its possession one week after the date the warrant of levy is served. It is required to disclose and surrender the $100 of D's account which is in its possession on the date the warrant of levy is served. If X Bank is served with another levy, pursuant to the provisions of Section 7-1-33 NMSA 1978, after D has deposited the additional $1,050, it will then be required to disclose and surrender that amount.

[5/24/90, 8/15/90, 10/31/96; 3.1.10.9 NMAC - Rn & A, 3 NMAC 1.10.9, 1/15/01]

3.1.10.10 RELEASE OF LEVY:

The secretary or secretary's delegate is authorized by Section 7-1-52 NMSA 1978 to release all or any part of property levied upon under the following conditions:

A. the release of levy will cause the collection of the taxes to be facilitated; and

B. the interests of the state will continue to be protected.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.10.10 NMAC - Rn & A, 3 NMAC 1.10.10, 1/15/01]

3.1.10.11 INJUNCTIONS:

The secretary has statutory authority to apply to a district court of New Mexico to have any delinquent taxpayer or other person who may be or may become liable for any tax enjoined from engaging in business in the state. The following examples illustrate some, but not all, situations where the secretary may make application to a district court for a temporary restraining order and an injunction against delinquent taxpayers or persons for the purpose of protecting the revenues of the state:

A. a taxpayer who has established a record of recurring tax delinquency as defined by Section 7-1-16 NMSA 1978;

B. a taxpayer who has neglected or refused to respond to a jeopardy assessment, issued pursuant to Section 7-1-59 NMSA 1978, by either paying the amount of tax demanded or furnishing satisfactory security;

C. a taxpayer who has established a recurring record of attempting to pay taxes due with bad checks as defined in Section 7-1-70 NMSA 1978;

D. a successor in business who has wrongfully failed to withhold and pay over tax or has not made payment or surrendered property after demand as provided by Section 7-1-63 NMSA 1978;

E. a person who self-denominates by declaration or actions as a "tax protestor" and who, as a means of protesting taxation or other issues, refuses to comply with the provisions of the Tax Administration Act;

F. a person who fails, neglects or refuses to collect and pay over withholding tax from that person's employees who perform personal services in New Mexico as provided by the Withholding Tax Act;

G. a prime construction contractor with principal place of business located outside New Mexico, performing construction services in New Mexico, and who has failed to comply with acceptable security requirements pursuant to Section 7-1-55 NMSA 1978;

H. a person who has failed within 90 days to respond to a demand from the department to file any tax return which was required to be filed on a date which occurred at least 45 days prior to the date the demand to file was made by the department.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.10.11 NMAC - Rn & A, 3 NMAC 1.10.11, 1/15/01]

3.1.10.12 METHODS TO AVOID IMPENDING INJUNCTION:

Persons who are subject to an impending injunction action by the secretary may take any of the following actions to avoid an injunction:

A. pay the assessed tax and, if applicable, submit a claim for refund pursuant to Section 7-1-26 NMSA 1978;

B. furnish acceptable security as provided by Section 7-1-54 and Section 7-1-55 NMSA 1978;

C. make application for an extension of time as provided by Section 7-1-13 NMSA 1978; or

D. make application for and enter into an installment agreement as provided by Section 7-1-21 NMSA 1978.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.10.12 NMAC - Rn & A, 3 NMAC 1.10.12, 1/15/01]

3.1.10.13 GENERAL PROVISIONS FOR PROVIDING SECURITY:

A. When the secretary or secretary's delegate believes that it is necessary to ensure payment of any tax due, or reasonably expected to become due, the secretary or secretary's delegate may require or allow a person subject to the Tax Administration Act to furnish acceptable security. The secretary or secretary's delegate will notify the person by mailing or hand-delivering a written notice of requirement to furnish security in the amount stated in the notice. If the person addressed does not promptly comply, the secretary or secretary's delegate will make a written demand of the person by certified mail or in person that the person furnish security in the stated amount. Upon the failure of any person to comply within ten days of the date of the written demand for furnishing security, the secretary may institute a proceeding to enjoin that person from engaging in business in the state as provided in Section 7-1-53 NMSA 1978. The following examples illustrate some, but not all, situations in which the secretary or secretary's delegate may require or allow the furnishing of security:

(1) the taxpayer is a delinquent taxpayer;

(2) the taxpayer is granted an extension of time to pay taxes;

(3) the taxpayer enters into an installment agreement;

(4) the taxpayer requests a stay of levy;

(5) the taxpayer requests permission to report and pay certain taxes on a quarterly or semiannual basis;

(6) the taxpayer wishes to avoid an impending restraining order or an injunction proceeding;

(7) the taxpayer wishes to stay the enforcement of a jeopardy assessment;

(8) a successor in business has failed to withhold the amount of the tax liability of the predecessor or to pay the tax or surrender the property;

(9) a corporation is dissolving or withdrawing from the state;

(10) the taxpayer is conducting a business of a transient nature;

(11) the taxpayer has a recurring record of attempted payment of tax liabilities with bad checks;

(12) the taxpayer has failed to file any required tax returns within 45 days from the date the return was required to be filed;

(13) the taxpayer has engaged in business for more than three months during which period of time the taxpayer was not registered with the department or did not maintain an active identification number issued by the department.

B. The furnishing of security by a person liable for the payment of taxes will not prevent the imposition of interest due on deficiencies as provided by Section 7-1-67 NMSA 1978 nor prevent the imposition of civil penalty for failure to pay tax or file a return as provided by Section 7-1-69 NMSA 1978.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.10.13 NMAC - Rn & A, 3 NMAC 1.10.13, 1/15/01]

3.1.10.14 SURETY BONDS:

The secretary will accept only those surety bonds underwritten by a company qualified to do business in New Mexico.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.10.14 NMAC - Rn, 3 NMAC 1.10.14, 1/15/01]

3.1.10.15 LIMITATION ON ACTIONS:

A. **LIMITATION ON ACTIONS TO COLLECT TAX DEBT:** Pursuant to the provisions of Section 7-1-19 NMSA 1978, the secretary or attorney general may not bring an action or proceeding to collect taxes after ten years from the date of the assessment of taxes.

B. **INTEREST ASSESSED FOR PRIOR TAX LIABILITIES:** When the secretary or delegate has, within the last ten years, caused interest to be assessed on a tax liability due under a self-assessment or notice of assessment of taxes made more than ten years ago, no action or proceeding to collect on the interest assessments may be brought by the secretary or secretary's delegate after ten years from the date of the underlying assessment, even though the interest assessment may have been made less than ten years ago. Subsection 3.1.10.15B NMAC is applicable to liabilities which originally became due on or after October 31, 1986 and to the related interest assessments.

C. **TEN-YEAR LIMITATION OVERRIDES OTHER STATUTES:** The ten-year limitation in Section 7-1-19 NMSA 1978 overrides the permanence of tax debt provided for in Section 7-1-58 NMSA 1978 and Subsection 7-1-17D NMSA 1978.

[7/19/67, 11/5/85, 8/15/90, 10/31/96, 7/31/97; 3.1.10.15 NMAC - Rn & A, 3 NMAC 1.10.15, 1/15/01]

3.1.10.16 DETERMINATION OF SUCCESSOR IN BUSINESS:

A. The following indicia are used by the secretary or secretary's delegate as factors in determining whether a business is a successor:

(1) Has a sale and purchase of a major part of the materials, supplies, equipment, merchandise or other inventory of a business enterprise occurred between a transferor and a transferee in a single or limited number of transactions?

(2) Was a transfer not in the ordinary course of the transferor's business?

(3) Was a substantial part of both equipment and inventories transferred?

(4) Was a substantial portion of the business enterprise that had been conducted by the transferor continued by the transferee?

(5) By express or implied agreement did the transferor's goodwill follow the transfer of the business properties?

(6) Were uncompleted sales, service or lease contracts of the transferor honored by the transferee?

(7) Was unpaid indebtedness to suppliers, utility companies, service contractors, landlords or employees of the transferor paid by the transferee?

(8) Was there an agreement precluding the transferor from engaging in a competing business to that which was transferred?

B. If one or more of the indicia mentioned above are present, the secretary or secretary's delegate may presume that ownership of a business enterprise has transferred to a successor in business.

C. Example 1: A father owning a business enterprise in sole proprietorship decided to retire. He transferred the substantial part of all tangible and intangible business property to his son. The father was liable for payment of state, municipal and county gross receipts taxes in the amount of $10,000 on the date of transfer. The son continued the business enterprise, but changed the trade name, added some new product lines, sold off some obsolete equipment and rented new store, warehouse and office business locations. The son is a successor in business to his father and shall follow the provisions of Subsection 7-1-61C NMSA 1978 by withholding or paying over the amount due.

D. Example 2: A person owning a road construction company sold one-half of the company's new and used heavy equipment to another person to reduce the company's inventory of construction equipment because the person planned to discontinue bidding on out-of-state road projects. The person plans to continue road construction services in New Mexico using the remaining equipment. The purchaser of the heavy equipment is not a successor in business to the seller since few of the indicia are present for determination of a successor in business.

E. Example 3: A title and abstract company which had been inactive for several months sold its remaining assets to a purchaser who incorporated the tangible and intangible property into the purchaser's own business. The seller was liable for payment of gross receipts taxes on the date of the transfer of the business assets and the purchaser failed to withhold and place into a trust account a sufficient amount of the purchase price to cover the taxes owed or to pay over to the department the seller's unpaid assessments of gross receipts taxes. The purchaser claimed to be unaware of the seller's tax liabilities. The department made a demand on the purchaser for payment and gave the amount and basis of the unpaid assessments of tax for which the seller was liable, in accordance with Subsection 7-1-63A NMSA 1978. The New Mexico court of appeals upheld the department's determination that a business which changes hands need not be an active or solvent business to come under the provisions of Section 7-1-61 NMSA 1978. Although not all the separate indicia listed in Section 3.1.10.16 NMAC were applicable to this illustration, the indicia of Paragraphs 3.1.10.16A(1) through (4) NMAC used by the department did apply and supported a presumption to meet the statutory requirements of Section 7-1-61 NMSA 1978. (***Sterling Title Co. v. Commissioner of Revenue***, 85 N.M. 279)

F. For the purposes of Sections 7-1-61 through 7-1-63 NMSA 1978 and Section 3.1.10.16 NMAC:

(1) "mere continuation" is determined by the "substantial continuity test" used in other contexts where the government is seeking to impose successor liability and is determined by addressing whether the successor maintains the same business with the same employees doing the same jobs under the same supervisors, work conditions and production process and produces the same product for the same customers. See ***B.F. Goodrich v. Betkoski***, 99 F.3d 505 (2nd Cir. 1996);

(2) "successor" means any transferee of a business or property of a business, except to the extent it would be materially inconsistent with the rights of secured creditors that have perfected security interests or other perfected liens on the business or property of the business. A "successor" may include a business that is a mere continuation of the predecessor after those connected with the business re-acquire at a foreclosure sale property used in the predecessor's business, a business that is acquired and run for indefinite period by a creditor of the predecessor and any business that assumes the liabilities of the predecessor. A "successor" does not include a disinterested third party who purchases property at a commercially reasonable foreclosure sale, a bank or other financial institution or government that acquires and operates a business for a limited period of time in order to protect its collateral for eventual resale in a commercially reasonable manner or a franchisor that cancels a franchise agreement due to material default by the franchisee;

(3) "transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with the property of a business; and

(4) "used in any business" means reasonably necessary for the business's continued operations, whether or not the property is actually owned by the business.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 6/15/98; 3.1.10.16 NMAC - Rn & A, 3 NMAC 1.10.16, 1/15/01]

3.1.10.17 [RESERVED]

[10/31/96; 6/15/98 - Repealed; 3.1.10.17 NMAC - Rn, 3 NMAC 1.10.17, 1/15/01]

3.1.10.18 INTEREST:

A. **INTEREST:**

(1) Interest on the unpaid portion of a tax indebtedness is due to the State of New Mexico at the rate of 15% per year computed on a daily basis for amounts due on or after January 1, 2001. The daily rate will be determined by dividing the annual rate by 365 or 366 as appropriate.

(2) Except as otherwise provided in Subsection 7-1-67A NMSA 1978, interest on the unpaid portion of a tax indebtedness shall begin to accrue on the day following the date on which payment of the tax is required by law. Interest shall continue to accrue until the tax indebtedness is paid.

(3) [Reserved.]

(4) The following are instances when interest is accrued on the unpaid balance of a taxpayer's tax indebtedness under the Tax Administration Act from the day following the due date:

(a) granting of an extension of time pursuant to Subsection 7-1-13E NMSA 1978;

(b) entering into a closing agreement pursuant to Section 7-1-20 NMSA 1978;

(c) entering into an installment agreement pursuant to Section 7-1-21 NMSA 1978;

(d) making of a protest of an assessment of tax pursuant to Section 7-1-24 NMSA 1978 unless payment has been made under the provisions of Section 3.1.7.9 NMAC, in which case interest will accrue only until the date payment is tendered to the department;

(e) an appeal by a taxpayer from an adverse decision rendered at an administrative hearing;

(f) the granting of a partial abatement of an assessment of tax;

(g) seizure of property under levy pursuant to Section 7-1-34 NMSA 1978;

(h) imposition of an injunction or temporary restraining order against a taxpayer pursuant to Section 7-1-53;

(i) furnishing of security by the taxpayer pursuant to Sections 7-1-54 and 7-1-55 NMSA 1978;

(j) in the case where a tax liability was incurred by a predecessor in business, ignorance of a successor in business of a tax liability;

(k) an attempt to pay tax by a bad check; and

(l) proper dissolution of a corporation.

(5) In the case where the due date has not yet passed, interest will begin to accrue on the sixth day following the jeopardy assessment made pursuant to Section 7-1-59 NMSA 1978.

B. **APPLICATION OF INTEREST PROVISIONS TO GOVERNMENTS:**

(1) Interest on the unpaid portion of a tax indebtedness is due to the state of New Mexico when the tax indebtedness is owed by any agency, institution, instrumentality or political subdivision of the state of New Mexico.

(2) To the extent permitted by the constitution, treaties and laws of the United States, interest on the unpaid portion of a tax indebtedness is due to the state of New Mexico when the tax indebtedness is owed by any other state, any Indian tribe, nation or pueblo, the United States, any alien government or any agency, institution, instrumentality or political subdivision of any of the foregoing.

(3) Subsection 3.1.10.18B NMAC is retroactively applicable to unpaid tax indebtedness due on or after July 1, 1992.

C. **WHEN INTEREST APPLIES TO REPAYMENTS OF EXCESS REFUNDS:**

(1) "Tax", as defined by the Tax Administration Act, includes any amount of any credit, rebate or refund paid by the department contrary to any law subject to administration under the Tax Administration Act. An excess credit, rebate or refund paid is a tax owed to the state. When no due date is specified by statute, the due date of such a tax is thirty days after the excess credit, rebate or refund is received by the taxpayer. Interest shall be applied for each month or fraction thereof from the due date until the excess credit, rebate or refund is paid.

(2) Unless the preponderance of evidence indicates another date, the person to whom the department mails an excess credit, rebate or refund shall be presumed to have received the excess credit, rebate or refund seven days after the department mailing.

(3) Subsection 3.1.10.18C NMAC applies to any excess credit, rebate or refund paid by the department after January 1, 1994.

[7/19/67, 11/5/85, 8/15/90, 10/31/96, 7/31/97; 3.1.10.18 NMAC - Rn & A, 3 NMAC 1.10.18, 1/15/01]

3.1.10.19 [RESERVED]

[7/3/92, 10/31/96; 7/31/97 - Repealed; 3.1.10.19 NMAC - Rn, 3 NMAC 1.10.19, 1/15/01]

PART 11: PENALTIES

3.1.11.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3/15/96; 3.1.11.1 NMAC - Rn, 3 NMAC 1.11.1, 1/15/01]

3.1.11.2 SCOPE:

This part applies to all taxpayers, their agents and representatives and all persons required to submit a return or information to the taxation and revenue department under any tax, tax act or other law administered and enforced pursuant to the Tax Administration Act.

[3/15/96, 10/31/96; 3.1.11.2 NMAC - Rn, 3 NMAC 1.11.2, 1/15/01]

3.1.11.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3/15/96; 3.1.11.3 NMAC - Rn, 3 NMAC 1.11.3, 1/15/01]

3.1.11.4 DURATION:

Permanent.

[3/15/96; 3.1.11.4 NMAC - Rn, 3 NMAC 1.11.4, 1/15/01]

3.1.11.5 EFFECTIVE DATE:

3/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3/15/96, 10/31/96; 3.1.11.5 NMAC - Rn & A, 3 NMAC 1.11.5, 1/15/01]

3.1.11.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Tax Administration Act.

[3/15/96; 3.1.11.6 NMAC - Rn, 3 NMAC 1.11.6, 1/15/01]

3.1.11.7 DEFINITIONS:

[Reserved.]

[3/15/96; 3.1.11.7 NMAC - Rn, 3 NMAC 1.11.7, 1/15/01]

3.1.11.8 ASSESSMENT AND PROTEST OF PENALTY:

A. Civil penalty is assessed by the secretary or delegate in the manner provided for issuing assessments in Paragraph 7-1-17B(2) NMSA 1978 and any regulations thereunder. Any assessment of civil penalty or demand for payment made by the department is presumed to be correct under Subsection 7-1-17C NMSA 1978.

B. Civil penalty shall be collected in the same manner as, and concurrently with, the amount of tax to which it relates, in accordance with Section 7-1-30 NMSA 1978.

C. A taxpayer who has been assessed civil penalty and who believes that the taxpayer has been neither negligent nor in disregard of rules or regulations has available all the legal remedies in the Tax Administration Act that are available for any assessed taxpayer, whether for tax, taxes, interest or penalty.

D. The effect of the presumption of correctness of assessment of civil penalty is that the taxpayer has the burden of coming forward with some evidence showing that the assessment made by the department is not correct. When not correct, the assessment shall be abated by the secretary or secretary's delegate as provided by Section 7-1-28 NMSA 1978.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.11.8 NMAC - Rn & A, 3 NMAC 1.11.8, 1/15/01]

3.1.11.9 COMPROMISE BY SECRETARY:

The secretary may compromise the assessment of civil penalty by entering into a written closing agreement if and when the secretary has a good faith doubt of the taxpayer's liability. The secretary may not compromise the civil penalty because of the taxpayer's inability to pay. The secretary may not compromise the civil penalty solely because of the threat of litigation. The secretary may not compromise the civil penalty solely as an expedient means of disposing of a controversy.

[11/5/85, 8/15/90, 10/31/96; 3.1.11.9 NMAC - Rn & A, 3 NMAC 1.11.9, 1/15/01]

3.1.11.10 NEGLIGENCE:

Taxpayer "negligence" under Subsection 7-1-69A NMSA 1978 means:

A. failure to exercise that degree of ordinary business care and prudence which reasonable taxpayers would exercise under like circumstances;

B. inaction by taxpayers where action is required;

C. inadvertance, indifference, thoughtlessness, carelessness, erroneous belief or inattention.

[11/5/85, 8/15/90, 10/31/96; 3.1.11.10 NMAC - Rn & A, 3 NMAC 1.11.10, 1/15/01]

3.1.11.11 INDICATIONS OF NONNEGLIGENCE:

The following situations may indicate that a taxpayer has not been negligent or in disregard of rules and regulations and the secretary will consider these circumstances in deciding whether to assess civil penalty as provided by Section 7-1-69 NMSA 1978, or whether to abate assessed civil penalty as provided by Section 7-1-28 NMSA 1978:

A. the taxpayer proves the taxpayer was affirmatively misled by a department employee;

B. the taxpayer, disabled because of injury or prolonged illness, demonstrates the inability to prepare a return and make payment and was unable to procure the services of another person to prepare a return because of the injury or illness;

C. the taxpayer shows that physical damage to the taxpayer's records or place of business caused a delay in filing a return or making payment of tax;

D. the taxpayer proves that the failure to pay tax or to file a return was caused by reasonable reliance on the advice of competent tax counsel or accountant as to the taxpayer's liability after full disclosure of all relevant facts; failure to make a timely filing of a tax return, however, is not excused by the taxpayer's reliance on an agent;

E. a taxpayer, within twelve months of the filing of a return by the original due date or by the extended due date and without action of the secretary or delegate, files an amended return reflecting tax due or additional tax due and full payment of any tax due accompanies the amended return;

F. with regard to income tax returns only, the internal revenue service abates federal penalty originally assessed for the same or similar reason as the New Mexico penalty. If the taxpayer, however, without requesting and receiving an extension of time in which to file under the provisions of Subsection 7-1-13E NMSA 1978, has failed to timely file and pay additional income tax due within the time required in Subsection 7-1-13C NMSA 1978, the penalty will be assessed;

G. with regard to oil and gas tax returns only, the taxpayer receives final approval from the appropriate government agency of the taxpayer's participation in production from a state or federal property and pays all oil and gas taxes due on production from the property attributable to the taxpayer no later than the twenty-fifth day of the second month following the month in which the approval is received; or

H. with regard to an out-of-state business when a good faith doubt exists as to whether the taxpayer has established nexus with New Mexico and whether the state has jurisdiction over the taxpayer and its transactions into New Mexico for current or prior reporting periods, the business volunteers to enter into an agreement with the department to register, report and pay gross receipts tax, corporate income tax or franchise tax or to collect and remit compensating tax as an agent under the provisions of Section 7-9-10 NMSA 1978.

[11/5/85, 1/4/88, 5/24/90, 9/20/93, 2/9/95, 3/15/96, 4/15/98; 3.1.11.11 NMAC - Rn & A, 3 NMAC 1.11.11, 1/15/01]

3.1.11.12 FAILURE TO FILE A RETURN:

If a taxpayer does not file a return on the date on which payment of tax is due, as required by Subsection 7-1-13B NMSA 1978, the minimum penalty of $5.00 imposed by Section 7-1-69 NMSA 1978 will apply only once per return, regardless of the number of tax programs included in the return.

[11/5/85, 8/15/90, 10/31/96; 3.1.11.12 NMAC - Rn & A, 3 NMAC 1.11.12, 1/15/01]

3.1.11.13 FRAUDULENT RETURN FILED WHEN NO TAX IS DUE:

When a taxpayer files a return with intent to defraud the state by making a claim for a tax credit or rebate, and no amount of tax is required to be paid on the return, the provisions of Section 7-1-69 NMSA 1978 will not apply. Nothing in Section 3.1.11.13 NMAC, however, shall be construed to prohibit criminal prosecution of such person for false statement and fraud under Section 7-1-73 NMSA 1978.

[11/5/85, 8/15/90, 10/31/96; 3.1.11.13 NMAC - Rn & A, 3 NMAC 1.11.13, 1/15/01]

3.1.11.14 APPLICATION OF PENALTY PROVISIONS TO GOVERNMENTS:

A. Penalty with respect to the unpaid portion of a tax indebtedness or with respect to the failure to file a return by the date required is due to the state of New Mexico when the tax indebtedness is owed by any agency, institution, instrumentality or political subdivision of the state of New Mexico.

B. To the extent permitted by the constitution, treaties and laws of the United States, penalty with respect to the unpaid portion of a tax indebtedness or with respect to the failure to file a return by the date required is due to the state of New Mexico when the tax indebtedness is owed by any other state, any Indian tribe, nation or pueblo, the United States, any alien government or any agency, institution, instrumentality or political subdivision of any of the foregoing.

C. Section 3.1.11.14 NMAC is retroactively applicable on July 1, 1992.

[7/3/92, 10/31/96; 3.1.11.14 NMAC - Rn & A, 3 NMAC 1.11.14, 1/15/01]

3.1.11.15 APPLICATION OF PENALTY UPON EXPIRATION OF EXTENSION:

Penalty for failing to file a required return or, if tax is due, to pay tax by an extended due date will be computed beginning with the first day following the extended due date.

[9/20/93, 10/31/96; 3.1.11.15 NMAC - Rn, 3 NMAC 1.11.15, 1/15/01]

3.1.11.16 DEFINITION OF BAD CHECK:

A bad check is a check or draft to the order of the department which the bank, as drawee, dishonors upon presentment by the department. "Dishonor" means the bank refuses to pay the amount of the check to the order of the department. The burden is on the taxpayer to prove that the taxpayer was not responsible for the bank's dishonoring of the check. "Bank" includes any financial institution upon which a check or draft is drawn.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.11.16 NMAC - Rn, 3 NMAC 1.11.16, 1/15/01]

3.1.11.17 IMPOSITION OF PENALTY ON BAD CHECKS:

A. A penalty in the amount of twenty dollars ($20.00) will be imposed under Section 7-1-70 NMSA 1978 for each instance in which a check tendered to the department is not paid upon presentment. This penalty is in addition to any penalty imposed under Section 7-1-69 NMSA 1978.

B. This version of Section 3.1.11.17 NMAC is applicable January 1, 1995.

[7/19/67, 11/5/85, 8/15/90, 10/28/94, 10/31/96; 3.1.11.17 NMAC - Rn & A, 3 NMAC 1.11.17, 1/15/01]

3.1.11.18 WILLFUL ATTEMPT TO EVADE OR DEFEAT TAX:

A. **"WILLFUL ATTEMPT TO EVADE OR DEFEAT" DEFINED:**

(1) As used in the Tax Administration Act, the term "willful attempt to evade" or "willful attempt to evade or defeat" means conscious awareness of the obligation to pay taxes coupled with either reckless disregard for, or gross negligence with respect to, whether the tax obligation is paid. A willful attempt to evade or a willful attempt to evade or defeat may occur either with respect to the obligation to report or the obligation to pay.

(2) A willful attempt to evade or defeat may include, but is not limited to:

(a) engaging in business while not filing tax returns coupled with the knowledge that the business is subject to tax;

(b) filing tax returns without payment for an extended period of time while staying in business and paying other creditors;

(c) knowingly completing false tax returns or claiming exemptions, deductions, credits or other reductions of taxable amounts or taxes to which the taxpayer knows he is not entitled;

(d) hiding or transferring assets to hinder collection activity of the department; or

(e) advising or counseling any of the foregoing in the course of one's business as an attorney, accountant, bookkeeper, business consulting firm or tax preparer.

(3) The following are examples of a willful attempt to evade or defeat a tax or to cause or attempt to cause the evasion of another's tax.

(a) A is the primary shareholder, controlling officer and sole employee of B, a closely held corporation. B is engaged in an on-going business and, on its billings to its customers, separately states and collects an amount denominated "gross receipts tax". B has not filed monthly gross receipts returns for eight consecutive months. B, however, has received frequent notices from the department and has received telephone calls from department personnel requesting that the returns be filed for the non-filed months and any tax due be paid. As a result of the frequent contact from the department, B files the gross receipts tax returns, each of which shows tax due, but refuses to pay the outstanding tax, penalty and interest due and does not protest the tax due. B is willfully evading or defeating the gross receipts tax due and A is willfully causing B to evade that tax.

(b) C is the primary shareholder and controlling officer of D, a corporation. D hires the services of a professional accounting firm. The firm prepares D's tax returns and forwards them to C. C receives the returns but simply stores them. D never files the tax returns or pays the taxes due. C has willfully caused the evasion of D's taxes.

(c) B keeps C's books. C is a corporation. E is the primary shareholder and controlling officer of C. B prepares the tax returns for C and drafts checks for E to sign. E signs the returns and the checks. B never sends the returns or checks to the department but endorses the checks to himself. B intercepts all mail and telephone calls from the department. When E becomes aware of what B is doing, E promptly contacts the department to make arrangements for the filing of the returns and payment of the taxes. Making the payments, however, proves unfeasible and C goes out of business. B has willfully caused C to evade its taxes but E has not.

(d) L is an attorney who is familiar with business and tax law and is the primary shareholder in PC, a professional corporation. PC has reported and paid gross receipts tax in the past. PC stops reporting and paying gross receipts tax; L is aware of this. L has willfully caused the evasion of PC's taxes.

(e) N is the primary shareholder and controlling officer of C, a corporation. C is assessed a substantial amount of tax as the result of an audit. N causes C to cease operations. N's brother, M, who has also worked in the business forms a new corporation D. D takes over C's business and assets, including C's customer lists, employees and goodwill. D operates at C's place of business, with strictly cosmetic changes in signs and stationery. Both N and M know of C's tax obligations and intended the change in form to strip the tax liability from the on-going business. Both N and M have willfully caused C to evade taxes.

(f) O is a company that researches tax liens. It contacts businesses with tax trouble as indicated by the existence of tax liens. It advises businesses in the use of techniques to avoid holding balances in bank accounts, thereby defeating any levy by the department on the business's bank accounts. O is willfully causing or attempting to cause another to evade or defeat taxes owed and may be assessed for the amount its clients acting owe in tax.

(4) The following examples illustrate situations which do not give rise to a willful attempt to evade or defeat tax.

(a) G is the primary shareholder and principal officer of C, a corporation. C is audited and is assessed a substantial amount of tax. C had never reported or paid gross receipts tax because G erroneously believed C's business was exempt from gross receipts tax. C files bankruptcy under Chapter 11 and attempts to resolve the tax liability under the bankruptcy laws. While in bankruptcy, C reports and pays its current gross receipts tax obligations. Regardless of the outcome of the bankruptcy proceedings, G has not willfully caused C to evade tax.

(b) H owns C, a corporation. C encounters considerable cash flow problems. It becomes obvious that C is insolvent. C files three monthly tax returns without payment before going out of business. H has not willfully caused C to evade tax.

B. **BURDEN OF PROOF:**

(1) The department has the burden of proving tax evasion or the causing or attempting to cause another to evade tax.

(2) In a protest before a department hearing officer pursuant to Section 7-1-24 NMSA 1978, the hearing officer must find by a preponderance of the evidence that either the taxpayer or other person who has been assessed for causing or attempting to cause the evasion of another's tax knew of the obligation to pay tax. The issue of whether the taxpayer or the other person actually knew of the obligation to pay tax can

be proved by reasonable inference from circumstantial evidence, and notwithstanding testimony to the contrary which the hearing officer finds not credible.

(3) The issue of whether the taxpayer or other person exercised gross negligence or willful disregard for whether taxes were paid is an objective standard to be determined by the facts and circumstances.

C. **INTEREST CONTINUES TO RUN ON ORIGINAL PRINCIPAL OF TAX ATTEMPTED TO BE EVADED:** Although interest does not run ordinarily on penalty pursuant to Subsection 7-1-67D NMSA 1978, interest continues to run on the penalty imposed under Section 7-1-72.1 NMSA 1978 to the extent of the unpaid principal of the underlying tax liability because Section 7-1-72.1 NMSA 1978 specifically authorizes the assessment of penalty and interest upon the tax which was evaded or attempted to be evaded.

[6/15/98; 3.1.11.18 NMAC - Rn & A, 3 NMAC 1.11.18, 1/15/01]

3.1.11.19 [RESERVED]

[3.1.11.19 NMAC - N, 1/31/05; A, 11/30/05; Repealed, 1/31/08]

PART 12: MISCELLANEOUS PROVISIONS

3.1.12.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[10/31/96; 3.1.12.1 NMAC - Rn, 3 NMAC 1.12.1, 1/15/01]

3.1.12.2 SCOPE:

This part applies to all taxpayers, their agents and representatives and all persons required to submit a return or information to the taxation and revenue department under any tax, tax act or other law administered and enforced pursuant to the Tax Administration Act.

[10/31/96; 3.1.12.2 NMAC - Rn, 3 NMAC 1.12.2, 1/15/01]

3.1.12.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[10/31/96; 3.1.12.3 NMAC - Rn, 3 NMAC 1.12.3, 1/15/01]

3.1.12.4 DURATION:

Permanent.

[10/31/96; 3.1.12.4 NMAC - Rn, 3 NMAC 1.12.4, 1/15/01]

3.1.12.5 EFFECTIVE DATE:

10/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[10/31/96; 3.1.12.5 NMAC - Rn & A, 3 NMAC 1.12.5, 1/15/01]

3.1.12.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Tax Administration Act.

[10/31/96; 3.1.12.6 NMAC - Rn, 3 NMAC 1.12.6, 1/15/01]

3.1.12.7 DEFINITIONS:

Reserved.

[10/31/96; 3.1.12.7 NMAC - Rn, 3 NMAC 1.12.7, 1/15/01]

3.1.12.8 REPORTING SALE OR USE OF FUEL FOR TURBOPROP OR JET-TYPE ENGINES:

A. Each month, the department shall distribute to the state aviation fund a percentage of the gross receipts or value attributable to the sale or use of fuel specially prepared and sold for use in turboprop or jet-type engines as specified in Section 7-1-6.7 NMSA 1978.

B. In order for the department to be able to determine the correct amount to be distributed to the aviation fund, the department requires, pursuant to Subsection 7-1-10E NMSA 1978, taxpayers who are in the business of selling fuel for use in turboprop and jet engines, users who are direct purchasers of such fuel from out-of-state sources and users who purchase such fuel through the use of nontaxable transaction certificates are required to report the dollar amount of such sales or purchases to the department on forms to be supplied by the department. This information shall be submitted to the department as an attachment to the taxpayer's monthly CRS-1 report and is due by the 25th day of the month following the end of the period covered by the CRS-1 report.

[7/2/82, 11/5/85, 8/15/90, 10/31/96; 3.1.12.8 NMAC - Rn & A, 3 NMAC 1.12.8, 1/15/01; A, 12/15/11]

3.1.12.9 ETHANOL PRODUCERS' REPORTING REQUIREMENTS:

Any person doing business in the state of New Mexico as an ethanol producer (manufacturer) shall file monthly reports, providing information necessary to the administration of the Gasoline Tax Act, in form and content as prescribed by the department.

[2/19/86, 8/15/90, 10/31/96; 3.1.12.9 NMAC - Rn, 3 NMAC 1.12.9, 1/15/01]

3.1.12.10 TAX IDENTIFICATION ON VENDING MACHINES:

All coin-operated vending machine owners shall prominently display on the front of each machine a plaque or sticker which bears the owner's name, complete address and combined reporting system (CRS) taxpayer identification number.

[10/12/71, 11/5/85, 8/15/90, 10/31/96; 3.1.12.10 NMAC - Rn, 3 NMAC 1.12.10, 1/15/01]

3.1.12.11 SECURITY POSTED BY GASOLINE DISTRIBUTORS:

Registered gasoline distributors shall post security as required by the secretary or secretary's delegate pursuant to 3.16.7.10 NMAC.

[2/19/86, 8/15/90, 10/31/96; 3.1.12.11 NMAC - Rn & A, 3 NMAC 1.12.11, 1/15/01]

3.1.12.12 LIQUOR WHOLESALE REPORTING REQUIREMENTS:

: Any person doing business in the state of New Mexico as a liquor wholesaler shall file monthly reports, providing sales information necessary to the administration of the Gross Receipts and Compensating Tax Act, in form and content as prescribed by the department. The monthly report is due by the 25th day of the month following the close of the calendar month in which the alcoholic beverages are sold.

[3.1.12.12 NMAC - N, 4/28/06]

3.1.12.13 COLLECTION OF COMMUNITY DEBT AGAINST A SPOUSE OR FORMER SPOUSE:

The secretary or secretary’s delegate may decline to bring an action or proceeding to collect community debt against a spouse or former spouse when bringing an action or proceeding would be inequitable.

A. In the case of community tax debt arising from a jointly-filed income tax return, the secretary or the secretary’s delegate may decline to bring an action or proceeding to collect such taxes against the spouse or former spouse of a taxpayer who is granted relief by the internal revenue service (IRS) pursuant to 26 U.S.C. Section 6015. Where relief is granted in writing by the IRS, the spouse who received such relief may provide

a copy of the IRS's determination and request that the secretary cease any collection activity against that spouse or former spouse to the extent such relief was allowed by the IRS. The secretary or the secretary's delegate may decline to pursue collection activity against a spouse or former spouse for community debt while an application for such relief is pending before the IRS, but the failure to seek or obtain such relief shall not preclude the secretary or secretary's delegate from declining to bring an action or proceeding against a spouse or former spouse for collection of a community debt when bringing an action or proceeding would be inequitable. The secretary or the secretary's delegate shall consider the following facts and circumstances when determining whether to bring an action or proceeding to collect community debt:

(1) Did the spouse or former spouse have knowledge of the tax liability at the time that liability arose?

(2) Did the spouse or former spouse have a meaningful opportunity to contest the assessment of tax at the time the assessment was made?

(3) Has the spouse or former spouse cooperated with the department in collection and compliance efforts?

(4) Can the state protect its interests without pursuing active collection efforts against the spouse or former spouse, including collection efforts against the other spouse or former spouse?

(5) Has the spouse or former spouse benefited from the transfer of significant amounts of property from the other spouse or former spouse?

(6) Was the spouse or former spouse given an opportunity to participate in the business decisions of the household during the periods when the debt arose?

B. In addition to the facts and circumstances listed in Subsection A above, in the case of a community debt arising from the conduct of a business within the state, including taxes collected under the combined reporting system, the secretary or the secretary's delegate shall also consider the following facts and circumstances when determining whether to bring an action or proceeding to collect community debt:

(1) Did the spouse or former spouse participate in the conduct of the business, including responsibility for payment of taxes and other debts?

(2) Has the spouse or former spouse benefited from the conduct of the business?

(3) Did the spouse or former spouse know that the other spouse or former spouse had a business?

C. The secretary or the secretary's delegate shall weigh all applicable factors when determining whether to decline to bring an action or proceeding. No one factor shall be considered determinative. Each of these factors may be given different relative weight, depending on the facts and circumstances of each case, therefore the presence of a majority of said factors tending to indicate "innocent spouse" in a particular case may not necessarily indicate that the taxpayer in question qualifies as an "innocent spouse" for New Mexico tax purposes.

D. Nothing in this regulation shall be construed to apply to offsets of refunds or credits to collect on community debts.

E. The secretary and the secretary's delegate has discretion to allow relief under this section. A spouse or former spouse who believes he or she is entitled to relief under this section may petition for such relief to the secretary in writing. The spouse or former spouse has the burden of proof in establishing his or her entitlement to the relief requested. A spouse or former spouse who believes that the request for relief under this section has been improperly denied may protest that decision under Section 7-1-24 NMSA 1978.

[3.1.12.13 NMAC - N, 10/31/07]

CHAPTER 2: GROSS RECEIPTS TAXES

PART 1: GENERAL PROVISIONS

3.2.1.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.2.1.1 NMAC - Rp, 3.2.1.1 NMAC 10/13/2021]

3.2.1.2 SCOPE:

This part applies to all persons engaging in business in New Mexico.

[3.2.1.2 NMAC - Rp, 3.2.1.2 NMAC 10/13/2021]

3.2.1.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.2.1.3 NMAC - Rp, 3.2.1.3 NMAC 10/13/2021]

3.2.1.4 DURATION:

Permanent.

[3.2.1.4 NMAC - Rp, 3.2.1.4 NMAC 10/13/2021]

3.2.1.5 EFFECTIVE DATE:

October 13, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.1.5 NMAC - Rp, 3.2.1.5 NMAC 10/13/2021]

3.2.1.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.1.6 NMAC - Rp, 3.2.1.6 NMAC 10/13/2021]

3.2.1.7 DEFINITIONS:

The terms defined in 3.2.1.7 NMAC apply throughout 3.2 NMAC.

A. Benefit: A "benefit**"** is any consideration to either party. "Benefit" is not limited to profits, pecuniary gains, or any particular kind of advantage.

B. Consideration: "consideration" is any benefit, interest, gain or advantage to one party, usually the seller, or any detriment, forbearance, prejudice, inconvenience, disadvantage, loss of responsibility, act or service given, suffered, or undertaken by the other party, usually the buyer.

C. Detriment: A "detriment" is a forbearance of either party of a right which the party is entitled to exercise or any consideration flowing from either party, not limited to payment of money or transfer of property.

D. Digital good: A "digital good" means a digital product delivered electronically, including software, music, photography, video, reading material, an application and a ringtone. A digital good generally takes the form of a license to use and which property is stored, conveyed, and used in a digital or electronic format. Digital goods are generally intangible property for purposes of the Gross Receipts and Compensating Tax Act.

E. Financial corporations:

(1) A financial corporation is any corporation primarily dealing in moneyed capital and in substantial competition with commercial banks.

(2) Example 1: FC is a corporation which is primarily engaged in the following activities:

(a) buying and selling mortgages on real estate,

(b) initiating mortgages on real estate and selling these mortgages, and

(c) servicing mortgages. FC is a financial corporation because it is primarily dealing in moneyed capital and is in substantial competition with commercial banks.

(3) Example 2: IA is an insurance agency which, as an adjunct of its primary business, loans money to finance premiums. IA is not a financial corporation because it is not primarily dealing in moneyed capital and it is not in substantial competition with commercial banks.

(4) Example 3: A corporation which receives a commission on sales of money orders to its customers as an adjunct of its primary business is not a financial corporation within the meaning of Subsection C of Section 7-9-3 NMSA 1978 simply because it engages in this business activity.

(5) Example 4: A corporation which is engaged in the following activities is not a financial corporation because it is not primarily dealing in moneyed capital and is not in substantial competition with commercial banks:

(a) acting as an investment advisor to a mutual fund and others and receiving a fee for such services;

(b) acting as principal underwriter for the same mutual fund as in Paragraph (2) of Subsection E of 3.2.1.7 NMAC above and receiving a fixed percentage of the selling price of the securities sold as a commission or fee; or

(c) issuing a weekly stock analysis report as an advisory service, receiving for this service payment in the form of subscription fees.

F. Franchise:

(1) A "franchise" is an agreement in which the franchisee agrees to undertake certain business activities or to sell a particular type of product or service in accordance with methods and procedures prescribed by the franchisor, and the franchisor agrees to assist the franchisee through advertising, promotion and other advisory services. The franchise usually conveys to the franchisee a license to use the franchisor's trademark or trade name in the operation of the franchisee's business.

(2) Example: Y, a pie company of Cambridge, Massachusetts, grants to X of Virden, New Mexico, the right to make pies according to their exclusive recipe and to operate Y Pie shops throughout New Mexico. The right to make the pies and operate

the pie shops, whether granted for a "one-time" payment or for a continuing percentage of the proceeds of the shops, is a franchise. Therefore, the receipts of Y, from its granting of the franchise are subject to gross receipts tax.

G. Computer-related terms:

(1) "Computer software" means computer programming in whatever form or medium.

(2) "Custom software" means computer programming developed specifically at the order of another or for a specific purpose. "Custom software" includes the modification of existing computer programming.

(3) "Packaged software" means computer programming embodied in electronic, electromagnetic or optical materials for transfer from one person to another, with or without explanatory materials, instructions or other programming and intended to be sold or licensed without modification to multiple buyers or users.

(4) "Digital software" means packaged software that is transmitted electronically rather on any type of material.

(5) "Software" means "computer software".

H. "Marketplace provider: A "marketplace provider" means a person who facilitates the sale, lease or license of tangible personal property or services or licenses for use of real property on a marketplace seller's behalf, or on the marketplace provider's own behalf. To "facilitate", as that term is used here, means listing or advertising the sale, lease or license, by any means, whether physical or electronic, including by catalog, internet website or television or radio broadcast; and either directly or indirectly, through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the seller, regardless of whether the marketplace provider receives compensation or other consideration in exchange for the marketplace provider's services. A marketplace provider also includes a person that has gross receipts as a marketplace provider under Section 7-9-3.5 NMSA 1978 from the sales of licenses, including digital goods.

I. Marketplace seller: A "marketplace seller" means a person who sells, leases or licenses tangible personal property or services or who licenses the use of real property through a marketplace provider. A marketplace seller also includes a seller that sells licenses through a marketplace provider.

J. Practitioner of the healing arts: A "practitioner of the healing arts" is a person licensed to practice in this state medicine, osteopathic medicine, acupuncture and oriental medicine, dentistry, podiatry, optometry, chiropractic, nursing or similar medical services for human beings. The term also includes veterinarians licensed to practice in this state.

K. Person engaged in the construction business: A "person engaged in the construction business" is a person who performs construction services as defined in Section 7-9-3.4 NMSA 1978.

[3.2.1.7 NMAC - Rp, 3.2.1.7 NMAC 10/13/2021]

3.2.1.8 CITATION OF REGULATIONS:

Unless otherwise stated, all citations of statutes in Chapter 3.2 NMAC with respect to the Gross Receipts and Compensating Tax Act are to the New Mexico Statutes Annotated, 1978 (NMSA 1978).

[3.2.1.8 NMAC - Rp, 3.2.1.8 NMAC 10/13/2021]

3.2.1.9 [RESERVED]

3.2.1.10 [RESERVED]

3.2.1.11 CONSTRUCTION:

A. Construction service as distinguished from other services.

(1) The term "construction" is limited to the activities, or management of the activities, which are listed in Section 7-9-3.4 NMSA 1978 and which physically change the land or physically create, change or demolish a building, structure or other facility as part of a construction project.

(2) "Construction" does not include services that do not physically change the land or physically create, change or demolish a building, structure or other facility as part of a construction project, even though they may be related to a construction project. The fact that a service may be a necessary prerequisite or ancillary to construction or a construction project does not in itself make the service a construction service. Excluded from the meaning of "construction" are activities such as, but not limited to: hauling to or from the construction site, maintenance work, landscape upkeep, the repair of equipment or appliances, laboratory work or accounting, architectural, engineering, surveying, traffic safety or legal services. Some of these activities may qualify as construction-related services; see Section 7-9-52 NMSA 1978.

B. Construction includes: Pursuant to Section 7-9-3.4 NMSA 1978 the term "construction" includes the painting of structures, the installation of sprinkler systems and the building of irrigation pipelines.

C. Construction does not include:

(1) The term "construction" does not include the installation of carpets or the installation of draperies, but see 3.2.209.25 NMAC.

(2) The term "construction", as defined in Section 7-9-3.4 NMSA 1978, does not include leasing or renting tangible personal property, such as construction equipment, with or without an operator but see Section 7-9-52.1 NMSA 1978 for transactions on or after January 1, 2013.

D. Oil and gas industry construction:

(1) "Construction", as this term is used in Section 7-9-3.4 NMSA 1978, includes the following activities related to the oil and gas industry:

(a) building and altering of gas compression plant facilities and pump stations, including: clearing of property sites; excavating for foundations; building and setting foundation forms; mixing, pouring, and finishing concrete foundations for buildings and plant equipment on foundations; fabricating and installing piping; installing electrical equipment, insulation, and instruments; erecting buildings; placing sidewalks, drives, parking areas; installing storage tanks; and dismantling equipment and reinstalling elsewhere;

(b) building of or extension of gas-gathering pipelines, including: connecting gathering lines to lease separators, fabricating and installing meter runs, digging trenches, beveling pipe, welding pipe, wrapping pipe, backfilling trenches, testing pipelines, fabricating and installing pipeline drips and installing conduit for pipelines crossing roads or railroads;

(c) building of or extension of product pipelines, including: building pressure-reducing stations; connecting pipelines to storage tanks, fabricating and installing valve assemblies, digging trenches, beveling pipe, welding pipe, wrapping pipe, laying pipe, backfilling trenches, testing pipelines and installing conduit for pipeline crossing roads or railroads;

(d) building secondary-recovery systems, including: excavating and building foundations, installing engines and water pumps, installing pipelines for water intake, installing pipelines for carrying pressured water to input wells, installing instruments and controls and erecting buildings;

(e) installing lease facilities, including: installing wellheads, flow lines, chemical injectors, separators, heater-treaters, tanks, stairways and walkways; building foundations; and setting pump units and engines, central power units and rod lines;

(f) demolishing pipelines, including: digging trenches to uncover pipelines, dismantling and removing drips and meter runs, backfilling trenches, tamping and smoothing right-of-way;

(g) increasing pipeline capacity, including: removing small pipelines and replacing with larger lines, and digging adjoining trenches and laying new pipelines;

(h) repairing plant, including: replacing tubing in atmospheric condensers, replacing plugged boiler tubing; removing cracked, broken or damaged portions of foundations and replacing anew; replacing compressors, compressor engines, or pumps; and regrouting and realigning compressors;

(i) drilling wells, including: drilling ratholes, excavating cellars and pits, casing crew services, cementing services, directional drilling, drill stem testing and fishing jobs in connection with drilling operations;

(j) general dirt work, including: building roads, paving with caliche or other surfacing materials; digging pits, trenches, and disposal ponds, building firewalls and foundation footing; and constructing pads from caliche or other materials.

(2) "Construction", as the term is used in Section 7-9-3.4 NMSA 1978, does not include the following activities related to the oil and gas industry:

(a) well servicing, including: acidizing and fracturing formations; pulling and rerunning rods or tubing; loading or unloading a well; shooting; scraping paraffin; steaming flow lines and tubing; inspecting equipment; fishing jobs, other than in connection with drilling operations; bailing cave-ins; reverse circulating and resetting packers;

(b) lease and plant maintenance, including: cleaning; weed-control; preventive care of machinery, pipelines, gathering systems, and engines; tank cleaning; testing of flow lines by pressure or X-ray means; cleaning lines and tubing by acid treatment or mechanical means, or replacing and restoring machinery components;

(c) transporting equipment, including: transporting drilling rigs, rigging-up and rigging-down, and hauling water and mud;

(d) salvaging of materials from a "production unit", as defined in the Oil and Gas Emergency School Tax Act, such as: killing the gas pressure, removing casing heads, welding pull nipples on the casing, cutting or shooting casing strings, pulling casings from the well bore, cementing to fill the abandoned well or plug the well, filling the cellar, and welding steel pipe markers;

(e) rental of equipment such as: power tongs, blowout preventors, tanks, pipe racks, core barrels, integral parts of a drilling rig or integral parts of a circulation unit, for transactions on or after January 1, 2013, see Section 7-9-52.1 NMSA 1978;

(f) measuring, "logging" and surveying services in connection with the drilling of an oil or gas well are construction-related services as of January 1, 2013, see Section 7-9-52 NMSA 1978. "Logging" as that term is used in this subsection is a method of testing or measuring an oil or gas well by recording various aspects of the geological formations penetrated by the well.

E. Construction includes prefabricated buildings; prefabricated versus modular buildings:

(1) The sale of prefabricated buildings, whether constructed from metal or other material, is the sale of construction. A prefabricated building is a building designed to be permanently affixed to land and manufactured (usually off-site) in components or sub-assemblies which are then assembled at the building site. Prefabricated buildings are not designed to be portable nor are they capable of being relocated.

(2) A portable building or a modular building is a building manufactured (usually off-site) which is designed to be moveable or is capable of being relocated and, when delivered to the installation site, generally requires only blocking, levelling and, in the case of modular buildings, joining of modules. For the purposes of Subsection F of 3.2.1.11 NMAC, neither portable buildings, modular buildings nor manufactured homes defined as vehicles by Section 66-1-4.11 NMSA 1978 are prefabricated buildings.

F. Construction materials and services; landscaping:

(1) Landscaping items, such as ornaments, rocks, trees, plants, shrubs, sod and seed, which are sold to a person engaged in the construction business, that are an integral part of the construction project, are construction materials. Persons who seed, lay sod or install landscape items in conjunction with a construction project are performing construction services.

(2) Receipts from selling landscaping items to, and from seeding, laying sod or installing landscape items for, persons engaged in the construction business may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate to the seller as provided in Section 7-9-51 and Section 7-9-52 NMSA 1978, respectively.

G. Nontaxable transaction certificates:

(1) Nontaxable transaction certificates are available from the department for persons who are engaged in the construction business and performing activities, as set forth in Sections 7-9-3.4, 7-9-52 and 7-9-52.1 NMSA 1978 to execute to providers of construction materials, construction services, construction-related services and lessors of construction equipment. See 3.2.201.11 NMAC for additional requirements on construction contractors to obtain nontaxable transaction certificates.

(2) Only persons who are licensed by the state of New Mexico as construction contractors may apply for and execute nontaxable transaction certificates under the provisions of Sections 7-9-51 NMSA 1978, 7-9-52 NMSA 1978, and 7-9-52.1 NMSA 1978, except that a person who performs construction activities as defined in Section 7-9-3.4 NMSA 1978 in the ordinary course of business, and who is exempt from the laws of the state of New Mexico requiring licensing as a contractor may apply for and execute such certificates.

H. Construction materials; general:

(1) The term "construction materials" means tangible personal property which is intended to become an ingredient or component part of a construction project.

(2) Tangible personal property intended ultimately to become an ingredient or component part of a construction project although not purchased for a specific project is nonetheless a construction material. *Example:* A government agency makes bulk purchases of asphalt which is stored by the agency for use in future road construction or repair projects. The asphalt is a construction material.

(3) Tools, equipment and other tangible personal property not designed or intended to become ingredients or component parts of a construction project are not construction materials if such materials accidentally become part of a construction project. *Example:* A workman accidentally drops a pair of gloves and a hammer into a form into which concrete is being poured. Because the gloves and the hammer are not intended to be included in the concrete structure, they are not construction materials.

[3.2.1.11 NMAC - Rp, 3.2.1.11 NMAC 10/13/2021]

3.2.1.12 ENGAGING IN BUSINESS:

A. Engaging in business:

(1) Generally: For periods beginning July 1, 2020, "engaging in business" conforms to the constitutional requirement for substantial nexus under South Dakota v. Wayfair, 585 U.S. ___ (2018). A person that has physical presence in the state and is also conducting activity with the purpose of direct or indirect benefit is engaging in business and subject to the imposition of gross receipts tax. A person that does not have physical presence in the state is nevertheless engaging in business and has substantial nexus in New Mexico if, in the preceding calendar year, that person has total taxable gross receipts from sales, leases and licenses of tangible personal property, sales of licenses and sales of services and licenses for use of real property sourced to this state pursuant to Section 7-1-14 NMSA 1978, of at least one hundred thousand dollars ($100,000).

(2) A person who is required to register with the department for the purposes of the gross receipts tax may close its gross receipts tax account following any calendar year in which it no longer meets the requirements for engaging in business set out in Section 7-9-3.3 NMSA 1978. For example, a person who does not currently have physical presence in New Mexico and who did not have total taxable gross receipts from sales, leases and licenses of tangible personal property, sales of licenses and sales of services and licenses for use of real property sourced to this state pursuant to Section 7-1-14 NMSA 1978 of at least $100,000, may close its gross receipts tax account for the 20XX calendar year. In order to close its registration and its future filing obligations, such person must submit its request to close its registration and specify the

closure date on a form prescribed by the department. The person's duty to register will resume in any calendar year in which it meets the requirements of Section 7-9-3.3 NMSA 1978.

(3) A person who has not registered or been otherwise identified is nonetheless a "taxpayer" subject to the provisions of the Tax Administration Act, 3.1.1.13 NMAC.

B. Affiliated corporations:

(1) When a corporation is carrying on or causing to be carried on, with a wholly owned subsidiary, any activity with the purpose of direct or indirect benefit, both the corporation and the subsidiary are "engaging in business".

(2) Example: B corporation, which operates a hotel supply house, sells supplies only to C Hotel Corporation, which owns all the stock in B Corporation. B claims that since it sells only to C, its parent corporation, it is not engaging in business. B and C are each engaging in business because the purpose of their activities is to benefit either or both corporations.

C. Corporation not for profit: When a corporation not for profit is carrying on or is causing to be carried on any activity with the purpose of direct or indirect benefit it is "engaging in business".

D. Leasing property:

(1) Persons leasing property employed in New Mexico are engaging in business within the state for the purpose of direct or indirect benefit.

(2) Example: X, an out of state business, leases construction machinery to Y who employs the leased property in New Mexico. X asks if X is engaged in business in New Mexico for purpose of registration, reporting and paying the gross receipts tax. X is engaged in business in New Mexico.

E. Hotels and motels providing interstate telecommunications service to guests:

(1) 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.

(2) A hotel, motel or similar establishment is primarily engaged in the business of renting rooms and meeting facilities to the general public. Providing interstate telephone service or other interstate telecommunications services to guests is incidental to the primary business of the hotel, motel or similar establishment. Receipts from providing such service are additional receipts from engaging in the primary

business and are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(3) Subsection D of 3.2.1.12 NMAC is retroactively applicable to transactions occurring on or after July 1, 1992.

F. Persons not engaging in business - foster parents: Individuals who enter into an agreement with the state of New Mexico to provide foster family care for children placed with them by the state are not thereby engaging in business. Receipts of the individuals from providing foster care pursuant to such an agreement are not receipts from engaging in business.

G. Persons not engaging in business - certain caretakers: Individuals who enter into an agreement with the state of New Mexico to provide non-medical personal care and housekeeping assistance to low income disabled adults pursuant to the critical in home care program are not thereby engaging in business. Receipts of the individuals from such caretaking activities are not receipts from engaging in business.

H. Persons not engaging in business - home care for developmentally disabled family members: Any individual who enters into an agreement with the state of New Mexico to provide home based support services for developmentally disabled individuals in the home of the developmentally disabled individuals or the home of the support provider and receives payments which under 26 USCA 131 are "qualified foster care payments" is not thereby engaging in business. Receipts of the individuals which are "qualified foster care payments" from providing such home based support services pursuant to such an agreement are not receipts from engaging in business.

I. Owner engaged in business when selling to an owned entity:

(1) Except as provided in Paragraph (2) of this Subsection, when an owner of an entity sells property in New Mexico to, leases property employed in New Mexico to, or performs services in New Mexico for the entity or other owners of the entity, the owner is engaging in business in New Mexico except when the transaction may be characterized for federal income tax purposes as a contribution of capital.

(2) When a partner or interest holder in an entity taxed as a partnership is allocated profits or receives a guaranteed payment or other distributions for activities undertaken as a partner on behalf of the partnership such as administrative services done solely for the benefit of the partnership or for activities for third -parties transacting business with the partnership, the partner is not engaging in business separately from the partnership and the allocations, payments, or distributions are not gross receipts. A partner may, however engage in business separately from the partnership and any transactions between that partner and the partnership, where the partner is not acting as a partner on behalf of the partnership, constitute gross receipts from engaging in business. Indicia that a partner is not acting as a partner on behalf of the partnership may include:

(a) that the partner engages in similar transactions with third parties other than the partnership; or

(b) that the allocation, payment, or distribution made by the partnership is not made under the partnership agreement; or

(c) that the partner's transaction(s) with the partnership involve the sale or lease of goods or the sale of services not provided by the partnership to third parties.

(3) For the purposes of Subsection H of 3.2.1.12 NMAC, an "entity" means any business organization or association other than a sole proprietorship.

J. Persons not engaging in business - sale or exchange of renewable-fueled electricity generated from a system installed in a personal residence. Any individual who sells or transfers electricity to an entity engaged in the business of selling electricity, for which the individual receives monetary compensation or credit against a future month's electricity use, is not engaged in business if the electricity is generated from a renewable-fueled system installed in a personal residence.

[3.2.1.12 NMAC - Rp, 3.2.1.12 NMAC 10/13/2021; A, 12/19/2023]

3.2.1.13 [RESERVED]

3.2.1.14 GROSS RECEIPTS - GENERAL:

A. Credit card sales: Gross receipts of the seller of property or services or the lessor of property include the full sale or lease contract amount of any property or service sold or of any property leased when payment is made through the use of a credit card which has been issued by a third party. The seller or lessor may not deduct from gross receipts the amount charged by the credit card company for converting the account into cash.

B. Consideration other than money:

(1) If the consideration received by the seller or lessor for the item sold or leased or for the service performed is in a form other than money, the fair market value of the consideration received or the fair market value of the item sold or of the lease or of the service performed must be included in gross receipts. The value of the consideration received or the item sold or of the lease or of the service performed is the fair market value at the time of the transaction.

(2) Example 1: X has Y, a garage owner, repair X's automobile. In exchange for the service performed by Y, X gives Y a deer rifle. The fair market value of the rifle at the time of the transaction is the measure of Y's gross receipts.

(3) Example 2: X, a New Mexico construction company, contracts with Y Electric Co-op Association for the construction of transmission lines. The contract requires X to furnish all materials and labor for a fixed price; however, it permits a reduction of the contract price in the amount of the value of materials furnished by Y. The gross receipts of X include the value of any material supplied by the cooperative.

(4) Example 3: X is a firm engaged in the construction business in New Mexico. The receipts of X from the sale of a completed construction project include the value of construction services performed by the buyer of the construction project pursuant to a "sweat labor contract" if the performance of services are required to fulfill a contractual obligation of X. A "sweat labor contract", as used in this example, is a contract whereby the buyer of a completed construction project agrees to perform certain construction services for the seller of the construction project as partial payment of the sale price of the construction project.

(5) Example 4: M agrees to drill an oil well for the XYZ Oil Company. The contract provides that M will drill the well for $7.50 per foot and a one-eighth interest in the minerals which belong to XYZ. The well, when completed, produces forty barrels of oil per day for a period which is expected to last for 10 years. M admits that the $7.50 per foot that is received from drilling the well are gross receipts subject to the gross receipts tax. M questions whether the value of the one-eighth interest is gross receipts. The value of the mineral interest is consideration and must be included in M's gross receipts. It will be valued at its fair market value at the time the well is completed.

(6) Example 5: The A Oil Company hires the B Drilling Company to drill a well on its property. A furnishes drill bits to B, but A has the right to deduct the rental value of the bits from the total footage or day rate price it agrees to pay B for the drilling. The use of the drill bits is partial consideration, furnished by A, for the performance of the drilling service by B and the reasonable value of their use must be included in B's gross receipts. A also must include the rental value of the bits in its gross receipts because it is leasing the drill bits to B. However, if A furnishes drill bits to B and does not have the right to deduct the rental value of the bits from the total footage or day rate price which it has agreed to pay B for the drilling, then no amounts from the drill bit transaction are includable in either A's or B's gross receipts. The same applies if B furnishes the drill bits.

C. Consideration less than fair market value:

(1) In a transaction where the actual consideration received does not represent the fair market value of the property sold or leased or of the service sold, the fair market value shall be included in the gross receipts of the seller or lessor. Fair market value is the value which the property or service can command in an arms length transaction between two independent parties in an open market.

(2) The following example illustrates the application of Section 7-9-3.5 NMSA 1978 with respect to consideration less than fair market value. Example: X, a land and

cattle company, is a corporation which is affiliated with Y, an equipment company. Because of their affiliation, X leases a $30,000 tractor from Y for $l.00 a month. Y reports that its gross receipts from this transaction are $l.00. Y's gross receipts are the market value of a monthly lease of a $30,000 tractor. Y must pay gross receipts tax on the adjusted amount.

D. Sale of commercial paper:

(1) The full sale or leasing contract amount of property or service sold, excluding any type of time price differential, is included in the seller's gross receipts even though the seller subsequently sells the contract and does not receive the total contract price in money. No deduction is allowed for discounts suffered from the sale of commercial paper arising from a sale or lease.

(2) Example: X sells a washing machine to Y under a conditional sales contract in which the full sale contract amount, excluding time price differential, is $120. The principal on the washing machine is to be paid for over a twelve month period at $10 a month. X collects $20 of principal under the contract and then assigns its rights to W for $90. Depending upon the method regularly used for reporting gross receipts, X would either pay tax on the full contract amount for the month in which the sale was made (accrual basis) or pay tax measured by the receipts as they were received (cash basis). If X had elected to pay tax measured by its receipts as they were received, X would have reported $20 during the first two months from this transaction. When X assigned the contract, X would have to include $100 in the gross receipts for the third month since a deduction is not allowed for a discount suffered upon the transfer of a conditional sales contract.

E. Interdepartmental transfers:

(1) Receipts derived from an interdepartmental transfer of services or property are not subject to the gross receipts tax. To qualify as an interdepartmental transfer, the transfer must be a transfer of services or property within the same corporation or other taxable entity.

(2) Example: C, a company located in New Mexico, operates both an electric utility and a water utility. C records on its books the sale of the electricity to the water utility in order to comply with the public service commission regulations but does not thereby incur gross receipts as that term is used in the Gross Receipts and Compensating Tax Act. Such book entries do not record receipts from selling property in New Mexico but record interdepartmental transfers. However, the value of the electricity at the time of its conversion to use by the water utility is subject to the compensating tax.

F. Service charges computed on balances:

(1) Service charges on accounts receivable balances or installment sales contracts which are not computed at the time of sale, are time-price differential charges, are not subject to the gross receipts tax and are not to be included in the sales price of an item brought into New Mexico for the purpose of computing the compensating tax.

(2) Example: X corporation located outside New Mexico is engaged in the business of publishing books. X has several nonemployee salesmen soliciting orders on a commission basis in New Mexico. Every such order is forwarded to X's main office where it is reviewed and then either accepted or rejected. Accepted orders are shipped directly to the purchaser from X's binderies located outside of New Mexico. Since X has salesmen in New Mexico, it is an agent for collection of the compensating tax, pursuant to Section 7 9 10 NMSA 1978. The purchaser may elect to pay for the books on an installment basis. If after 90 days from purchase, the balance has not been paid, a one percent per month service charge is added to the balance. This charge is not precomputed and no portion thereof is due unless the purchaser elects to pay on an installment plan extending over 90 days. Such a charge is a time-price differential and is not a part of the sales price of the item. Therefore, it should not be included in the sales price when considering the amount of compensating tax that should be paid over to the state of New Mexico.

G. Corporations and organizations not organized for profit - fund raising activities:

(1) Receipts of a corporation or organization not organized for profit, other than an organization granted a 501(c)(3) determination by the internal revenue service, derived from fund raising activities which are in the nature of donations, gifts, and contributions are not subject to the gross receipts tax.

(2) The department will presume that the total receipts of such a nonprofit organization from a fund raising activity are receipts derived from a taxable activity if the project involves the performance of any service or the sale or lease of any property by the organization. This presumption may be overcome by establishing the following:

(a) the purchaser or lessee of the property or service intended by the purchase or lease to make a gift, donation, or contribution to the organization; and

(b) the purchase or lease price clearly exceeded the fair market value of the service or property or the fair rental value of the property.

(3) If these conditions are satisfied, the amount of consideration received by the organization in excess of the fair market price or fair rental value is not subject to the gross receipts tax.

H. Discount coupons: The gross receipts attributable to a sale in which a seller accepts discount coupons provided by buyers are measured by the cash received plus the value of the coupon. However, if the discount coupon is not redeemable by the

seller, the acceptance of the coupon constitutes a cash discount allowed and taken and is excluded from gross receipts.

I. Gross receipts embezzled: Receipts that have been embezzled or lost through bookkeeping errors are not a cash discount allowed and taken; such receipts are not deductible under Section 7 9 67 NMSA 1978 because they are not a refund, allowance or uncollectible debt.

J. Vending machines:

(1) A vending machine is a device that, when the appropriate payment has been inserted into it, whether payment is made by coins, tokens, paper money, credit card, debit card or other means, dispenses tangible personal property, performs a service (including entertainment) or dispenses tickets, tokens or similar objects redeemable for money, tangible personal property or services; but "vending machine" does not include any device which is designed to primarily or solely to play a game of chance, such as slot machines, video gaming machines and the like.

(2) Amounts received from allowing the vending machine to be placed in a location as well as amounts received from use of or sales from vending machines are gross receipts and are subject to the gross receipts tax. The vending machine owner is responsible for reporting the receipts and paying the gross receipts tax.

(3) Receipts derived from allowing vending machines to be placed in a location not owned or rented by the vending machine owner are gross receipts and are subject to the gross receipts tax. Except as provided otherwise in Subsection K of Section 3.2.1.14 NMAC, the person receiving the receipts is responsible for reporting the receipts and paying the gross receipts tax with respect to such receipts.

(4) If the vending machine owner and a person controlling the premises where the machine is located enter into a written agreement similar to the one below, the department will presume that a joint venture has been created, that the joint venture is registered with the department and that the vending machine owner has agreed to pay all gross receipts tax due with respect to the joint venture. In such a case, the person owning the machine, on behalf of the joint venture, will report and pay the gross receipts tax due on all the receipts derived from either allowing the vending machine to be placed in a location or sales from the vending machine for all parties in the joint venture and the person controlling the premises is relieved of the duty to report or pay gross receipts tax on those same receipts.

(5) Agreement: Total amounts collected from the vending machine shall be allocated between the vending machine owner and the person controlling the location. The vending machine owner will receive a percentage of the amounts collected net of gross receipts tax due, plus an amount equal to the gross receipts tax payable on the entire proceeds from the vending machine. The person controlling the location will receive a percentage of the amounts collected net of gross receipts tax due. The

vending machine owner will report and pay any gross receipts tax due on all the receipts derived from either the use of or sales from the vending machine.

(6) In the event that no such agreement exists, the department will presume that no joint venture exists. In such a case, the vending machine owner will be subject to gross receipts tax on the entire amounts collected from the use of or sales from the vending machine, and the person controlling the premises will be subject to gross receipts tax on the amount that person receives from the vending machine owner for allowing the placement of the machine on the premises.

(7) In the event the vending machines are leased to the person who services them, the term "vending machine owner" means the lessee of the vending machines.

K. "Gross receipts" excludes leased vehicle surcharge: For the purposes of Subparagraph (b) of Paragraph (3) of Subsection A of Section 7-9-3.5 NMSA 1978, the term "leased vehicle gross receipts tax" includes the leased vehicle surcharge. The amount of any leased vehicle surcharge may be excluded from gross receipts.

L. Receipts from furnishing parts or labor under automotive service contract:

(1) When an automobile dealer, who is the promisor under an automotive service contract as that term is defined under Subsection C of Section 3.2.1.16 NMAC, furnishes parts or labor or both to satisfy the promisor's obligation to repair the breakdown involving a part specified in the contract, the dealer has taxable gross receipts equal to the retail value of the parts and labor furnished. A transfer of property or performance of service for a consideration has occurred and therefore a receipt from selling property or performing services has been realized by the dealer.

(2) The consideration received by the dealer is the discharge of the dealer's obligation to make the repair which obligation arose when the covered breakdown occurred.

(3) Receipts of a repair facility, including an automobile dealer, from furnishing parts and labor to fulfill the obligation of another person under an automotive service contract are gross receipts and not deductible under Sections 7 9 47 and 7 9 48 NMSA 1978, even though the seller has received NTTCs for other transactions.

M. Receipts from deductibles/co-payments under automotive service contracts: The receipts of a New Mexico automotive dealer or other repair facility, including the promisor under an automotive service contract, from the "deductible" or "co-payment" amount paid by a customer as required by automotive service contract as that term is defined in Subsection C of Section 3.2.1.16 NMAC in connection with the provision of repair services under contract are gross receipts.

N. Receipts of dealer from own reserve:

(1) The receipts of a New Mexico auto dealer for repairs provided by the dealer under an automotive service contract as that term is defined in Subsection C of Section 3.2.1.16 NMAC, on which the dealer is obligated as promisor are not gross receipts if:

(a) the receipts are paid from a reserve account established by the dealer under an agreement with an auto service contract administrator or an insurance company, or both, and

(b) the dealer is entitled to a return of any amounts in the reserve account not used to pay for parts and labor or to pay other charges against the dealer in connection with the auto service contract.

(2) In this situation, the dealer is being "paid" from the dealer's own funds and has no receipts. However, the dealer as promisor is liable for gross receipts tax on the retail value of the parts or labor or both furnished to discharge the dealer's obligation.

O. Water conservation fee: Section 74-1-13 NMSA 1978 imposes the water conservation fee on the operator of a public water supply system. The fee is measured by the amount of water produced. The operator is not authorized to impose the water conservation fee on the operator's customers. If the operator of the system separately bills an amount characterized as a reimbursement of the water conservation fee to the operator's customers, the separately stated amount is simply an element of the price of the water sold and the "reimbursement" is included in gross receipts. The definition of "gross receipts" does not exclude the water conservation fee or amounts characterized as reimbursements of water conservation fee paid.

P. Sales of items subject to the federal manufacturer's excise tax:

(1) The gross receipts from sales of items such as motor vehicle tires include the total amount of money or the value of other consideration received even though this amount includes the Federal Manufacturer's Excise Tax, 26 U.S.C.A. Section 4061 et seq., (1986) which is separately stated on the invoice. Gross receipts do not include the amount of money attributable to the Federal Communications Excise Tax, 26 U.S.C.A. Section 4251, et seq., (1986), and the Federal Air Transportation Excise Tax, 26 U.S.C.A. Section 4261 et seq., (1986), which are user's taxes.

(2) Example: A tire dealer sells a tire in New Mexico to a retail customer for $40.00 and separately states $l.00 for Federal Manufacturer's Excise Tax on the sales ticket. The seller's gross receipts for this transaction are $41.00.

Q. Transactions among related persons are gross receipts

(1) Each person engaging in business in New Mexico is subject to the provisions of the Gross Receipts and Compensating Tax Act. Each person who is a member of any group of related or affiliated persons and who engages in business in

New Mexico is a taxpayer. The provisions of the Gross Receipts and Compensating Tax Act apply to the transactions between that taxpayer and all other persons, including the other related or affiliated persons, even though consideration is not received in the form of cash or other monetary remuneration.

(2) Example 1: A cooperative association and X both engage in business in New Mexico. The cooperative sells services to X, one of its members. The cooperative is a taxpayer and the receipts from this transaction are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(3) Example 2: Both X and a cooperative association engage in business in New Mexico. X is a member of the cooperative and sells services to it. X is a taxpayer and the receipts from this transaction are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(4) Example 3: X engages in business in New Mexico, specifically by selling office supplies. X is also a partner in a partnership. Sales by X to the partnership are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(5) Example 4: C is a corporation engaging in business in New Mexico. S, an individual who is the majority stockholder in C, buys in New Mexico services and goods from C. C's receipts from these transactions with S are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(6) Example 5: C and S are corporations engaging in business in New Mexico. S is a wholly-owned subsidiary of C. C sells tangible personal property in New Mexico to S. C's receipts from the transaction are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(7) Example 6: X and Y are both divisions of corporation Z. X and Y are both parts of the same person, Z, and are not "related persons". Receipts from transactions between these two divisions are activities within Z and do not constitute gross receipts.

(8) Example 7: P, an individual, operates two businesses as sole proprietorships. One of P's businesses transfers tangible personal property to the other. Since both businesses and P are the same person, they are not "related persons" and the transaction does not constitute gross receipts.

R. Owner's receipts from transactions with owned entity are gross receipts

(1) Except as provided in Paragraph (2) of this Subsection, when a person who owns all or part of an entity has receipts from the sale of property in New Mexico to, the lease of property employed in New Mexico to or the performance of services in New Mexico for the entity, the person's receipts are gross receipts except when the transaction may be characterized for federal income tax purposes as a contribution of capital. The person's receipts include the actual amount of money received by the

person plus the value of any additional consideration. Additional consideration includes forbearance of charges against the person's ownership interest. These gross receipts are subject to the gross receipts tax unless an exemption or deduction applies.

(2) When a partner or interest holder in an entity is allocated profits or receives a guaranteed payment or other distributions for activities undertaken as a partner on behalf of the partnership such as administrative services done solely for the benefit of the partnership or for activities for third-parties transacting business with the partnership, these receipts of the partner are not gross receipts and are not subject to the gross receipts tax. When a partner engages in business separately from the partnership any transactions of that partner with the partnership, where the partner is not acting as a partner on behalf of the partnership, are gross receipts. Indicia that a partner is not acting as a partner on behalf of the partnership may include:

(a) that the partner engages in similar transactions with third parties other than the partnership;

(b) that the allocation, payment, or distribution made by the partnership is not made under the partnership agreement;

(c) that the partner's transaction(s) with the partnership involve the sale or lease of goods or the sale of services not provided by the partnership to third parties.

(3) For the purposes of Subsection S of Section 3.2.1.14 NMAC, an "entity" means any business organization or association other than a sole proprietorship.

(4) Example: C is a corporation and S is C's wholly owned subsidiary corporation. C and S create L, a limited liability company; C and S each own fifty percent of L. L purchases a twenty percent interest in P, a limited partnership. C sells goods to P. P pays the amount charged. C has gross receipts from this transaction equal to the amount received for the goods.

[3.2.1.14 NMAC - Rp, 3.2.1.14 NMAC 10/13/2021]

3.2.1.15 GROSS RECEIPTS; TANGIBLE PERSONAL PROPERTY:

A. Lease purchase agreement as a sale: The receipts from a two party "lease-purchase" or "paid-out lease" agreement for tangible personal property will be treated as receipts from the sale of tangible personal property under the Gross Receipts and Compensating Tax Act if the lessee-buyer treats the property as an asset and depreciates the property pursuant to generally accepted accounting practices.

B. Consignment sales: Receipts of both a consignor and a consignee from the sale of tangible personal property handled on consignment are subject to the gross receipts tax.

C. Delivery expenses:

(1) Receipts from charges by a seller of tangible personal property for delivery costs, including postage and transportation charges, paid by the seller and passed on to the buyer, are an element of the sales price of the property.

(2) *Example:* X sells tangible personal property in the state of New Mexico and transports property to buyers located in New Mexico in its own equipment from its factory and warehouse. In some instances the contracts of sale which X has with its buyers stipulate that title passes on completion of manufacturing; in other cases there is no stipulation regarding passage of title. On its billing to buyers, X separately states amounts categorized as "warehouse charges" and "delivery charges". These separately stated charges are elements of the sale price of the property.

D. Freight charges:

(1) Transportation costs that are paid by the seller to the carrier are an element of the sales price of the property.

(2) Transportation costs that are paid to the carrier by the buyer are not an element of the sales price of the property. If the buyer transports the property with the buyer's own equipment, the cost of the transportation does not increase the value of the property.

(3) If the seller transports the property with its own equipment, and the cost of the transportation is already included in the price of the property, it is considered as an element of the sales price of the property. If extra separate charges are made, receipts from such charges are gross receipts.

E. Refundable deposits: Amounts received in the form of refundable deposits on bottles, cartons, cases and the like are to be included in gross receipts of the seller or lessor and are subject to the gross receipts tax.

F. Buyer's financing costs: In a situation where:

(1) a lending institution lends money directly to a buyer of tangible personal property;

(2) the buyer executes a promissory or installment note together with a security agreement or a retail financing agreement directly to the lending institution;

(3) neither the note nor the agreement is endorsed or guaranteed in any manner by the seller of the property; and

(4) the lending institution as agent for the buyer, pays the seller by crediting the account of the seller with an amount equal to the loan against the property, with no

amount added or later rebated, the receipts of the seller from the sale of the property include any down payment and the amount credited to the account of the seller unless that amount is less than the fair market value of the property sold, in which case the fair market value would be the measure of the seller's gross receipts.

G. Sale of items subject to the state Cigarette Tax Act: The gross receipts from sales of cigarettes include the total amount of money or the value of other consideration received even though this amount includes the excise tax levied by the Cigarette Tax Act.

H. Florist receipts: Receipts of a New Mexico florist are gross receipts when the florist:

(1) receives an order and payment for flowers under an agreement that the flowers are to be delivered at another location by another florist; and

(2) uses long distance communication to authorize the other florist to make delivery; and

(3) pays the other florist for the flowers.

I. Sale of food and beverage at horse racetracks: Receipts from the sale of food and beverage either by a concessionaire or the owner of a New Mexico horse racetrack, including the track at the state fair grounds, are subject to the gross receipts tax. If a concessionaire pays a racetrack owner a consideration for operating a food and beverage concession, the racetrack owner's receipts are subject to the gross receipts tax.

J. Packaged software:

(1) The transaction constitutes a sale of tangible personal property or a digital good, as defined by 3.2.1.7 NMAC when a person sells a packaged software where:

(a) no extraordinary services are performed in order to furnish the packaged software; and

(b) the buyer pays a fixed amount for the packaged software and the license to use the software; and

(c) the buyer is allowed to resell the license to use the software with the packaged software itself.

(2) Sale of such property for resale is subject to the deduction provided in Section 7-9-47 NMSA 1978.

(3) This version of Subsection J of Section 3.2.1.15 NMAC is retroactively applicable to transactions occurring on or after July 1, 1991.

K. Sale of postage stamps:

(1) Receipts in excess of the face value of the postage stamps from reselling un-canceled postage stamps issued by the United States postal service or any foreign government are gross receipts. Receipts in excess of the face value of the postage from imprinting, mechanically or by other means, the amount of postage on documents to be mailed are gross receipts.

(2) Receipts from selling canceled postage stamps issued by the United States postal service or any foreign government are gross receipts.

L. Refined metals: The receipts of a person who sells refined metals in New Mexico are gross receipts subject to the gross receipts tax regardless of whether the seller is a severer or processor as defined in the Resources Excise Tax Act or the Severance Tax Act.

[3.2.1.15 NMAC - Rp, 3.2.1.15 NMAC 10/13/2021]

3.2.1.16 GROSS RECEIPTS - REAL ESTATE AND INTANGIBLE PROPERTY:

A. Insurance proceeds:

(1) Receipts of an insured derived from payments made by an insurer pursuant to an insurance policy are not subject to the gross receipts tax. Such receipts are not receipts derived from the sale of property in New Mexico, the leasing of property employed in New Mexico, or the performance of a service.

(2) Example: ABC is an auto dealer in the business of selling new and used cars. In addition to selling cars, ABC also maintains a service garage with a large inventory of automobile parts. As part of its regular sales practice, ABC allows potential purchasers to test drive the cars. ABC carries automobile insurance which is applicable in the situation where the potential purchaser is test driving the car. When an accident occurs, even though some or all the parts used to repair the automobile are taken from ABC's inventory of parts and ABC does the actual repair work, payment received from the insurance company for the damaged automobile is not gross receipts. Such a payment is not received as consideration for selling property in New Mexico, leasing property employed in New Mexico, or for performing services. ABC is not liable for compensating tax on the value of the parts used or the labor.

B. Receipts from sale of automotive service contracts:

(1) "Automotive service contract" means an undertaking, promise or obligation of the promisor, for a consideration separate from the sale price of a motor

vehicle, to furnish or to pay for parts and labor to repair specified parts of the covered motor vehicle only if breakdowns (failures) of those specified parts occur within certain time or mileage limits. The promisor's obligation is conditioned upon regular maintenance of the motor vehicle by the purchaser of the automotive service contract at the purchaser's expense. The automotive service contract may also obligate the promisor to reimburse the purchaser for certain breakdown related rental and towing charges. The automotive service contract may require the payment of a specified "deductible" or "co-payment" by the purchaser in connection with each repair.

(2) The receipts of a person from selling an automotive service contract are not gross receipts. The undertaking, promise or obligation of the promisor under the automotive service contract to pay for or to furnish parts and service if an uncertain future event (breakdown) occurs is not within the definition of property under Subsection J of Section 7-9-3 NMSA 1978. Since the receipts from selling an automotive service contract do not arise "from selling property in New Mexico, from leasing property employed in New Mexico or from performing services in New Mexico", the receipts are not gross receipts as defined in Section 7-9-3.5 NMSA 1978 and are not subject to the tax imposed by Section 7-9-4 NMSA 1978.

(3) The furnishing by the promisor of parts or labor or both to fulfill the promisor's obligation when a breakdown occurs is a taxable event.

C. Receipts from insurance company under an automotive service contract program: The receipts of a New Mexico automotive dealer from an insurance company are not taxable gross receipts if the payments by the insurance company are to reimburse the dealer, who is promisor under an automotive service contract as that term is defined in Subsection C of 3.2.1.16 NMAC, for all parts and labor furnished by the dealer under the contract or for parts and labor furnished by the dealer under the contract in an amount in excess of a specified reserve established by the dealer under an agreement with the insurance company. The receipt of the payments from the insurance company are not receipts from the sale of parts and labor but are payments to indemnify the dealer for the dealer's expense in fulfilling the dealer's obligation. The value of parts and labor furnished to make the repairs was subject to the gross receipts tax when the parts and labor were furnished to discharge the dealer's obligation as the promisor under the automotive service contracts.

D. Gift certificates:

(1) Receipts from the sale of gift certificates are receipts from the sale of intangible personal property of a type not included in the definition of "property" and, therefore, are not gross receipts.

(2) When a gift certificate is redeemed for merchandise, services or leasing, the person accepting the gift certificate in payment receives consideration, which is gross receipts subject to the gross receipts tax unless an exemption or deduction applies. The value of the consideration is the face value of the gift certificate.

(3) When a gift certificate is purchased during the time period set out in Laws 2005, Chapter 104, Section 25 subsequent redemption of the gift certificate for the purchase of qualified tangible personal property after that period is not deductible under Laws 2005, Chapter 104, Section 25.

(4) When a gift certificate is redeemed during the time period set out in Laws 2005, Chapter 104, Section 25 for the purchase of qualified tangible personal property, the receipts from the sale are deductible under Laws 2005, Chapter 104, Section 25.

E. Merchant discount and interchange rate fee receipts: Bank receipts derived from credit and debit card merchant discounts and bank interchange rate fees are not gross receipts within the meaning of the Gross Receipts and Compensating Tax Act and therefore are not taxable.

F. Prepaid telephone cards - "calling cards":

(1) Receipts from the sale of an unexpired prepaid telephone card, sometimes known as a "calling card", are receipts from the sale of a license to use the telecommunications system and, therefore, are gross receipts and are not interstate telecommunications gross receipts. Receipts from selling an expired prepaid telephone card are receipts from the sale of tangible personal property and are gross receipts and are not interstate telecommunications gross receipts.

(2) Receipts from recharging a rechargeable prepaid telephone card are receipts from the sale of a license to use the telecommunications system and are gross receipts and are not interstate telecommunications gross receipts.

(3) Subsection F of 3.2.1.16 NMAC is retroactively applicable to transactions and receipts on or after September 1, 1998.

[3.2.1.16 NMAC - Rp, 3.2.1.16 NMAC 10/13/2021]

3.2.1.17 GROSS RECEIPTS - LEASING:

A. Leasing of property employed in New Mexico:

(1) Receipts derived from the rental or leasing of property employed in New Mexico are subject to the gross receipts tax.

(2) *Example 1*: A is in the business of leasing heavy equipment used in construction projects. The receipts from the leasing of such equipment employed in New Mexico prior to January 1, 2013, are subject to the gross receipts tax. See Section 7-9-52.1 NMSA 1978 for deductibility of receipts from such leases on or after January 1, 2013.

(3) *Example 2*: Y, a New York corporation, leases four block-making machines to X who uses the machines in X's block making business in New Mexico. The rental contract is signed in Nebraska. The receipts which Y receives from the rental of the equipment employed in New Mexico are taxable.

(4) *Example 3*: P corporation leases photocopying machines to Q, a state agency. The receipts of P corporation from leasing these machines to the state agency are subject to the gross receipts tax.

B. Additional charges:

(1) Receipts derived from additional charges made in conjunction with the rental or leasing of property employed in New Mexico are subject to the gross receipts tax.

(2) *Example 1*: C owns and operates a business which leases gas cylinders. There is a clause in the lease whereby the lessee will be liable for an additional charge if the gas cylinders are kept past a specific date provided in the lease contract. Receipts from these penalties or demurrage charges for keeping the gas cylinders past the specified date provided are receipts from leasing property employed in New Mexico and are subject to the gross receipts tax.

(3) *Example 2*: D is in the business of leasing concrete forms which are employed in New Mexico. The terms of the lease agreement require that the property leased be returned to the lessor in the condition in which it was leased. Any receipts from charges for repairing and cleaning concrete forms returned to the lessor in a damaged condition, for any material used in repair of such forms, or from charges for the purchase price of forms which are not returned to the lessor, are receipts from leasing property employed in New Mexico and are subject to the gross receipts tax.

C. Lease of license - franchise agreement: Receipts derived from the lease of a license, such as a liquor license, or from a franchise agreement, are subject to the gross receipts tax.

D. Multistate use of leased equipment:

(1) Where property is rented or leased for employment both within and outside New Mexico the renter or lessor will be subject to the gross receipts tax on that portion of the receipts which is derived from the renting or leasing of property employed in New Mexico.

(2) In order to determine the portion of the receipts which are subject to the gross receipts tax, the total receipts from the lease are to be multiplied by whichever of the following fractions more accurately reflects the receipts from the period of employment of the leased item inside New Mexico:

(a) the numerator is the total miles traveled by the leased items in New Mexico and the denominator is the total miles traveled by the leased items during the lease period; or

(b) the numerator is the total time the leased items were employed in New Mexico and the denominator is the total time of the lease period.

(3) The department will allow a person engaged in the business of leasing property employed both within and without New Mexico to use other methods of apportioning the receipts of such leasing activities upon showing that the other methods more accurately reflect the portion of employment of leased items within New Mexico.

(4) *Example*: B owns and operates a business located in Santa Fe, New Mexico, which rents or leases vehicles, airplanes, and mobile equipment. The items leased are employed both within and without New Mexico. B is subject to the gross receipts tax on that portion of the receipts which is from employment of the vehicles, airplanes, and mobile equipment within New Mexico.

E. Leasing of property employed outside New Mexico:

(1) Receipts derived from the rental or leasing of property employed outside New Mexico are not subject to the gross receipts tax.

(2) *Example*: L, a resident of Hobbs, New Mexico, owns a sawmill in Wyoming which is leased to S for three thousand dollars ($3,000) per year. These receipts are not derived from selling property in New Mexico, leasing property employed in New Mexico, performing services outside of New Mexico the product of which is initially used in New Mexico, or performing services in New Mexico. These receipts are not includable in L's gross receipts.

F. Use of vehicles in New Mexico:

(1) Receipts from the rental or leasing of vehicles, airplanes, or mobile equipment which are employed both within and outside New Mexico are subject to the gross receipts tax on that portion of the receipts which are from employment of the vehicles, airplanes, or mobile equipment within New Mexico.

(2) In order to determine the portion of receipts described in the above paragraph which are subject to the gross receipts tax, the total receipts from the lease are to be multiplied by whichever of the following fractions more accurately reflects the receipts from the period of employment of the leased item inside New Mexico:

(a) the numerator is the total miles traveled by the leased items in New Mexico and the denominator is the total miles traveled by the leased items during the period of lease; or

(b) the numerator is the total time the leased items were physically present in New Mexico and the denominator is the total time of the lease period.

(3) The department will allow a person engaged in leasing the above described items to use other methods of apportionment upon a showing that the other methods will more accurately reflect the period of employment of the leased item within New Mexico.

G. Safe harbor lease - purchaser/lessor: A purchaser/lessor who enters into a qualified "safe harbor lease" transaction as defined in Section 168 of the Internal Revenue Code will be subject to the gross receipts tax on the receipts if the property being leased is located in New Mexico.

H. Leasing computers: Receipts from renting or leasing the use of computers or related equipment in New Mexico, on either a part-time or a full-time basis, are subject to the gross receipts tax.

[3.2.1.17 NMAC - Rp, 3.2.1.17 NMAC 10/13/2021]

3.2.1.18 GROSS RECEIPTS – SERVICES GENERALLY:

A. Receipts from performing a service in New Mexico or performing a service outside New Mexico the product of which is initially used in New Mexico. Receipts derived from performing a service in New Mexico or performing a service outside New Mexico the product of which is initially used in New Mexico are subject to the gross receipts tax unless a specific exemption or deduction provided for in the Gross Receipts and Compensating Tax Act applies.

B. Sales of state licenses by nongovernmental entities:

(1) Amounts retained by nongovernmental entities as compensation for services performed in selling state licenses are gross receipts.

(2) Example: G owns and operates a small grocery store in rural New Mexico which is located near a popular fishing area. As a convenience to the public, G sells New Mexico game and fish licenses. For its services in selling these licenses, G retains a small percentage of the total license fee. The amounts retained are gross receipts because they are receipts derived from services performed in New Mexico. G may not deduct the amounts retained pursuant to Section 7-9-66 NMSA 1978 which deals with commissions derived from the sale of tangible personal property not subject to the gross receipts tax. A New Mexico game and fish license is not tangible personal property pursuant to Section 7-9-3 NMSA 1978.

C. Stockbrokers' commissions: Gross receipts include commissions received by stockbrokers for handling transactions. The commissions are receipts from performing a service.

D. Directors' or trustees' fees: Receipts from attending a board of directors or board of trustees meeting in New Mexico are gross receipts from performing services in New Mexico. Receipts from attending a board of directors or board of trustees meeting outside New Mexico are not gross receipts because the initial use of the product of the service is not in New Mexico.

E. Racing receipts:

(1) Unless the receipts are exempt under Section 7-9-40 NMSA 1978:

(a) the receipts of vehicle or animal owners from winning purse money at races held in New Mexico are receipts from performing services in New Mexico and are subject to the gross receipts tax if any charge is made for attending, observing or broadcasting the race.

(b) receipts of vehicle drivers, animal riders and drivers and other persons from receiving a percentage of the owner's purse are receipts from performing services in New Mexico and are subject to the gross receipts tax, unless the person receiving the percentage of purse money is an employee, as that term is defined in 3.2.105.7 NMAC, of the owner.

(2) Where there is an agreement between the driver, rider or other person and the owner for distribution of the winning purse, then only the amount received pursuant to the agreement is gross receipts of the driver, rider or other person receiving the distribution.

(3) Racetrack operators. Receipts of operators of racetracks other than horse racetracks, from gate admission fees and entrance fees paid by drivers are subject to the gross receipts tax. Any portion of these fees paid out by the operator as prizes are not exempt or deductible since the payments are part of the operator's cost of doing business.

F. Advertising services: The service of advertising is performed and initially used at the location of the intended recipient or viewer regardless of where related services may be performed or the location of the advertiser who purchases the advertising services.

(1) Advertising receipts of a newspaper or broadcaster. The receipts of a New Mexico newspaper or a person engaged in the business of radio or television broadcasting from performing advertising services in New Mexico do not include the customary commission paid to or received by a nonemployee advertising agency or a nonemployee solicitation representative, when said advertising services are performed pursuant to an allocation or apportionment agreement entered into between them prior to the date of payment.

(2) Advertising space in pamphlets. Receipts from selling advertising service to New Mexico merchants in a pamphlet printed outside New Mexico and distributed

wholly inside New Mexico are receipts from performing an advertising service in New Mexico. Such receipts are subject to the gross receipts tax.

(3) Billboard advertising. Receipts derived from contracts to place advertising on outdoor billboards located within the state of New Mexico are receipts from performing an advertising service in New Mexico. Such receipts are subject to the gross receipts tax, regardless of the location of the advertiser.

G. Day care centers or licensed child care assistance programs:

(1) Receipts from providing day care are receipts from performing a service and are subject to the gross receipts tax unless an applicable deduction exists.

(2) Receipts from providing day care for children in a situation where a commercial day care center provides day care for the children and the expenses of the care for some of these children is paid for by the state of New Mexico are subject to the gross receipts tax. However, the deduction under Section 7-9-77.2 NMSA 1978 may apply.

(3) Receipts from providing day care for children in a situation where a person provides day care for children in a residence and the care for all these children is paid for by the state of New Mexico are subject to the gross receipts tax. However, the deduction under Section 7-9-77.2 NMSA 1978 may apply.

(4) Receipts from providing day care for children in a situation where a person provides day care for children in the children's home and the care for the children is paid for by the state of New Mexico are subject to the gross receipts tax. However, the deduction under Section 7-9-77.2 NMSA 1978 may apply.

H. Child care:

(1) Receipts derived by a corporation for providing child care facilities for its employees are subject to the gross receipts tax on the amount received from its employees.

(2) Example: The X corporation operates a licensed child care facility to accommodate dependent children of its employees. In order to defray a portion of the cost of the facility, the corporation charges each employee a fee per child per week for the use of the facility. All receipts from the fee per child per week are subject to the gross receipts tax.

I. Service charges; tips:

(1) Except for tips, receipts of hotels, motels, guest lodges, restaurants and other similar establishments from amounts determined by and added to the customer's

bill by the establishment for employee services, whether or not such amounts are separately stated on the customer's bill, are gross receipts of the establishment.

(2) A tip is a gratuity offered to service personnel to acknowledge service given. An amount added to a bill by the customer as a tip is a tip. Because the tip is a gratuity, it is not gross receipts.

(3) Amounts denominated as a "tip" but determined by and added to the customer's bill by the establishment may or may not be gross receipts. If the customer is required to pay the added amount and the establishment retains the amount for general business purposes, clearly it is not a gratuity. Amounts retained by the establishment are gross receipts, even if labeled as "tips". If the customer is not required to pay the added amount and any such amounts are distributed entirely to the service personnel, the amounts are tips and not gross receipts of the establishment.

(4) Examples:

(a) Restaurant R has a policy of charging parties of six or more a set percentage of the bill for food and drink served as a tip. If a customer insists on another arrangement, however, the set amount will be removed. R places all amounts collected from the set tip percentage into a pool that is distributed to the service staff at the end of each shift. The amounts designated as tips and collected and distributed by R to the service staff are tips and not gross receipts. If R retains any amounts derived from the set tip percentage, the amounts retained are gross receipts.

(b) Hotel H rents rooms for banquets and other functions. In addition to the rental fee for the room, H charges amounts for set-up and post-function cleaning. H retains these amounts for use in its business. These amounts are gross receipts. They are gross receipts even if H denominates them as "tips".

J. Entertainers: The receipts of entertainers or performers of musical, theatrical or similar services in New Mexico are subject to the gross receipts tax.

K. Data access charges: Receipts from fees or charges made in connection with property owned, leased or provided by the person providing the service are subject to the gross receipts tax when the information or data accessed is utilized in this state.

L. Allied company underwriting automotive service contracts: When a New Mexico automotive dealer pays an entity that is allied or affiliated with that dealer (allied company) to undertake all of the dealer's obligations under automotive service contracts as that term is defined in Subsection C of 3.2.1.16 NMAC on which the dealer is promisor, the undertaking of the allied company does not involve the sale of property in New Mexico or the lease of property employed in New Mexico. The undertaking principally involves an obligation of the allied company to indemnify the dealer by paying the dealer for furnishing parts and labor to fulfill the dealer's obligation to furnish the parts and labor. However, the undertaking also involves the performance of services by

the allied company for the dealer since the allied company undertakes to handle the claims of automotive service contract purchasers and otherwise perform the dealer's task under the contract. Absent a showing of a different value by the allied company or the department, seven and a half percent of the contract amount paid by the dealer to the allied company will be treated as consideration received for services performed in New Mexico.

M. Custom software:

(1) Receipts derived by a person from developing custom software are receipts from performing a service.

(2) When custom software is developed by a seller for a customer, but the terms of the transaction restrict the customer's ability without the seller's consent to sell the software to another or to authorize another to use the software, the seller's receipts from the customer are receipts from the performance of a service. The seller's receipts from authorizing the customer's sublicensing of the software to another person are receipts from granting a license.

N. Check cashing is a service: Receipts from charges made for cashing checks, money orders and similar instruments by a person other than the person upon whom the check, money order or similar instrument is drawn are receipts from providing a service, not from originating, making or assuming a loan. Such charges are not interest.

O. Receipts of collection agencies:

(1) The fee charged by a collection agency for collecting the accounts of others is gross receipts subject to the gross receipts tax, regardless of whether the receipts of the client are subject to gross receipts tax and regardless of whether the agency is prohibited by law from adding its gross receipts tax amount to the amount collected from the debtor.

(2) Example 1: X is a cash basis taxpayer utilizing the services of Z collection agency for the collection of delinquent accounts receivable. From its New Mexico offices, Z collects from X's New Mexico debtors in the name of X, retains a percentage for its services and turns over the balance to X. The percentage retained by Z is its fee for performing services in New Mexico. The fee is subject to the gross receipts tax. It makes no difference that federal law prohibits Z from passing the cost of the tax to the debtor by adding it to the amount to be collected. X's gross receipts include the full amount collected by Z.

(3) Amounts received by collection agencies from collecting accounts sold to the collection agency are not gross receipts.

(4) Example 2: X, a cash basis taxpayer, sells its delinquent accounts receivable to Z, a collection agency, for a percentage of the face amount of the

accounts. X's gross receipts include the full amount of the receivables, excluding any time-price differential. The amount subsequently collected by Z from those accounts, however, is not subject to gross receipts tax because the amount is not included within the definition of gross receipts. In this situation Z is buying and selling intangible property of a type not included within the definition of property in Section 7-9-3 NMSA 1978.

P. Commissions of independent contractors when another pays gross receipts tax on the receipts from the underlying transaction. The following regulations address independent contractors, including commissioned sales agents, who are not consignees or marketplace providers.

(1) Commissions and other consideration received by an independent contractor from performing a sales service in New Mexico with respect to the tangible or intangible personal property of other persons are gross receipts whether or not the other person reports and pays gross receipts tax with respect to the receipts from the sale of the property. This situation involves two separate transactions. The first is the sale of the property by its owner to the customer and the second is the performance of a sales service by the independent contractor for the owner of the property. The receipts from the sale of the property are gross receipts of the person whose property was sold. Receipts, whether in the form of commissions or other remuneration, of the person performing a sales service in New Mexico are gross receipts of the person performing the sales service.

(2) Example 1: S is a national purveyor of tangible personal property. S has stores and employees in New Mexico. S also has catalogue stores in less populated parts of New Mexico. Catalogue stores maintain minimal inventories; their primary purpose is to make S's catalogues available to customers, to take orders of merchandise selected from the catalogues, to place the orders with S and to provide general customer service. The catalogue stores are operated by independent contractors and not by S. S pays the contractors commissions based on the orders placed. In charging its customers, S charges the amount shown in the catalogue and does not add any separate amount to cover the cost of the contractors' commissions. S pays gross receipts tax on its receipts from the sale of catalogue merchandise. The contractors contend that the cost of their selling services is included in the amount S charges for its merchandise and so their commissions are not gross receipts. The contention is erroneous. The contractors have receipts from performing a service in New Mexico; it is immaterial that S paid the amount of gross receipts tax S owed on S's receipts. See, however, the deduction at Subsection B of Section 7-9-66 NMSA 1978.

(3) Example 2: M is a nationwide, multi-level sales company with presence in New Mexico. M sells products to households mainly through a network of individual, independent contractors. The network of sellers is controlled by one or more sets of individuals, also independent contractors, who train and supervise the individuals selling the merchandise; these supervisory contractors may also sell merchandise. The sellers display, promote and take orders for M's products. Payment for orders are sent to M

along with the orders. M ships the merchandise directly to the final customers. M has agreed to, and does, pay the gross receipts tax on the retail value of the merchandise sold, whether sold by M or one of the independent contractors. Based on the volume and value of merchandise sold, M pays both the selling and supervisory independent contractors a commission. The commissions received by the independent contractors engaging in business in New Mexico with respect to merchandise sold in New Mexico are gross receipts subject to the gross receipts tax. The commissions are receipts from performing a service in New Mexico. The fact that M pays gross receipts tax on M's receipts from the sale of the property is immaterial in determining the liability of the independent contractors.

(4) Commissions and other consideration received by an independent contractor from performing a sales service in New Mexico with respect to a service to be performed by other persons are gross receipts whether or not the other person reports and pays gross receipts tax with respect to the receipts from the performance of the underlying service. This situation involves two transactions. The first is the performance of the underlying service by the other person for the customer and the second is the performance of the sales service by the independent contractor for the performer of the underlying service. The receipts from the performance of the underlying service for the customer are gross receipts of the person performing that service. Receipts, whether in the form of commissions or other remuneration, of the person performing the sales service are gross receipts of the person performing the sales service.

(5) Example 3: P is the publisher of a magazine published in New Mexico. P enters into arrangements with independent contractors to solicit ads to be placed in P's publication. P pays each contractor a percentage of the billings for the ads placed by the contractor as a commission. The independent contractors claim that they owe no gross receipts tax with respect to ads solicited in New Mexico because P has paid gross receipts tax on P's advertising revenues. The contractors are incorrect. There are two transactions in this situation, P's service of publishing advertisements and the contractors' service of soliciting ads for P. The fact that P paid the amount of gross receipts tax due on P's advertising revenues is immaterial regarding the contractors' gross receipts tax obligations on their receipts.

(6) If the receipts from the underlying sale of the tangible property are exempt or deductible, the commission received by an independent contractor from selling the tangible property of another may be subject to the deduction provided by Section 7-9-66 NMSA 1978.

Q. Consignees and Marketplace Providers: Consignees and marketplace providers have gross receipts from amounts collected by those persons for the sale, lease or license of property or the sale of services to customers as defined under Section 7-9-3.5, regardless of whether the consignee or marketplace provider is obligated to pay the consignor or marketplace seller some part of the amounts collected or whether the contract between the consignee and consignor or the marketplace provider and marketplace seller calls for the consignor or marketplace provider to perform certain

services in conjunction with the sale, lease or license of property or the sale of services to the customer. A consignee or marketplace provider will be considered to be selling a separate service for the consignor or marketplace seller only if the contract requires the performance of the service separate and apart from any sale, lease or license of property or sale of a service to the customer.

R. Receipts from winning contest:

(1) Receipts of a contestant from winning purse money in a rodeo or an athletic game, match or tournament held in New Mexico are gross receipts from performing services if any charge is made for attending, observing or broadcasting the event. Such receipts are subject to the gross receipts tax unless an exemption or deduction applies. Where the contestant is a team and there is an agreement among the team members governing distribution of the purse money, then only the amount received by each team member pursuant to the agreement is gross receipts of the team member.

(2) Subsection R of 3.2.1.18 NMAC does not apply to receipts exempt under Section 7-9-40 NMSA 1978 nor does it apply to activities that are primarily or solely gambling.

[3.2.1.18 NMAC - Rp, 3.2.1.18 NMAC 10/13/2021; A, 2/25/2025]

3.2.1.19 GROSS RECEIPTS; RECEIPTS OF AGENTS:

A. Nonemployee agents:

(1) The receipts of nonemployee agents are subject to the gross receipts tax to the extent the education provided by Section 7-9-66 NMSA 1978 is not applicable. The indicia outlined in 3.2.105.7 NMAC will be considered in determining whether a person is an employee or a nonemployee agent.

(2) *Example 1*: S is a nonemployee salesperson for Z Corporation, an out-of-state business. Z Corporation arranges for S to sell securities belonging to corporation shareholders. Z accepts payment from the purchasers of the security, deposits this payment in a trust account, pays S the commission and then distributes the balance to the seller of the securities. Z does not incur gross receipts tax liability as the result of its activity because it is not selling property or performing services in New Mexico for a consideration. The commissions received by S for selling securities in New Mexico are receipts for performing services in New Mexico and are subject to the gross receipts tax.

(3) *Example 2*: The receipts of a nonemployee agent or sub-agent derived from commissions received from;

(a) correspondence schools for enrolling persons in those schools;

(b) freight companies, bus transportation firms, and similar business concerns for rendering services; and

(c) the owner of trailers or trucks for leasing those trailers or trucks, are subject to gross receipts tax.

B. Receipts of condominium and other real property owners associations:

(1) As of March 8, 1988, the provisions of this subsection do not apply to receipts which are exempt under the provisions of Section 7-9-20 NMSA 1978.

(2) Associations in which common areas are owned by unit owners:

(a) Amounts received by this type of association from unit owners (owners of homes, offices, apartments or other real property) for accumulation in a trust account owned by the unit owners and expended to provide insurance and pay taxes on the common areas, elements or facilities are not taxable gross receipts since such amounts are not receipts of the association.

(b) Amounts received by an association of this type from unit owners for accumulation in a trust account owned by the unit owners for current or future expenditures for the improvement, maintenance or rehabilitation of the common areas, elements or facilities are not taxable gross receipts since such amounts are not receipts of the association. However, with respect to receipts not exempt under Section 7-9-20 NMSA 1978, when payments are made from the trust account to the association or its employees, officers or representatives for the improvement, maintenance or rehabilitation, these payments are taxable gross receipts of the association under Section 7-9-3.5 NMSA 1978. When payments are made directly from the account to third parties, those third parties will be liable for the gross receipts tax on those receipts.

(c) With respect to receipts which are not exempt under Section 7-9-20 NMSA 1978, associations of this type which bill unit owners may issue nontaxable transaction certificates (NTTCs) when appropriate under Section 7-9-48 NMSA 1978 (sale of a service for resale) to suppliers of these services, unless the service is deductible by the association under the Internal Revenue Code as an ordinary and necessary business expense. The association must report and pay gross receipts taxes on all its receipts for services, including those for which NTTCs are given. This version of Paragraph (2) of Subsection B of 3.2.1.19 NMAC applies to transactions occurring on or after July 1, 2000.

(3) *Example A 1*: Property Owners Association A receives monthly payments from each individual owner of property located in XYZ condominiums. The funds are held in a separate trust account by Association A for the XYZ unit owners to pay, on behalf of themselves, the property tax accruing to the common areas, insurance covering the common areas, maintenance and repair of the common areas and future improvements and additions to the common areas. On November 10, Association A, as

trustee of such funds, issues a check directly from the trust account to the county treasurer for payment of property taxes on the common areas. This payment goes from the trust account directly to the county treasurer with Association A acting as agent for the actual owners of property; therefore, these funds do not become a part of Association A's gross receipts.

(4) *Example A 2*: Association A employs a maintenance person to maintain and clean the common areas. The maintenance person is responsible for mowing lawns, maintaining the landscape, cleaning halls, lobbies and other common areas and making minor repairs to common facilities. Funds received by Association A from the trust account to pay the maintenance person's wages and to pay various payroll taxes and employee benefits are gross receipts for the performance of service on which Association A is required to pay tax.

(5) *Example A 3*: NMO Construction Co. contracts to paint and remodel the halls, lobbies and other common areas of the condominiums. Association A, acting as agent, draws funds from the trust account which are paid directly to NMO Construction Co. Since such funds do not become receipts of Association A, the association is not liable for tax on these funds. The funds pass directly to NMO Construction Co. who becomes liable for the gross receipts tax on its receipts for performing construction services.

(6) *Example A 4*: For the last 10 years, funds have accumulated in the trust for construction of a swimming pool. A Pool Co. builds the pool and is paid directly from the trust account. A Pool Co. is subject to gross receipts tax on the receipts from the construction of the pool. Association A, acting as agent for the property owners, has no receipts and pays no tax on this transaction.

(7) *Example A 5*: Association A purchases, with its own funds, chemicals which its employee will use to maintain the new swimming pool. To recover this expense, Association A increases the amount it charges the property owners each month and draws funds from the trust account which it places with its own funds. These receipts of Association A are subject to the tax since Association A is performing services for the property owners. This treatment of receipts applies to purchases of other maintenance or cleaning supplies which Association A consumes in the performance of maintenance and cleaning services. Association A may not execute a non-taxable transaction certificate for the purchase of these chemicals or other cleaning supplies, because the chemicals and supplies are consumed in the performance of services by the association.

(8) Associations in which common areas are owned by the association with long-term real property rights held by individual unit owners:

(a) An association of unit owners in a real estate development in which the common elements, areas or facilities are owned by the association but subject to long-term (10 or more years) real property rights of the unit owners (as defined in Paragraph

(2) of Subsection B of 3.2.1.19 NMAC) granted by deed or covenant, appurtenant to and inseparable from unit ownership, transferable only by the unit owner or upon acceptance of deed, and not extinguishable by the association shall be subject to tax in the same manner as associations described in Subsection B of this section. If the unit owners cease to hold or possess such real property rights, the association shall become subject to tax in the same manner as associations described in Paragraph (9) of Subsection B of 3.2.1.19 NMAC.

(b) All examples in Paragraphs (3) through (7) of Subsection B of 3.2.1.19 NMAC also apply to associations of unit owners identified in Paragraph (8) of Subsection B of 3.2.1.19 NMAC.

(9) Associations in which common areas are owned by association: Different treatment is required for an association of unit owners in a real estate development in which the common elements, areas or facilities are owned by the association and the unit owners (as defined in Subparagraph (a) of Paragraph (2) of Subsection B of 3.2.1.19 NMAC) do not possess the real property rights to the common elements described in Paragraphs (2) and (8) of Subsection B of 3.2.1.19 NMAC. All receipts of this type of association (e.g., payments by unit owners for maintenance and use of the common areas) are fully taxable and no NTTCs may be issued for services purchased. Because of the association's status as owner and the absence of real property rights of the unit owners in the common areas, the association is not acting as the unit owners' agent, nor is it reselling a service.

(10) *Example C 1*: Association C holds title to all common areas of a development which includes a clubhouse, golf course, swimming pool and tennis courts. Each owner of property within the development is a member of Association C and pays a membership fee. In consideration for the fees received, Association C grants each member a license to use facilities owned by the association. Association C is liable for gross receipts tax on its receipts from granting the licenses to use the facilities.

(11) *Example C 2*: Association C contracts with a security services company to provide a security officer to patrol the facilities which the association owns. Association C does not resell these services provided by the security services company and may not execute a non-taxable transaction certificate to purchase these services.

(12) *Example C 3*: Association A, Association B and Association C maintain vending machines from which soft drinks, snacks and other items of tangible personal property are sold. The associations are deriving gross receipts from the sale of tangible personal property and must pay gross receipts tax on these receipts. However, they may also execute a non-taxable transaction certificate when purchasing the soft drinks, snacks and other tangibles, since these items are resold by the associations.

C. Reimbursed expenditures:

The receipts of any person received as a reimbursement of expenditures incurred in connection with the performance of a service or the sale or lease of property are gross receipts as defined by Section 7-9-3.5 NMSA 1978, unless that person incurs such expense as agent on behalf of a principal while acting in a disclosed agency capacity.

D. Reimbursement of expenditures made to volunteers:

(1) A volunteer who contributes time, effort or talent without expectation of consideration or remuneration is not selling the services performed. When a volunteer receives reimbursement for out-of-pocket expenses incurred in the performance of a service as a volunteer which were directly related to the work volunteered, reimbursement of those expenses is not gross receipts.

(2) For purposes of Paragraph (1) of Subsection D of 3.2.1.19 NMAC, the term "volunteer" means any person who contributes time, effort or talent for the direct benefit of an organization which is exempt from taxation under the Internal Revenue Code. The term also extends to any person who contributes time, effort or talent without the receipt of consideration or remuneration to the state of New Mexico or any agency or any political subdivision of the state, or to the United States or any agency of the United States. "Volunteer" further includes any elected official serving without consideration or remuneration and any appointive non-employee member of any public commission or board serving without consideration or remuneration, whether the appointment was made by the governor, any other elected official or a public body.

(3) For purposes of Paragraph (1) of Subsection D of 3.2.1.19 NMAC, "reimbursement" includes per diem amounts set by statute to reimburse uncompensated elected and appointed governmental officials for the expense of carrying out official duties.

[3.2.1.19 NMAC - Rp, 3.2.1.19 NMAC 10/13/2021; A, 11/29/2022]

3.2.1.20 GROSS RECEIPTS OF MARKETPLACE PROVIDERS AND MARKETPLACE SELLERS:

A. Gross Receipts of Marketplace Providers: Under Section 7-9-3.5 NMSA 1978, the receipts of marketplace providers are defined to include receipts collected by a marketplace provider engaging in business in the state from sales, leases and licenses of tangible personal property, sales of licenses and sales of services or licenses for use of real property that are sourced to this state and are facilitated by the marketplace provider on behalf of marketplace sellers, regardless of whether the marketplace sellers are engaging in business in the state. As used here, the term "collected by a marketplace provider" means amounts paid by the customer directly to the marketplace provider or indirectly through third parties, where the marketplace provider either retains the receipts or transmits all or part of the receipts to the marketplace seller, regardless of whether the marketplace provider retains any portion of the gross receipts as consideration in exchange for the marketplace provider's

services . The receipts of the marketplace provider, therefore, include all gross receipts collected from the customer for the sales, leases and licenses, regardless of whether any amount is paid over to the marketplace seller. The gross receipts collected by the marketplace provider are treated as receipts of that marketplace provider from sales, leases and licenses for purposes of the Gross Receipts and Compensating Tax Act, including exemptions and deductions, as though the marketplace provider had gross receipts from selling, leasing or licensing.

B. Gross Receipts of Marketplace Sellers: Under Section 7-9-3.5 NMSA 1978, a marketplace seller that sells, licenses or leases through a marketplace provider to customers in New Mexico has gross receipts in New Mexico from selling, licensing or leasing under Section 7-9-3.5 NMSA 1978. A marketplace seller may be entitled to deduct gross receipts for sales, licenses or leases facilitated on its behalf by a marketplace provider under Section 7-9-117 NMSA 1978. A marketplace seller that is not entitled to deduct gross receipts for sales, licenses or leases facilitated on its behalf by a marketplace provider under Section 7-9-117 NMSA 1978 may be entitled to other exemptions and deductions under the Gross Receipts and Compensating Tax Act that would otherwise apply to those gross receipts.

[3.2.1.20 NMAC - N, 10/13/2021]

3.2.1.21 TAX ON GROSS RECEIPTS FROM SERVICES PERFORMED OUTSIDE THE STATE:

A. Beginning July 1, 2021 most services performed outside New Mexico the product of which is initially used in New Mexico are not exempt under Section 7-9-13.1 NMSA 1978.

B. The term "initial use" is used here as defined in Section 7-9-3 NMSA 1978 and in other regulations under the Gross Receipts and Compensating Tax Act. Gross receipts from selling services performed outside New Mexico are subject to the gross receipts tax only if the product of the service is initially used in the state. If the product of the service performed outside of New Mexico is delivered in New Mexico but not initially used in the state, receipts from selling the service are not taxable in the state.

C. If the product of a service performed outside of New Mexico is initially used in the state, then the business location to which the gross receipts and related deductions are reported and the applicable tax rate will be determined under Section 7-1-14 NMSA 1978, which, depending on the type of service, may look to the location of delivery of the service to the customer.

[3.2.1.21 NMAC - Rp, 3.2.1.21 NMAC 10/13/2021]

3.2.1.22 LEASING:

Security agreement distinguished from a lease - tax consequences:

A. The gross receipts from leasing equipment to a lessee for the lessee's own use and not for subsequent leasing are subject to the gross receipts tax unless the presence of all or a majority of the following or similar indicia indicates that the transaction between lessor and lessee is in fact a financing transaction between a secured party and a buyer:

(1) There is a written agreement which provides that, upon compliance with the terms of the agreement, the buyer has the option to purchase the property without additional consideration or with nominal consideration; exercise of the option in itself is not sufficient to establish the transaction as an installment sale.

(2) The secured party pays for the equipment selected by the buyer from the stock of an independent vendor with funds allocable to a line of credit previously extended by the secured party to the buyer.

(3) The payments made by the buyer to the secured party are determined by the cost of the equipment selected by the buyer plus an interest charge added by the secured party.

(4) If the buyer is not a federal, state, local or Indian government, the equipment is carried as an asset on the books of the buyer and depreciated by the buyer, not the secured party, and if the buyer is a federal, state, local or Indian government, the tangible personal property is not carried as an asset on the books of the seller or depreciated by the seller.

(5) The secured party treats the total amount of payment as receivables on its books and treats the interest charged the buyer as "unearned income", transferring amounts to "income" as payments are received.

B. The presence of these or other such factors between the parties to an agreement denominated as a "lease agreement" will lead to the conclusion that the lessee under such an arrangement is the purchaser of the equipment, and that the lessor as the seller of the equipment is a secured party financing the sale and is using the "lease" as a form of security agreement. In such cases the rental receipts of the lessor will not be gross receipts from leasing and, unless all or a portion of the rental receipts are gross receipts from the installment sale of property, will not be subject to the gross receipts tax. However, the gross receipts from the sale of such equipment by a vendor in New Mexico who also may be the secured party in a two party transaction will be subject to the gross receipts tax unless an exemption or deduction applies.

C. The buyer, other than a federal, state, local or Indian government, in such an arrangement will be liable for payment of the compensating tax if the buyer introduces property into this state which was acquired outside the state as a result of a transaction that would have been subject to the gross receipts tax had it occurred within the state and if the property is not subject to any exemption from payment of the compensating tax.

[3.2.1.22 NMAC - Rp, 3.2.1.22 NMAC 10/13/2021]

3.2.1.23 "PERFORMANCE OF A SERVICE", "PRODUCT OF THE SERVICE", "INITIAL USE", AND "DELIVERY"; PRESUMPTIONS:

A. Relationship between certain terms and consistency in use of those terms. The terms "sale of a service performed," "performance of a service," "product of the service," "initial use" and "delivery" are defined or used in the Gross Receipts and Compensating Tax Act and regulations in a way that makes them closely related in their application. The terms are used in Section 7-9-3.5 NMSA 1978, the definition of "gross receipts," to describe gross receipts from performing or selling services that will be subject to tax and in Section 7-9-57 NMSA 1978 to describe a deduction for sales to out-of-state buyers. Regardless of the context in which they are used, or whether the service is performed inside or outside the state, these terms will be interpreted and applied consistently.

B. Delivery and initial use of the product of construction services and construction related services, in-person services, and services which that produce tangible personal property.

(1) The product of a construction service or a construction related service is delivered and initially used in New Mexico if the related construction site is located in New Mexico.

(2) The product of an in-person service is delivered and initially used in New Mexico if the location of the performance of the service is in New Mexico.

(3) The product of a service, the primary purpose of which is to produce tangible personal property, is delivered and initially used in New Mexico if the tangible personal property is delivered to the purchaser or a person designated to receive the property in New Mexico.

C. Delivery and initial use of the product of a service other than construction services, construction related services, in-person services, or services which produce tangible personal property - generally.

(1) As defined under Subsection E of Section 7-9-3 NMSA 1978, "initial use" or "initially used" means the first employment for the intended purpose and expressly excludes the following:

(a) observation of tests conducted by the performer of services;

(b) participation in progress reviews, briefings, consultations and conferences conducted by the performer of services;

(c) review of preliminary drafts, drawings and other materials prepared by the performer of the services;

(d) inspection of preliminary prototypes developed by the performer of services; or

(e) similar activities.

(2) The location of delivery or initial use of the product of a service is determined based on relevant facts and circumstances, including primarily:

(a) The location of the purchaser or the person to whom the service is intended to be delivered.

(b) The terms of the agreement between the parties, as evidenced by any formal writing or documentation as well as the parties' behavior, including, but not limited to, any behavior which constitutes an alteration of the parties' agreement.

(c) The nature of the service and the manner in which similar services are ordinarily delivered and initially used.

(3) The delivery and initial use of the product of a separate service, which is sold with other services or property, will be determined based on the facts and circumstances relating to that separate service. For this purpose, a "separate service" is a service that would be considered a service under 3.2.1.29 NMAC, but may be sold together with property or other services, and which the seller could have sold separately to the buyer, though it was in fact sold as part of a single transaction or contract along with other services or property. Similarly, a single contract may involve services that are to be performed in multiple phases, where each phase may constitute a separate service under 3.2.1.29 NMAC. The delivery and initial use of the product of each separate service, as described in this Paragraph (3), may occur at different locations under the relevant facts and circumstances.

(4) A single or separate service, as that term is used in Paragraph (3) of Subsection C of 3.2.1.23 NMAC may, under all the relevant facts and circumstances, appear to have multiple points of delivery or initial use both inside and outside the state. In particular, this may be the case for services sold to businesses or organizations. If there is a primary location of delivery or initial use, this location will be deemed the location of delivery or initial use for purposes of the Gross Receipts and Compensating Tax Act. The primary location of delivery may be determined by facts and circumstances that show the location of the persons or offices that contracted for or oversee the service or that approve payment of the service or determine if the service has been completed properly. The primary location of initial use may be determined by the primary location of delivery or the place in which the most significant portion of initial use takes place.

D. Presumptions as to delivery and initial use of the product of the service in New Mexico; reliance on purchaser representations. Other than services described in Subsection B, of 3.2.1.23 NMAC, the following presumptions apply to all sales of

services unless the seller has information and evidence sufficient to rebut the presumptions:

(1) if the purchaser of the service is an individual, then delivery and initial use of the product of the service are presumed to occur in New Mexico if the seller has information showing a billing address or other primary location for that purchaser in New Mexico;

(2) if the purchaser of the service is a person other than an individual, then delivery and initial use of the product of the service are presumed to occur in New Mexico if that person's domicile or primary place of business or operations is in New Mexico;

(3) if the purchaser of the service is a person other than an individual and the person has its domicile or primary place of business or operations outside New Mexico, then delivery and initial use of the product of the services are presumed to occur in New Mexico if the seller's primary contact for purposes of the contract or the billing address for the services is located in New Mexico; and

(4) in a case where the facts and circumstances demonstrate that delivery of the product of the service occurs in New Mexico, initial use of the product of the service is presumed to occur in New Mexico. In order to rebut these presumptions, the seller must show that delivery or initial use of the product of the service is not in New Mexico considering the relevant facts and circumstances as generally described in this Subsection C of 3.2.1.23 NMAC. The seller may also rely in good faith on written representations made by the purchaser of the service that the initial use of the service will not be made in New Mexico, provided that the seller has no indication that this representation is untrue.

E. Partial performance of service inside the state If a seller performs services partially inside and outside New Mexico which are delivered in New Mexico but are initially used outside the state, only the portion of the gross receipts from the service performed inside New Mexico will be subject to the gross receipts under Sections 7-9-3.5 and 7-9-57 NMSA 1978. Because the seller delivers the product of the service in New Mexico, the portion of gross receipts from the service performed in the state is not deductible under Section 7-9-57 NMSA 1978. The seller may apportion the gross receipts from the service performed inside and outside the state using the relative direct costs incurred.

F. Change in facts and circumstances during the performance of a service and incomplete services. A change in facts and circumstances during the performance of a service may change the delivery or initial use of the product of a service. Likewise, the failure to complete the performance of a service may change the delivery or initial use of the product of a service.

G. No effect on compensating tax due. The provisions of this regulation apply only to a seller's determination of whether the delivery or initial use of the product of a service are in New Mexico. A purchaser who makes a taxable use of a service in New Mexico may owe the compensating tax even if the seller was not required to pay tax on the gross receipts from the performance or sale of that service.

H. Examples:

(1) A lawyer in New Mexico and her New Mexico client, with a New Mexico billing address, agree that the lawyer will perform the legal service of drafting a will. The lawyer charges for her service on an hourly basis. The lawyer reviews the client's finances and other information. The lawyer completes the will and provides it to the client. After reviewing the will, the client executes the will. Under Subsection D of 3.2.1.23 NMAC, delivery and initial use of the product of the service are presumed to be in New Mexico. Nor would the lawyer be able to rebut these presumptions since, under all the facts and circumstances, delivery of the product of the service occurs in New Mexico when the client receives the draft will from the lawyer and initial use of the product of the service occurs in New Mexico when the client executes the will.

(2) Same facts as in Paragraph (1) of Subsection H of 3.2.1.23 NMAC, except that before the will is finally drafted, the client tells the lawyer she has changed her mind and will not need the will. The lawyer and the client agree that the lawyer will not provide any documentation of advice or a draft of the will based on the work done, even though the client will pay for the hours already worked. As in Paragraph (1) of Subsection D of 3.2.1.23 NMAC, delivery and initial use of the product of the service are presumed to be in New Mexico. Nor would the lawyer be able to rebut this presumption since under the product of this incomplete service is the work done by the lawyer for the client in New Mexico and there are no facts that would rebut the presumption that delivery and initial use of this product occur in New Mexico.

(3) Same facts as in Paragraph (1) of Subsection H of 3.2.1.23 NMAC, except the client is outside New Mexico and the lawyer delivers the will to the client outside New Mexico where the client executes the will. In this case, there is no presumption under Subsection D of 3.2.1.23 NMAC that delivery or initial use of the product of the service is in New Mexico. Under the facts and circumstances, the product of the service, the will, is delivered and initially used outside New Mexico. Therefore, the lawyer will be entitled to a deduction under Section 7-9-57 NMSA 1978 provided the lawyer has evidence required to support the deduction.

(4) Same facts as in Paragraph (1) of Subsection H of 3.2.1.23 NMAC, except the lawyer performs the service outside New Mexico and the lawyer delivers the will to the client in New Mexico, where the client executes the will. As in Paragraph (1) of Subsection D of 3.2.1.23 NMAC, delivery and initial use of the product of the service are presumed to be in New Mexico. Nor would the lawyer be able to rebut this presumption since under the facts and circumstances, the product of the service, the will, is delivered and initially used in New Mexico. Note that while lawyer in this case would have gross

receipts subject to tax because the service is initially used in the state, under 3.1.4.13 NMAC, because the service is a professional service, the gross receipts would be sourced to the state reporting location and subject to tax at the state rate.

(5) Same facts as in Paragraph (2) of Subsection H of 3.2.1.23 NMAC except the lawyer is outside New Mexico. As in Paragraph (2) of Subsection D of 3.2.1.23 NMAC, delivery and initial use of the product of the service are presumed to be in New Mexico. In this case, however, the product of this incomplete service is the work done by the lawyer for the client outside New Mexico and the lawyer may, therefore, be able to rebut the presumption that delivery or initial use of this product occurs inside New Mexico. Assuming the lawyer can rebut the presumption and show that initial use of the product of the service occurs outside New Mexico, the lawyer would have no gross receipts subject to tax.

(6) A New Mexico seller agrees to provide a consulting service to a federal government agency, contracting and overseeing the performance of the service at an out-of-state location. The contract for the service provides that the seller is required to prepare a report summarizing the work and deliver that report to the out-of-state location. The contract also provides that the government will use the report to select products for purchase at facilities outside New Mexico. During the contract, the government agency, which has offices in New Mexico, answers questions posed by the New Mexico seller and responds to requests for data. Here, there is no presumption in this case under Subsection D of 3.2.1.23 NMAC that the delivery or initial use of the product of the service are in New Mexico. Furthermore, under all the facts and circumstances, the product of the service, the report, is delivered and initially used outside the state.

(7) A seller performs website design services outside New Mexico for a client that has business locations inside and outside the state. The seller works with and responds to the client's technology manager the client's out-of-state office. The seller and the client agree that the seller will make a demo of the proposed website for the technology manager to test. After the test, the seller will finish the website, with any necessary changes, and will give the client access to operating the website. The operation of the website will be done primarily at offices of the client outside the state, although some operations will also be done in the New Mexico office. Here, there is no presumption under Subsection D of 3.2.1.23 NMAC that the product of the service is delivered or initially used in New Mexico. Furthermore, under all the facts and circumstances, the product of the service, the final website, will be delivered and initially used outside the state.

(8) A seller of medical testing services performed outside New Mexico has a client in New Mexico who purchases the services for its own medical facilities both inside and outside the state. The seller of testing services charges by the test. The results of tests are sent to the client's medical facilities in New Mexico where they are reviewed and then made available to doctors and patients. Each testing service is a separate sale of a service. Here, for each service, the product of the service is

presumed to be delivered and initially used in New Mexico under Subsection D of 3.2.1.23 NMAC. The seller in this case will not be able to rebut the presumption because, under the facts and circumstances, the product of these services are the results which are delivered to New Mexico and initially used at facilities where they are reviewed.

(9) A seller of payroll services performed outside New Mexico has a business client which has offices both inside and outside New Mexico. The seller's contact is with the business's headquarters, outside the state, and the seller obtains information to perform the payroll service from the business's chief accountant located in that office. Each pay period, the seller transmits funds electronically drawing on the business's accounts to pay employees and to submit tax returns and also transmits reports to the business at the headquarters office. This information is reviewed by the headquarters office and any mistakes are communicated by the business to the seller. Each year the seller also transmits W-2s and other tax information by mail. Here, there is no presumption under Subsection D of 3.2.1.23 NMAC that the product of the service is delivered or initially used in New Mexico. It may appear that the product of the service is delivered and initially used both in and outside New Mexico. Under Paragraph (4) of Subsection C of 3.2.1.23 NMAC and under all the relevant facts and circumstances, the product of the service, payroll information, is deemed delivered to the primary location of delivery outside the state and the initial use of the product of the service is, likewise, deemed delivered to occur at the primary location of initial use outside the state.

(10) Same facts as the example above, except that the seller of payroll services performs those services in New Mexico. Again, as in the previous, while the product of the service may appear to be delivered and initially used both inside and outside New Mexico, under Paragraph (4) of Subsection C of 3.2.1.23 NMAC and under all the relevant facts and circumstances, the product of the service, payroll information, is deemed delivered to the primary location of delivery outside the state and the initial use of the product of the service is, likewise, deemed to occur at the primary location of initial use outside the state.

(11) A seller of video editing services performed inside New Mexico are sold to an out-of-state customer who posts the edited video on-line for use by its customers throughout the United States. After the edited video is delivered and posted on the customer's website, the customer then asks the seller in New Mexico to test access to the video, and the seller agrees to do so. The fact that the final action related to the service, the testing of the access to the video, occurs in New Mexico does not change the result under all the relevant facts and circumstances that the delivery and initial use of the product of the service, the edited video, occurs outside New Mexico when the video is delivered to and posted by the customer on its website.

(12) Same facts as Paragraph (11) of Subsection H of 3.2.1.23 NMAC except that the seller in New Mexico agrees to both edit the video and provide data from a survey of other websites. The seller charges separately for these services, which it also regularly sells on a separate basis, but the contract and billing information for the two

services are combined. These services would be separate services under 3.2.1.29 NMAC and the delivery and initial use of the product of each service would be determined based on the relevant facts and circumstances for each service.

[3.2.1.23 NMAC - N, 10/13/2021]

3.2.1.24 [RESERVED]

3.2.1.25 MANUFACTURING - GENERAL EXAMPLES:

A. For purposes of Subsection H of Section 7-9-3 NMSA 1978, combining means assembling two or more pieces of tangible personal property to create another piece of personal property. Processing means to convert tangible personal property into a marketable form. A person is engaged in the business of manufacturing only if:

(1) that person combines or processes components or materials;

(2) the value of the tangible personal property which has been combined with other tangibles or which has been processed has increased as a direct result of the manufacturing process; and

(3) the person manufacturing sells the same or similar type of manufactured products in the ordinary course of business.

B. The following examples illustrate the application of Subsection H of Section 7-9-3 NMSA 1978.

C. *Example 1*: Y sells parts and bodies for automobiles to X. X, who owns a used car lot and garage, places the parts and bodies in and on used cars from his lot. X then resells the renovated cars to the general public in the ordinary course of business. X is manufacturing because X is assembling and fabricating the cars to increase their value and is selling them in the ordinary course of business.

D. *Example 2*: Y, a machine tool firm, assembles three machine tools solely for its own use in producing components. Y does not sell any of these three machine tools. Assembling the machine tools is not "manufacturing" because Y is not assembling the tools to increase their value for sale in the ordinary course of business.

E. *Example 3*: S, who is in the business of building custom boats, purchases fiberglass and other supplies from F, a fiberglass manufacturer. S is furnished blueprints by customers and all the materials that are to be purchased are specified in those blueprints. After S obtains all the materials from F, S builds the boats to the specifications set out in the blueprints and then sells the boats to customers in the ordinary course of business. S is manufacturing boats. S may therefore give F a nontaxable transaction certificate.

F. *Example 4*: R is in the business of retreading and recapping pneumatic tires. If R retreads and recaps a tire carcass which R owns in order to increase its value for sale in the ordinary course of business and that tire carcass becomes a component part of a recapped tire, then R is "manufacturing".

G. *Example 5*: P is in the business of printing and silk screening. If P uses only printing supplies which P owns as an ingredient or component part of the end product which P sells in the ordinary course of business, then P is "manufacturing". If P uses printing supplies such as paper, ink, staples, glue, binding, chemicals, and dyes provided by the customer, then even though such supplies become ingredient or component parts of an end product which P sells in the ordinary course of business, P is "performing a service" and not "manufacturing".

H. *Example 6*: Y is a newspaper publishing company located outside New Mexico with no business location, salespersons or other presence in New Mexico. Z is a printing company inside New Mexico. Y arranges to have Z print the newspapers which it publishes. Z is required to provide newsprint (paper), ink, and all the materials required for the production of newspapers. Z is manufacturing printed material. Z, in the given fact situation, does not have receipts from either publishing a newspaper or selling a newspaper; therefore, the deductions provided by Section 7-9-63 NMSA 1978 and Section 7-9-64 NMSA 1978 do not apply. Z may deduct from its gross receipts its receipts from selling printed material to Y if the printed material is delivered to Y outside New Mexico.

I. *Example 7*: A is in the business of painting oil and water color pictures for sale in the ordinary course of business. A is a manufacturer of tangible personal property. A combines oils, color pigments, fixing agents, canvas, frames and glass in a painting as components and properly issues a nontaxable transaction certificate to the seller of the components. A cannot properly issue a nontaxable transaction certificate to the seller of brushes, palettes, knives, cleaners, erasers and easels since these items of property are not components for purposes of Subsection H of Section 7-9-3 NMSA 1978.

[3.2.1.25 NMAC - Rp, 3.2.1.25 NMAC 10/13/2021]

3.2.1.26 [RESERVED]

3.2.1.27 PROPERTY:

A. Bills, notes, etc.: Tangible personal property does not include bills, notes, checks, drafts, bills of exchange, certificates of deposit, letters of credit, or any negotiable instrument. Coins, stamps, and documents which have a historic value or market value in excess of their face value are tangible personal property.

B. Sale of license to use software is sale of property:

(1) The definition of property includes licenses. The sale of a license to use software constitutes a sale of property and comes within the definition of gross receipts.

(2) The transaction constitutes a sale of a license to use the software program when a computer software company sells an already-developed software program where:

(a) no extraordinary services are performed in order to furnish the program;

(b) the buyer pays a fixed amount for the license to use the program and use is generally limited to a specific computer; and

(c) the buyer may not resell to any other person a license to use the program and may not transfer the software package itself to any other person.

C. Granting the right to hunt is the sale of a license to use: For purposes of this section, granting by a landowner to another, a right to access and hunt within the boundaries of the landowner's real property is a license to use the real property. A license is a form of property as defined in Subsection J of Section 7-9-3 NMSA 1978 and the receipts from the sale of a license are subject to the gross receipts tax. The following are four types of hunting-related transactions, that when sold, may include the sale of a license:

(1) the sale of a hunting package that includes permission to hunt on private land;

(2) the sale of an authorization to hunt on private land granted by the New Mexico department of game and fish;

(3) the granting of permission or access to enter onto the private land to hunt; or

(4) the sale of a license/permit issued by the state to hunt on public land.

D. Receipts from selling a hunting package are subject to gross receipts tax to the extent that the individual components of the package are not deductible or exempt from the gross receipts tax pursuant to the Gross Receipts and Compensating Tax Act. A person that sells a hunting package that consists of taxable and nontaxable components must reasonably allocate the receipts based on the value of the individual components. For purposes of this section, a "hunting package" may include the following components:

(1) lodging;

(2) meals;

(3) delivery and transportation services;

(4) guide services;

(5) license to use the property;

(6) carcass of the hunted animal; or

(7) other services or tangible personal property included in the package.

E. *Example:* X owns a ranch in New Mexico and sells guided hunting packages. Included in the price for the hunt X guarantees that the hunter will retrieve an animal, lodging at the ranch, meals, experienced hunting guide, retrieval, caping, delivery to local meat processor and taxidermist. Not included in the price are expenses associated with alcohol consumption, meat processing, taxidermy services or gratuities for guides. X receipts from the sale of this type of hunting package includes receipts from providing services, the sale of tangible personal property (meals), the sale of the carcass (possibly livestock) and from granting a license to use the land within the ranch boundaries. X must determine a reasonable method of allocating their receipts between components that are subject to gross receipts tax and those that are exempt from gross receipts tax (sale of livestock).

[3.2.1.27 NMAC - Rp, 3.2.1.27 NMAC 10/13/2021]

3.2.1.28 [RESERVED]

3.2.1.29 SERVICES:

A. When a transaction is predominantly a service:

(1) A transaction involving both the transfer of tangible personal property to the buyer and the performance of a service other than a construction or research and development service is predominantly a service when:

(a) the seller is not regularly engaged in selling or leasing the same or similar tangible personal property other than in conjunction with the sale of a service; and

(b) at least one of the following conditions applies:

(i) the transaction is primarily the performance of work and the transfer of any property through the transaction is incidental to the performance of the required work; or

(ii) the transaction requires the performance of work which is substantially greater in value than the value of the tangible personal property involved in the transaction; or

(iii) the performer of the service has the power to influence significantly the degree of involvement of the tangible personal property in the transaction.

(2) When the transaction is predominantly a service other than construction, any tangible personal property transferred in conjunction with the service is incidental to the service and the value of the property becomes an element of and is incorporated into the value of the service sold. Type 2 nontaxable transaction certificates (NTTCs) may not be executed to acquire the property so incorporated.

(3) *Example A1*: C, a consultant, reviews operations of clients; C does not engage in the business of selling office supplies. C is hired to evaluate certain operations of L. C presents the evaluation to L as a written report, with supplemental data on computer disks. C contends that the paper used for the report and the computer disks were sold to L and therefore C may execute a Type 2 NTTC to acquire these tangibles. The transaction with L is predominantly the performance of a service. The paper and computer disks convey the result of the C's service and are incidental to that service. C may not execute Type 2 NTTCs for the purchase of these tangibles.

(4) *Example A2*: X is engaged in the business of performing certain services and is not engaged in selling tangible personal property in the ordinary course of business. X enters into a cost plus a fixed fee contract with Y to conduct a survey of residents of this state to determine consumer acceptability of and demand for particular household products which Y manufacturers and plans to distribute into New Mexico. The contract specifies that on completion or termination of the contract any tangible property purchased by X, and billed by X, will be paid by Y as a cost of fulfilling the requirements of the contract. X chooses to purchase a personal computer to use in the performance of the service. X will enter results of the surveys into the computer which will classify the responses and generate reports which X will analyze, interpret and submit to Y. Since X has the power to exert significant influence over the degree of involvement (use) of the computer under the contract and since X is not engaged in selling computers or similar property in the ordinary course of business, X's receipts attributed to the cost of the computer are receipts from performing a service. X may not execute a Type 2 NTTC for the purchase of the computer.

(5) *Example A3*. A well servicing company uses disposable bits and other disposable "rubber goods" in servicing oil and natural gas wells. The disposable items are used up in the course of the servicing; pieces of the abraded material are left in the well. The company claims it should be allowed to execute Type 2 NTTCs because the disposable items are left with the owner(s) of the well. These materials are incidental to the performance of the service. The company may not execute Type 2 NTTCs in acquiring these disposable items.

(6) Construction is defined to be a service and that service is defined to include all tangible personal property which becomes an ingredient or component part of the construction project. Under the provisions of Section 7-9-51 NMSA 1978, however, a person engaging in the construction business may execute a nontaxable

transaction certificate for the purchase of tangible personal property which will become an ingredient or component part of a construction project.

(7) The product of a research and development service may be tangible property, such as prototypes, facsimiles, reports or other similar property. Even though the product of the service may itself be tangible, receipts from the transaction are receipts from the sale of a service and not from the sale of tangible personal property. Accordingly the performer of research and development services may not execute a nontaxable transaction certificate when purchasing tangible personal property used to assemble or create such product of the service, except as provided by Section 3.2.205.11 NMAC.

(8) *Example B1*: B, an engineering company, contracts to design a product for Y, a manufacturer, who intends to manufacture the product for sale to the general public. The contract requires B to submit plans for the product and a prototype of it. B contends that the plans and prototype are tangible personal property and therefore Type 1 or Type 2 NTTCs may properly be executed. B is performing a research and development service, even though the product of the service is embodied in tangible personal property. The tangibles used are incidental to the performance of the service. Type 1 and Type 2 NTTCs may not be executed to acquire the tangible personal property making up the plans and prototype.

(9) *Example B2*: B, an engineering company, is a qualified contractor within the meaning of Section 3.2.205.11 NMAC under a contract with D, an agency of the United States. The contract is a research and development contract covered by the agreement between the state of New Mexico and several agencies of the United States, including D. The contract calls for B to design and submit plans for a rocket motor and to develop and deliver a facsimile of the rocket casing to a research facility for testing. B maintains that B is selling tangible personal property to the federal government. B is performing research and development services. The plans and facsimile are products of that service. The transaction is predominantly the performance of a service rather than the sale of tangible personal property. B is not selling tangible personal property to the federal government but may be eligible to execute Type 15 NTTCs if the conditions specified by Section 3.2.205.11 NMAC and the State-Federal agreement are met.

(10) When the performer of the service either is regularly engaged in selling or leasing by itself the type of tangible personal property transferred in the transaction, a single transaction may encompass both the sale of a service and the sale of property as distinct and separable parts of the transaction. In such a case, Type 2 NTTCs may be executed to acquire the tangible personal property resold if the conditions in Subsection A of Section 3.2.205.10 NMAC are met.

(11) *Example B3*: F, an accountant, performs bookkeeping services for several clients. The accountant transmits various forms and papers to the clients in the course of providing this service. G, another accountant, runs short of certain forms and purchases some from F to tide G over until G's regular suppliers are open for business.

F contends that, because F has sold to G tangible personal property by itself of the type sold to F's clients, two separate transactions occur with F's clients. F is not regularly engaged in the business of selling these forms. F's transactions with F's clients are not separable into distinct service and tangible components. F's transactions are predominantly the performance of a service.

(12) *Example B4*: H, who operates a computer hardware and software company, is hired to write computer programs for one of M's divisions, acquire and set up 25 computer stations for use of the division and to train the division personnel in the use of the stations and programs. H contends that the computer stations are sold to M and therefore H may execute Type 2 NTTCs to acquire them for resale. The transaction encompasses both the performance of services (developing the programs and training the division personnel) as well as the sale of tangible personal property (the computer stations) as separable elements. Therefore H may execute Type 2 NTTCs in acquiring the computer stations.

(13) See Paragraph (8) of Subsection A of Section 3.2.205.10 NMAC for transactions in which buyer regularly sells the tangible personal property by itself.

B. Transactions in which neither the performance of a service or the sale of tangible personal property predominates:

(1) In some cases, a transaction involving the performance of a service other than a construction or research and development service and the sale of tangible personal property may not be predominately either the performance of a service or the sale of tangible personal property, as for example where receipts attributable to each constitutes more than forty percent of the total receipts from the transaction. In such cases, if the market value or costs of the tangible personal property or services is readily ascertainable and if the taxpayer's records adequately reflect the portion of receipts derived from the sale of tangible personal property and the portion derived from the performance of services, the receipts may be apportioned accordingly. The burden rests on the taxpayer to provide that information, and to justify that the portion of receipts attributable to the sale of the tangible personal property or to the performance of services accurately reflects the relative market value or costs, including reasonably apportioned overhead, of the tangible personal property or services. The clearest way of carrying that burden is to specify separately on the invoice the charges for the property and the charges for the services, and to retain sufficient records to allow a determination that the relative value of either the property or the services is not overstated.

(2) *Example 1*: Taxpayer X enters into a contract with a governmental entity to maintain the entity's computer equipment. The contract obliges X to check and maintain the equipment, providing replacement parts such as toner cartridges on a regular basis, and to repair the equipment, including the replacement of broken parts. X bills the entity separately stating the charges for its maintenance and repair services and for the replacement parts. Receipts from the charges for replacement parts will be

receipts from the sale of tangible personal property to a governmental entity and are deductible pursuant to Section 7-9-54 NMSA 1978. Receipts from charges for the services are not deductible.

(3) Subsection E of Section 3.2.1.29 NMAC does not apply to construction or to transactions in which prototypes or other tangible products of a service are transferred.

[3.2.1.29 NMAC - Rp, 3.2.1.29 NMAC 10/13/2021]

3.2.1.30 USE AND USING:

The definition of "use" and "using" pursuant to Subsection N of Section 7-9-3 NMSA 1978 includes three components: use, consumption and storage.

A. Use: The first component, "use", means to employ or utilize property or a service for a particular purpose. Use does not include mere ownership or possession of property. Use does not include the mere treatment, processing or servicing of tangible property to make the property fit for utilization when the ultimate use of the property is outside New Mexico. Use does not include the transfer to the customer of tangible personal property in the course of the treatment, processing or servicing or the return of the property to the owner at the conclusion of the treatment, processing or servicing.

(1) *Example 1*: The uses of a chair are many and varied. Its designed or intended use is being sat on by human beings. A chair, however, may also be "used" to wedge a door shut, as a step-ladder to reach something, as a receptacle to hold objects, as a display item, as a support to prop up a table or shelf and many other purposes not planned by its designer or maker. In contrast, a chair is not "used" by being assembled, polished, painted, upholstered or recaned.

(2) *Example 2*: B enters into a contract with C, a firm in New Mexico. Under the contract, B sends a gaseous compound to C for separation. C returns the separated materials to B or delivers them to D for further processing. B has not used the compound or the separated materials in New Mexico.

B. Storage:

(1) The term "using" includes storage in New Mexico except where the storage is for subsequent sale of the property in the ordinary course of the seller's business or for use solely outside New Mexico.

(2) *Example 1*: D, a resident of Utah, buys pipe in Texas to be used solely in Utah. The pipe is shipped into New Mexico, unloaded, and stored for three days. It is then reloaded and shipped to Utah. There is no use of the pipe in New Mexico within the meaning of Subsection N of Section 7-9-3 NMSA 1978. The transaction which occurred was merely storage for use solely outside New Mexico.

(3) *Example 2*: X Construction Company purchases a bulldozer in Illinois intending to use it in its construction business. The bulldozer is then delivered to X in New Mexico. X does not have any immediate use for the bulldozer so it is stored in the back lot of the construction company with other equipment. Two months later X changes plans and sells the bulldozer to Y Construction Company who needs it for a job. The bulldozer remained in storage from the day X received it until the day it was sold. Since the storage of the tractor was not for subsequent sale in the ordinary course of X's business, the storage of the tractor is a "use" within the meaning of Subsection N of Section 7-9-3 NMSA 1978. Therefore, X Construction Company will be subject to the compensating tax on the value of the tractor because it has used the property in New Mexico.

[3.2.1.30 NMAC - Rp, 3.2.1.30 NMAC 10/13/2021]

PART 2: DATE PAYMENT DUE

3.2.2.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.2.1 NMAC - Rn, 3 NMAC 2.11.1, 4/30/01]

3.2.2.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.2.2 NMAC - Rn, 3 NMAC 2.11.2, 4/30/01]

3.2.2.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.2.3 NMAC - Rn, 3 NMAC 2.11.3, 4/30/01]

3.2.2.4 DURATION:

Permanent.

[11/15/96; 3.2.2.4 NMAC - Rn, 3 NMAC 2.11.4, 4/30/01]

3.2.2.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.2.5 NMAC - Rn & A, 3 NMAC 2.11.5, 4/30/01]

3.2.2.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.2.6 NMAC - Rn, 3 NMAC 2.11.6, 4/30/01]

3.2.2.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.2.7 NMAC - Rn, 3 NMAC 2.11.7, 4/30/01]

3.2.2.8 EXTENSION OF TIME FOR PAYMENT:

The time for payment of the tax may be extended under unusual circumstances upon proper application to the department prior to the due date.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.2.8 NMAC - Rn, 3 NMAC 2.11.8, 4/30/01]

3.2.2.9 DETERMINATION OF TIMELINESS:

Determination of what timeliness is in relation to the filing of returns, notices, and applications and the making of payments is governed by Section 7-1-9 NMSA 1978 of the Tax Administration Act and regulations thereunder. Requirements for making payments equal to or in excess of $25,000 are governed by Section 7-1-13.1 NMSA 1978 of the Tax Administration Act and regulations thereunder.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.2.9 NMAC - Rn & A, 3 NMAC 2.11.9, 4/30/01]

3.2.2.10 EFFECT OF SATURDAY, SUNDAY, OR HOLIDAY ON PAYMENT DATE:

When the total tax due is less than $25,000 and the last day for payment of the combined taxes on the CRS-1 Combined Report Form falls on Saturday, Sunday or a legal holiday, the payment shall be considered timely if it is postmarked or filed in person the next succeeding day which is not a Saturday, Sunday or a legal New Mexico or national holiday.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 4/30/99; 3.2.2.10 NMAC - Rn, 3 NMAC 2.11.10, 4/30/01]

3.2.2.11 REPORTING OF PROGRESS PAYMENTS:

A contractor who receives progress payments or other consideration for services performed on and materials provided for a construction project as defined in Section 7-9-3.4 NMSA 1978 must report such payments or other consideration as gross receipts. If the contractor is a cash-basis taxpayer, the contractor must report any such payments or other consideration actually received in a particular month as receipts for that month. If the contractor is an accrual basis taxpayer, any amounts which the contractor earned or billed or to which the contractor became entitled during a particular month must be reported as receipts for that month as required by Section 7-9-11 NMSA 1978.

[4/2/75, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.2.11 NMAC - Rn & A, 3 NMAC 2.11.11, 4/30/01; A, 12/30/03]

3.2.2.12 PETITION TO CHANGE ACCOUNTING METHODS:

A. A taxpayer who elects to report gross receipts tax on either the cash, modified accrual or accrual basis is bound by that election and must report the gross receipts tax on that basis unless the taxpayer petitions the secretary or the secretary's delegate in writing to allow a change in reporting method as required by Subsection C of Section 7-1-10 NMSA 1978 and the petition is granted. A change in accounting method operates prospectively from the date the petition for change of method is granted.

B. A taxpayer who elects to report governmental gross receipts tax on either the cash, modified accrual or accrual basis is bound by that election and must report the governmental gross receipts tax on that basis unless the taxpayer petitions the secretary or the secretary's delegate in writing to allow a change in reporting method as required by Subsection C of Section 7-1-10NMSA 1978 and the petition is granted. A change in accounting method operates prospectively from the date the petition for change of method is granted.

[7/26/76, 6/18/79, 4/7/82, 1/6/84, 5/4/84, 4/2/86, 11/26/90, 6/28/91, 11/15/96; 3.2.2.12 NMAC - Rn & A, 3 NMAC 2.11.12, 4/30/01]

3.2.2.13 REPORTING OF GROSS RECEIPTS - SEMI-ANNUAL REPORTING OR QUARTERLY REPORTING:

Taxpayers who have a tax liability which averages less than two hundred dollars ($200) per month and have been granted authority to report gross receipts or governmental gross receipts on either a semi-annual filing basis or quarterly filing basis must file a return with payment on or before the twenty-fifth day of the month following the last month of the semi-annual filing period or of the quarterly filing period. The taxpayer does not have authority to change from one reporting interval to another without the prior approval of the secretary or the secretary's delegate.

[1/6/84, 5/4/84, 4/2/86, 11/26/90, 6/28/91, 11/15/96; 3.2.2.13 NMAC - Rn, 3 NMAC

2.11.13, 4/30/01]

3.2.2.14 ACCRUAL AND CASH BASIS REPORTING:

A. Cash basis taxpayers report as gross receipts or governmental gross receipts all cash and other consideration received during the tax reporting period.

B. Accrual basis taxpayers report as gross receipts or governmental gross receipts amounts of sales, including cash and charge sales, made during the tax reporting period.

[1/21/85, 4/2/86, 11/26/90, 6/28/91, 11/15/96; 3.2.2.14 NMAC - Rn, 3 NMAC 2.11.14, 4/30/01]

3.2.2.15 RETURN REQUIRED TO BE FILED:

Taxpayers who are registered for gross receipts, governmental gross receipts, compensating or withheld income tax purposes must file a CRS-1 Combined Report Form for each reporting period whether or not any tax is due.

[1/21/85, 4/2/86, 11/26/90, 6/28/91, 11/15/96; 3.2.2.15 NMAC - Rn, 3 NMAC 2.11.15, 4/30/01]

PART 3: [RESERVED]

PART 4: IMPOSITION AND RATE OF TAX - DENOMINATION AS "GROSS RECEIPTS TAX"

3.2.4.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.4.1 NMAC - Rn, 3 NMAC 2.4.1, 4/30/01]

3.2.4.2 SCOPE:

This part applies to all persons engaging in business in New Mexico.

[11/15/96; 3.2.4.2 NMAC - Rn, 3 NMAC 2.4.2, 4/30/01]

3.2.4.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.4.3 NMAC - Rn, 3 NMAC 2.4.3, 4/30/01]

3.2.4.4 DURATION:

Permanent.

[11/15/96; 3.2.4.4 NMAC - Rn, 3 NMAC 2.4.4, 4/30/01]

3.2.4.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.4.5 NMAC - Rn & A, 3 NMAC 2.4.5, 4/30/01]

3.2.4.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.4.6 NMAC - Rn, 3 NMAC 2.4.6, 4/30/01]

3.2.4.7 DEFINITIONS:

For the purposes of Section 3.2.4.9 NMAC:

A. "Indian tribe" means an Indian nation, tribe or pueblo, including:

(1) any political subdivision, agency or department of that Indian nation, tribe or pueblo;

(2) any incorporated or unincorporated enterprise of the Indian nation, tribe or pueblo or its political subdivisions, agencies or departments; and

(3) any corporation required to be considered an Indian and therefore a member of the Indian nation, tribe or pueblo under ***Eastern Navaho Industries, Inc. v. Bureau of Revenue***, 552 P.2d 805 (N.M. App. 1976); and

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.

[3/16/95, 8/30/95, 11/15/96; 3.2.4.7 NMAC - Rn & A, 3 NMAC 2.4.7, 4/30/01]

3.2.4.8 WHO IS THE TAXPAYER:

The gross receipts tax is imposed on persons engaging in business in New Mexico. Such persons are solely liable for payment of the tax; they are not "collectors" on behalf of the state.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.4.8 NMAC - Rn, 3 NMAC 2.4.8, 4/30/01]

3.2.4.9 FEDERAL PREEMPTION - TRANSACTIONS WITH INDIAN TRIBES:

A. **Imposition barred by federal law - sale in Indian country of tangible personal property to a tribe or tribal member - general**

(1) Except for receipts of a public utility from selling electricity, natural gas or water, receipts from selling tangible personal property to an Indian tribe or member thereof on that tribe's territory are not subject to the gross receipts tax if taxation of such receipts is prohibited by federal law.

(2) The person selling tangible personal property to an Indian tribe or member thereof on that tribe's territory must demonstrate that the sale is to an Indian tribe or member thereof. The person must also demonstrate that the sale takes place on the tribe's territory. The documents demonstrating that the receipts from these sales are not subject to tax under Subsection A of Section 3.2.4.9 NMAC shall be retained in the person's records.

(a) The first requirement may be met by obtaining a statement signed by the purchaser of the tangible personal property 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 a tribal member, the statement must either specify the tribal member's official tribal or BIA census number or, in the case in which the Indian tribe does not maintain an official census system, the signature of an official of the member's Indian tribe confirming this statement. This statement may also be provided to the person 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.

(b) The second requirement may be met if the person keeps records adequate to document that delivery of the tangible personal property to the buyer took place on the tribe's territory and that at least two of the following activities also took place on the tribe's territory:

(i) solicitation of the sale;

(ii) making of the contract of sale; or

(iii) payment for the property sold.

(3) Receipts from the sale of tangible personal property in New Mexico in Indian country to the following persons are subject to the gross receipts tax:

(a) a person who is not an Indian tribe or member thereof;

(b) a person who is an Indian tribe other than the Indian tribe on whose territory the sale takes place; and

(c) 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 Subsection A of Section 3.2.4.9 NMAC to be a member of the spouse's Indian tribe.

(4) Receipts from the sale of tangible personal property in New Mexico to an Indian tribe or member thereof are subject to the gross receipts tax when the sale takes place outside the tribe's territory, even if the sale takes place within the territory of another Indian tribe.

B. **Imposition barred by federal law - sale in Indian county of tangible personal property to a tribe or tribal member - electricity, natural gas or water sold by public utility:**

(1) Receipts of a public utility (as defined in Section 62-3-3 NMSA 1978) from selling electricity, natural gas or water to an Indian tribe or member thereof on that tribe's territory are not subject to the gross receipts tax if taxation of such receipts is prohibited by federal law. A sale occurs on the tribe's territory when the meter measuring the quantity sold is located on the tribe's territory.

(2) The public utility selling electricity, natural gas or water to an Indian tribe or member thereof on that tribe's territory must demonstrate that the sale is to an Indian tribe or member thereof. The public utility must also demonstrate that electricity, natural gas or water being sold is sold through a meter on the tribe's territory. The documents demonstrating that the receipts from these sales are not subject to tax under Subsection B of Section 3.2.4.9 NMAC shall be retained in the public utility's records.

(a) The first requirement may be met by obtaining a statement signed by the purchaser of the electricity, natural gas or water 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 a tribal member, the statement must either specify the tribal member's official tribal or BIA census number or, in the case in which the Indian tribe does not maintain an official census system, the signature of an official of the member's Indian tribe confirming this statement. This statement may also be provided to the public utility 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.

(b) The second requirement may be met if the public utility keeps records adequate to document that the meter through which the electricity, natural gas or water is sold is located on the tribe's territory.

(3) Receipts from the sale of electricity, natural gas or water in New Mexico in Indian country to the following persons are subject to the gross receipts tax:

(a) a person who is not an Indian tribe or member thereof;

(b) a person who is an Indian tribe other than the Indian tribe on whose territory the sale takes place; and

(c) 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 Subsection B of Section 3.2.4.9 NMAC to be a member of the spouse's Indian tribe.

(4) Receipts from the sale of electricity, natural gas or water in New Mexico to an Indian tribe or member thereof are subject to the gross receipts tax when the sale takes place outside the tribe's territory, even if the sale takes place within the territory of another Indian tribe.

C. **Imposition barred by federal law - leasing in Indian country to tribe or tribal members:**

(1) Receipts from leasing property to an Indian tribe or member thereof on that tribe's territory are not subject to gross receipts tax if taxation of such receipts is prohibited by federal law. Leasing occurs on a tribe's territory when the property being leased is located on the tribe's territory.

(2) The lessor must demonstrate that the leased property is leased to an Indian tribe or member thereof. The lessor must also demonstrate that the property being leased is located on the tribe's territory. The documents demonstrating that lease receipts are not subject to tax under Subsection C of Section 3.2.4.9 NMAC shall be retained in the lessor's records.

(a) The first requirement may be met by obtaining a statement signed by the lessee that the lessee 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 a member, the statement must also either specify the lessee's official tribal or BIA census number or, when the lessee's Indian tribe does not maintain an official census system, be attested to by an official of the lessee's Indian tribe confirming this statement. This

statement may also be provided to the lessor 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 lessee is an Indian tribe or member thereof.

(b) The second requirement may be met if the lessor keeps records adequate to document that the property being leased is located during the lease on the lessee's tribe's territory. If the property being leased is to be located both on and off the lessee's tribe's territory during the lease, the lessor must keep records documenting the time the property is on the lessee's tribe's territory.

(3) Receipts from leasing property in New Mexico in Indian country to the following persons are subject to the gross receipts tax:

(a) a person who is not an Indian tribe or member thereof;

(b) a person who is an Indian tribe other than the Indian tribe on whose territory the leased property is located; and

(c) a person who is a member of an Indian tribe other than the Indian tribe on whose territory the leased property is located except that, if the person is the spouse of a member of the Indian tribe on whose territory the leased property is located, that person will be considered for the purposes of Subsection C of Section 3.2.4.9 NMAC to be a member of the spouse's Indian tribe.

(4) Receipts from leasing property in New Mexico to an Indian tribe or member thereof are subject to the gross receipts tax when the property being leased is located outside the tribe's territory, even if located within the territory of another Indian tribe.

D. **Imposition barred by federal law - services in Indian country for tribe or tribal members - general:**

(1) Receipts from performing services, other than construction or telecommunications services, sold to an Indian tribe or member thereof on that tribe's territory are not subject to gross receipts tax if taxation of such receipts is prohibited by federal law.

(2) The seller of the services must demonstrate that the service is sold to an Indian tribe or member thereof. The seller must also demonstrate that the service is performed on the tribe's territory. The documents demonstrating that the receipts are not subject to tax under Subsection D of Section 3.2.4.9 NMAC shall be retained in the seller's records.

(a) 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 a member, 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.

(b) The second requirement may be met if the seller keeps records adequate to document that the services are performed on the purchaser's tribe's territory. If the services are performed both on and off the purchaser's tribe's territory, the seller must keep records documenting the value of the services performed on the purchaser's tribe's territory.

(3) Receipts from performing services, other than construction or telecommunications services, in New Mexico in Indian country which are sold to the following persons are subject to the gross receipts tax:

(a) a person who is not an Indian tribe or member thereof;

(b) a person who is an Indian tribe other than the Indian tribe on whose territory the sale takes place; and

(c) 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 Subsection D of Section 3.2.4.9 NMAC to be a member of the spouse's Indian tribe.

(4) Receipts from performing services, other than construction or telecommunications services, in New Mexico for an Indian tribe or member thereof are subject to the gross receipts tax when the services are performed outside the tribe's territory, even if performance takes place within the territory of another Indian tribe.

E. **Imposition barred by federal law - services in Indian country for tribe or tribal members - construction services:**

(1) Receipts from construction services sold to an Indian tribe or member thereof on that tribe's territory are not subject to gross receipts tax if taxation of such receipts is prohibited by federal law. Construction occurs on a tribe's territory when the construction site is located on the tribe's territory.

(2) The seller must demonstrate that the construction service is sold to an Indian tribe or member thereof. The seller must also demonstrate that the construction

site is located on the tribe's territory. The documents demonstrating that the receipts are not subject to tax under Subsection E of Section 3.2.4.9 NMAC shall be retained in the seller's records.

(a) 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.

(b) The second requirement may be met if the seller keeps records adequate to document that the construction site is located on the purchaser's tribe's territory. If the construction site is located partly on and partly off the purchaser's tribe's territory, the seller must keep records documenting the portion of construction occurring on the purchaser's tribe's territory.

(3) Receipts from construction services in Indian country sold to the following persons are subject to the gross receipts tax:

(a) a person who is not an Indian tribe or member thereof;

(b) a person who is an Indian tribe other than the Indian tribe on whose territory the sale takes place; and

(c) 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 Subsection E of Section 3.2.4.9 NMAC to be a member of the spouse's Indian tribe.

(4) Receipts from performing construction services in New Mexico for an Indian tribe or member thereof are subject to the gross receipts tax when the construction site is outside the tribe's territory, even if the construction site is within the territory of another Indian tribe.

F. **Imposition barred by federal law - services in Indian country for tribe or tribal members - telecommunications services:**

(1) Receipts from selling telecommunications services to an Indian tribe or member thereof on that tribe's territory are not subject to gross receipts tax if taxation of

such receipts is prohibited by federal law. Telecommunications service occurs on a tribe's territory when:

(a) calls originate or terminate through an instrument on the tribe's territory; and

(b) the service is billed to the Indian tribe or a member thereof.

(2) The seller must demonstrate that the telecommunications service is sold to an Indian tribe or member thereof. The seller must also demonstrate that the 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 telecommunications services are not subject to tax under Subsection F of Section 3.2.4.9 NMAC shall be retained in the seller's records.

(a) 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.

(b) The second requirement may be met for fixed location instruments if the seller keeps records adequate to document that 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:

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

(ii) 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.

(3) Receipts from selling telecommunications services in New Mexico in Indian country to the following persons are subject to the gross receipts tax:

(a) a person who is not an Indian tribe or member thereof;

(b) a person who is an Indian tribe other than the Indian tribe on whose territory the sale takes place; and

(c) 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 Subsection F of 3.2.4.9 NMAC to be a member of the spouse's Indian tribe.

(4) Receipts from selling telecommunications services in New Mexico to an Indian tribe or member thereof are subject to the 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.

(5) For the purposes of Subsection F of Section 3.2.4.9 NMAC, "telecommunications service" means the transmission of messages or conversations by persons providing telephone or telegraph services; "telecommunications service" excludes the transmission or re-transmission of radio or television programming.

G. **Imposition barred by federal law - receipts of federally licensed Indian traders:** The receipts of a federally licensed Indian trader as defined in Sections 25 U.S.C. 261 to 264 from trading with an Indian tribe on that tribe's territory are exempt from the gross receipts tax to the extent that the tax is pre-empted by federal law.

H. **Imposition barred by federal law - Indian business within tribe’s territory:**

(1) The receipts of a qualifying business from transactions occurring within the tribe's territory are exempt from gross receipts tax to the extent that such tax is pre-empted by federal law. The receipts of a qualifying business from transactions occurring anywhere else are not exempt under Subsection H of Section 3.2.4.9 NMAC.

(2) A "qualifying business" is a business that:

(a) is physically located within an Indian tribe's territory; and

(b) is fifty percent or more owned by individuals who are enrolled members of the Indian tribe within whose territory the business is located, provided that for purposes

of establishing the percentage of ownership the Indian spouse of an enrolled member of that Indian tribe is to be considered an enrolled member of that Indian tribe.

[3/16/95, 8/30/95, 11/15/96, 4/30/99; 3.2.4.9 NMAC - Rn & A, 3 NMAC 2.4.9, 4/30/01]

3.2.4.10 FEDERAL PREEMPTION AND STATE EXEMPTION - CREDIT UNIONS:

A. 12 U.S.C. 1768 exempts federal credit unions from state taxation, other than property taxation. Accordingly, the receipts of federal credit unions are exempt from the gross receipts tax.

B. Section 58-11-61 NMSA 1978 exempts from state taxation credit unions organized under or subject to the Credit Union Regulatory Act to the same extent that credit unions chartered under federal law are exempt. Therefore receipts of credit unions organized under or subject to the Credit Union Regulatory Act are also exempt from the gross receipts tax.

[5/31/97; 3.2.4.10 NMAC - Rn & A, 3 NMAC 2.4.10, 4/30/01]

3.2.4.11 FEDERAL PREEMPTION - JOB CORPS CONTRACTORS:

29 U.S.C. 1707(c) prohibits states and their subdivisions from imposing gross receipts taxes on receipts of Job Corps contractors from operating any Job Corps center, program or activity. Accordingly the receipts of Job Corps contractors from operating a Job Corps center, program or activity are exempt from the gross receipts tax.

[5/31/97; 3.2.4.11 NMAC - Rn, 3 NMAC 2.4.11, 4/30/01]

PART 5: PRESUMPTION OF TAXABILITY

3.2.5.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.5.1 NMAC - Rn, 3 NMAC 2.5.1, 4/30/01]

3.2.5.2 SCOPE:

This part applies to all persons engaging in business in New Mexico.

[11/15/96; 3.2.5.2 NMAC - Rn, 3 NMAC 2.5.2, 4/30/01]

3.2.5.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.5.3 NMAC - Rn, 3 NMAC 2.5.3, 4/30/01]

3.2.5.4 DURATION:

Permanent.

[11/15/96; 3.2.5.4 NMAC - Rn, 3 NMAC 2.5.4, 4/30/01]

3.2.5.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.5.5 NMAC - Rn & A, 3 NMAC 2.5.5, 4/30/01]

3.2.5.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.5.6 NMAC - Rn, 3 NMAC 2.5.6, 4/30/01]

3.2.5.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.5.7 NMAC - Rn, 3 NMAC 2.5.7, 4/30/01]

3.2.5.8 PERSONS NOT REQUIRED TO REGISTER WITH THE DEPARTMENT:

A. A person engaging in business must register with the department to report gross receipts unless that person is clearly engaged solely in an activity the receipts from which are exempt as provided in Sections 7-9-13 through 7-9-42 NMSA 1978 or other law. Even though a person's receipts may be entirely deductible under provisions of the Gross Receipts and Compensating Tax Act, the person must register, report those receipts, and claim the applicable deduction or deductions.

B. The following examples illustrate the application of Section 7-9-5 NMSA 1978:

(1) Example 1: A is engaged in the business of farming. A's sole activity is raising cotton which is then sold through a broker to a cotton mill. Because this sale activity is specifically exempted in Section 7-9-18 NMSA 1978, A does not have to register under the Gross Receipts and Compensating Tax Act or file a return.

(2) Example 2: B is a farmer. B raises cotton that is sold through a broker to a mill. B also owns a retail grocery store. B contends that there is no need to register with

the taxation and revenue department since B is engaged in a specifically exempted activity. B must register with the department since B is also engaged in selling groceries, an activity that is not specifically exempt from the Gross Receipts and Compensating Tax Act. However, B does not have to report the receipts derived from the sale of cotton, because these receipts are specifically exempt.

(3) Example 3: V Company employs five persons and is engaged solely in the business of buying wool from farmers and selling it to yarn factories. Because V's receipts are exempt from taxation under Section 7-9-18 NMSA 1978, it is not required to register for gross receipts taxation with the department. However, V is required to register and file the necessary returns under the Withholding Tax Act, Sections 7-3-1 through 7-3-12 NMSA 1978, and comply with any other tax laws that pertain to its business.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90 11/15/96, 4/30/99; 3.2.5.8 NMAC - Rn & A, 3 NMAC 2.5.8, 4/30/01]

PART 6: SEPARATELY STATING THE GROSS RECEIPTS TAX

3.2.6.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.6.1 NMAC - Rn, 3 NMAC 2.6.1, 4/30/01]

3.2.6.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.6.2 NMAC - Rn, 3 NMAC 2.6.2, 4/30/01]

3.2.6.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.6.3 NMAC - Rn, 3 NMAC 2.6.3, 4/30/01]

3.2.6.4 DURATION:

Permanent.

[11/15/96; 3.2.6.4 NMAC - Rn, 3 NMAC 2.6.4, 4/30/01]

3.2.6.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.6.5 NMAC - Rn & A, 3 NMAC 2.6.5, 4/30/01]

3.2.6.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.6.6 NMAC - Rn, 3 NMAC 2.6.6, 4/30/01]

3.2.6.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.6.7 NMAC - Rn, 3 NMAC 2.6.7, 4/30/01]

3.2.6.8 SEPARATELY STATING THE GROSS RECEIPTS TAX:

A. A person who is required to report and pay tax on gross receipts is not required to charge or collect the tax from the customer, but if the person does not separately state the amount of tax on the bill other transactional document provided to the customer, the person must affirmatively state that the gross receipts tax is included in the amount billed. This requirement is met if the person provides a general statement on bills or invoices to customers stating that New Mexico tax is included or if the information generally provided to New Mexico customers at the time of sale or subsequently indicates that the seller has included New Mexico tax in the amount charged.

B. A person who uses reasonable estimates as provided in 3.1.4.13 NMAC to determine the reporting location for reporting gross receipts and related deductions may also use these estimates for the purpose of billing tax to customers.

C. Gross receipts does not include the gross receipts tax, including any local option amount of tax, due. In a case where a person does not separately charge the tax or where the tax is charged at a different rate than the rate actually due, the person shall compute the amount of gross receipts net of tax as follows:

(1) total amount charged including any separately charged tax;

(2) divided by 1 plus the tax rate expressed as a decimal;

(3) equals gross receipts.

[9/29/1967, 12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 3/31/1986, 4/2/1986, 4/26/1990, 11/20/1990, 11/15/1996; 3.2.6.8 NMAC - Rn, 3 NMAC 2.6.8, 4/30/2001; A, 7/7/2021]

3.2.6.9 WHO IS THE TAXPAYER:

A. The gross receipts tax is imposed on persons engaging in business in New Mexico. Such persons are solely liable for payment of the tax; they are not "collectors" on behalf of the state.

B. Section 7-9-6 NMSA 1978 treats as gross receipts, subject to the gross receipts tax, any amount of money shown on the books and records of a seller or lessor as the tax on receipts from a transaction which is in excess of the tax the seller or lessor is liable to report and pay to the department.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/20/90, 11/15/96; 3.2.6.9 NMAC - Rn & A, 3 NMAC 2.6.9, 4/30/01]

PART 7-9: [RESERVED]

PART 10: IMPOSITION AND RATE OF TAX - DENOMINATION AS "COMPENSATING TAX"

3.2.10.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96, 3.2.10.1 NMAC - Rn, 3 NMAC 2.7.1, 4/30/01]

3.2.10.2 SCOPE:

This part applies to all persons using property in New Mexico.

[11/15/96, 3.2.10.2 NMAC - Rn, 3 NMAC 2.7.2, 4/30/01]

3.2.10.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96, 3.2.10.3 NMAC - Rn, 3 NMAC 2.7.3, 4/30/01]

3.2.10.4 DURATION:

Permanent.

[11/15/96, 3.2.10.4 NMAC - Rn, 3 NMAC 2.7.4, 4/30/01]

3.2.10.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96, 3.2.10.5 NMAC - Rn & A, 3 NMAC 2.7.5, 4/30/01]

3.2.10.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96, 3.2.10.6 NMAC - Rn, 3 NMAC 2.7.6, 4/30/01]

3.2.10.7 DEFINITIONS:

[Reserved.]

[11/15/96, 3.2.10.7 NMAC - Rn, 3 NMAC 2.7.7, 4/30/01]

3.2.10.8 TANGIBLE PERSONAL PROPERTY ACQUIRED OUTSIDE NEW MEXICO FOR USE IN NEW MEXICO:

A. Tangible personal property acquired inside or outside New Mexico as a result of a transaction with a person located outside New Mexico which would have been subject to the gross receipts tax had the tangible personal property been acquired from a person with nexus with New Mexico is subject to the compensating tax if that tangible personal property is subsequently used in New Mexico. For compensating tax purposes, a transaction would have been "subject to the gross receipts tax" when the transaction would have been within New Mexico’s taxing jurisdiction, the receipts from the transaction would have been defined as gross receipts, the receipts would not have been deductible or exempt and taxation by New Mexico would not be pre-empted by federal law.

B. Example 1: X, a New Mexico business, purchases the furniture for a new office from an El Paso, Texas, merchant. X brings this furniture into New Mexico in X's truck and puts it in the office. If X had purchased the furniture from a New Mexico business, the transaction would have been subject to the gross receipts tax. Therefore, X is liable for compensating tax measured by the sale price of the furniture. However, X may take a credit of up to 5% of the sale price of the furniture against the compensating tax liability on this furniture for any sales tax which was paid in Texas on the purchase of the furniture. Also, X pays no separate tax if tax collected by the seller is shown on the invoice as the New Mexico compensating tax collected by the El Paso, Texas, merchant.

C. Example 2: G operates a carnival concession. G has purchased tangible personal property in Iowa, to be used as prizes for persons performing certain skills at the carnival concession. G is subject to the compensating tax on the value of the tangible personal property acquired in Iowa, which is used as prizes in New Mexico.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/28/94, 11/15/96, 3.2.10.8 NMAC - Rn, 3 NMAC 2.7.8, 4/30/01; A, 4/30/07; A, 8/15/12]

3.2.10.9 PERSONAL RATHER THAN COMMERCIAL USE OF TANGIBLE PERSONAL PROPERTY OR SERVICES:

A. When a person has delivered a nontaxable transaction certificate for a taxable purpose but then uses the service or tangible personal property in a manner other than indicated on the nontaxable transaction certificate, then the person who delivered the nontaxable transaction certificate is liable for the compensating tax on the value of the service or the tangible personal property.

B. Example 1: Z operates a furniture store in New Mexico. Z issues a nontaxable transaction certificate to all of Z's suppliers. Z decides to take a refrigerator out of stock for use in Z's home. Because the gross receipts tax was not paid at the time of the acquisition, Z must now pay the compensating tax on the value of the refrigerator.

C. Example 2: A, a garage operator, has the radiator on A's service truck repaired by B, a radiator repair specialist. A has previously delivered a nontaxable transaction certificate to B. Therefore, B does not pay gross receipts tax on this transaction. In this case A is not reselling the radiator repair service to one of A's customers; therefore A must pay the compensating tax on the value of the repair service. If A does not pay the compensating tax when due, A is also liable for penalty and interest, and if A does not pay the compensating tax within one year of the due date A may have the right to use nontaxable transaction certificates suspended by the secretary for up to one year. See prior example.

D. Example 3: G owns and operates a grocery store. G bought two dozen brooms for resale and delivered a nontaxable transaction certificate. G then removed six of these brooms from stock for use in cleaning the store. G is subject to the compensating tax on the value of the six brooms removed from stock.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.10.9 NMAC - Rn, 3 NMAC 2.7.9, 4/30/01]

3.2.10.10 [RESERVED]

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996, 3.2.10.10 NMAC - Rn, 3 NMAC 2.7.10, 4/30/2001; Repealed, 7/7/2021]

3.2.10.11 TANGIBLE PERSONAL PROPERTY ON WHICH THE COMPENSATING TAX HAS BEEN PREVIOUSLY PAID:

A. Persons who have previously paid the compensating tax on tangible personal property introduced into this state are not required to pay the compensating tax again on the reintroduction into the state of the same property if the property has been under the same ownership continuously since the time it was initially introduced into the state.

B. Example: A, a Colorado construction company, is awarded the contract for the improvement of a portion of the interstate highway in northern New Mexico. One of the pieces of equipment which A brings to perform the job is a tractor that A used on another New Mexico job earlier in the year. If A can prove that the compensating tax was paid at the time of the earlier use of the tractor and that A owned the tractor continuously since that time, A does not have to pay the compensating tax again.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/28/94, 11/15/96, 3.2.10.11 NMAC - Rn, 3 NMAC 2.7.11, 4/30/01]

3.2.10.12 PROMOTIONAL GIFTS:

A. If a taxpayer uses merchandise for advertising or promotional purposes by giving away the merchandise without the requirement of a concurrent purchase, the taxpayer is liable for the compensating tax on the value of the merchandise if the merchandise was acquired by the taxpayer in a transaction which was not subject to the gross receipts tax because the taxpayer furnished a nontaxable transaction certificate to the supplier pursuant to Section 7-9-47 NMSA 1978 or because the taxpayer acquired this merchandise outside New Mexico.

B. If a taxpayer "gives away" merchandise or services with a requirement of a concurrent purchase, no compensating tax is due on the merchandise or service "given away".

C. Example: X Restaurant gives a free drink to Y, a customer, on Y's birthday. The restaurant is not subject to the compensating tax on the value of the free drink if the drink is only given when there is a requirement of a concurrent purchase. If there is no requirement of a concurrent purchase, then the restaurant is liable for the compensating tax on the value of the drink if the liquor was acquired by the restaurant in a transaction which was not subject to the gross receipts tax because the restaurant furnished a nontaxable transaction certificate to its supplier pursuant to Section 7-9-47 NMSA 1978, because of the operation of Section 7-9-43.1 NMSA 1978 or because the taxpayer acquired the merchandise outside New Mexico. When restaurants or cocktail lounges promote their business by offering one free drink to a customer for every drink purchased, the restaurant or lounge is not subject to the compensating tax on the value of the free drink. In this situation, the drinks are only "given away" when there is a requirement of a concurrent purchase.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.10.12 NMAC - Rn & A, 3 NMAC 2.7.12, 4/30/01]

3.2.10.13 CONSTRUCTION PROJECTS OCCUPIED OR LEASED PRIOR TO SALE:

A. A person engaged in the construction business who purchases construction materials, construction services, construction-related services or who leases construction equipment using nontaxable transaction certificates (nttcs) provided by the department for use under Sections 7-9-51, 7-9-52 and 7-9-52.1 NMSA 1978 is liable for the compensating tax on the value of the materials and services purchased at the time when the construction project is initially leased or otherwise occupied prior to the sale. It is immaterial that the construction project is leased to enhance its value for sale as is the case with so-called income producing property.

B. Example 1: Y is a company which constructs office buildings for sale to investors as income producing property. Y has issued nttcs to material suppliers and subcontractors. Upon completion of the building, Y leases office space to tenants in order to enhance the salability of the building. Y is liable for the compensating tax at the time it leases the first office.

C. Example 2: Z is building an apartment complex consisting of five separate buildings with twenty apartments in each building. Z begins renting apartments in each building as the building is completed. If Z issued nttcs to purchase construction materials and construction services for incorporation into these apartment buildings, Z will be liable for compensating tax on the value of the materials and services purchased for each building when any apartment in the building is rented. The rental of the apartments is a conversion to use by Z. When Z subsequently sells any or all of the five buildings, the compensating tax previously paid by Z on construction materials and construction services which became an ingredient or component part of each building may be credited against the gross receipts tax due on the sale.

D. Example 3: R is a homebuilder who typically sells the homes he builds either prior to the start of construction, or on a speculative basis prior to the completion of the home. R has executed nttcs to material suppliers and subcontractors for a specific home. Upon completion of the home, R is unable to find a buyer, and decides to retain title to the home and use it as his personal home or rent the home to a third party until a buyer can be found. R is liable for the compensating tax on the value of the construction materials, construction services and construction-related services purchased with the nttcs at the time the home is initially rented or occupied by the homebuilder prior to the sale.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.10.13 NMAC - Rn & A, 3 NMAC 2.7.13, 4/30/01; A, 12/14/12]

3.2.10.14 PROCESSING PIPE:

A New Mexico buyer who purchases pipe from outside the state is subject to the New Mexico compensating tax on the total value of the pipe at the time it is introduced into New Mexico for use. Value includes charges for labor and material used in processing the pipe when processed outside New Mexico prior to initial introduction into the state.

[6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.10.14 NMAC - Rn, 3 NMAC 2.7.14, 4/30/01]

3.2.10.15 MATERIALS USED ON NONTAXABLE PROJECTS:

A. Construction materials purchased with a nontaxable transaction certificate and subsequently used in a project, other than a project located on tribal territory the state taxation of which is pre-empted by federal law, which upon completion is not subject to gross receipts tax are subject to the compensating tax for the value of materials used in the project.

B. *Example*: X construction company purchases a truckload of lumber from A lumber company with whom X has previously executed the appropriate nontaxable transaction certificate. X takes delivery of, and title to, the lumber at A's yard in New Mexico. X then transports the lumber by its own vehicle to a location outside New Mexico and incorporates the lumber into a construction project outside New Mexico. X is subject to the compensating tax on the value of the lumber purchased from A lumber company since the construction project outside New Mexico is not subject to gross receipts tax upon completion.

[1/26/86, 2/21/86, 4/2/86, 11/26/90, 11/15/96, 3.2.10.15 Rn & A, 3 NMAC 2.7.15, 10/31/00; A, 8/15/12]

3.2.10.16 ORDINARY AND NECESSARY BUSINESS EXPENSE:

Services performed in New Mexico deductible by the purchaser as ordinary and necessary business expenses under the provisions of the Internal Revenue Code are "used" for purposes of Subsection B of Section 7-9-7 NMSA 1978. Nontaxable transaction certificates may not be issued for such transactions. If a taxpayer acquires the services through the inappropriate use of a nontaxable transaction certificate, the compensating tax is due on the value of the services and the taxpayer's right to issue nontaxable transaction certificates will be jeopardized under the provisions of Section 7-9-44 NMSA 1978.

[3/11/88, 11/26/90, 11/15/96, 3.2.10.16 NMAC - Rn & A, 3 NMAC 2.7.16, 4/30/01]

3.2.10.17 SERVICES WHICH QUALIFY AS CAPITAL EXPENDITURES:

Services performed in New Mexico which are capitalized under the provisions of the Internal Revenue Code are "used" for purposes of Subsection B of Section 7-9-7 NMSA 1978. Nontaxable transaction certificates may not be issued for such transactions. If a

taxpayer acquires these services through the issuance of a nontaxable transaction certificate, the compensating tax is due on the value of the services, and the taxpayer's right to issue nontaxable transaction certificates will be jeopardized under the provisions of Section 7-9-44 NMSA 1978.

[3/11/88, 11/26/90, 11/15/96, 3.2.10.17 NMAC - Rn & A, 3 NMAC 2.7.17, 4/30/01]

3.2.10.18 COMPENSATING TAX ON DEALER USE OF PARTS:

The value of parts, motor oils and similar items taken from inventory held for sale, or purchased under Type 2 (resale) NTTCs, by automobile dealers for use in repairing or maintaining vehicles used by the dealers in the operation of the dealerships, as distinguished from vehicles held for sale, is subject to compensating tax. A new vehicle which has been titled and registered, other than pursuant to Subsection C of Section 66-3-118 NMSA 1978 pertaining to new vehicles held for sale and allowed to be registered without payment of the motor vehicle excise tax, will be treated as a vehicle used in the dealer's business for purposes of applying Section 3.2.10.18 NMAC.

[6/28/89, 11/26/90, 11/15/96, 3.2.10.18 NMAC - Rn & A, 3 NMAC 2.7.18, 4/30/01]

3.2.10.19 TANGIBLE PERSONAL PROPERTY FURNISHED TO DEALERS BY OUT-OF-STATE SERVICE CONTRACT ADMINISTRATORS:

Tangible personal property, such as contract forms and promotional and administrative materials, furnished to New Mexico dealers by out-of-state companies which undertake to administer automotive service contracts for a fee is property acquired as a result of a transaction with a person located outside New Mexico that would have been subject to the gross receipts tax had the property been acquired from a person with nexus with New Mexico. The value of the tangible personal property is subject to compensating tax to be paid by the dealers when the property is stored, used or consumed in New Mexico.

[6/28/89, 11/26/90, 10/28/94, 11/15/96, 3.2.10.19 NMAC - Rn, 3 NMAC 2.7.19, 4/30/01; A, 8/15/12]

3.2.10.20 TELECOMMUNICATIONS SERVICE USED BY HOTELS AND MOTELS:

If a hotel, motel or similar establishment has represented to a company engaged in the business of providing interstate telecommunications service that the hotel, motel or similar establishment is purchasing interstate telecommunication service for use as a service to guests of the hotel, motel or similar establishment for an additional separately stated charge, it is liable for compensating tax on the value of any interstate telecommunications service purchased but not separately stated in its billings to its guests.

[3/9/92, 11/15/96, 3.2.10.20 NMAC - Rn & A, 3 NMAC 2.7.20, 4/30/01; A, 8/15/12]

3.2.10.21 FEDERAL PREEMPTION AND STATE EXEMPTION - CREDIT UNIONS:

A. 12 U.S.C. 1768 exempts federal credit unions from state taxation, other than property taxation. Accordingly, the use of property in New Mexico by federal credit unions is exempt from compensating tax.

B. Section 58-11-61 NMSA 1978 exempts from state taxation credit unions organized under or subject to the Credit Union Regulatory Act to the same extent that the credit unions chartered under federal law are exempt. Therefore the use of property in New Mexico by credit unions organized under or subject to the Credit Union Regulatory Act is exempt from compensating tax.

[5/31/97, 3.2.10.21 NMAC - Rn & A, 3 NMAC 2.7.21, 4/30/01]

3.2.10.22 FEDERAL PREEMPTION - JOB CORPS CONTRACTORS:

29 U.S.C. 1707(c) bars imposition of any use or similar tax on the use by a Job Corps contractor of any property or service in connection with the operation of a Job Corps center, program or activity. Therefore, Job Corps contractors are exempt from the compensating tax with respect to property used in connection with operating a Job Corps center, program or activity.

[5/31/9, 3.2.10.22 NMAC - Rn & A, 3 NMAC 2.7.22, 4/30/01]

3.2.10.23 COMPENSATING TAX ON SERVICES PERFORMED OUTSIDE THE STATE:

A. For periods after July 1, 2021, if a purchaser acquires services performed outside the state in a transaction that was not subject to the gross receipts tax and subsequently makes taxable use of that service in New Mexico, the service is subject to the gross receipts tax. For services that were performed outside the state, the taxable use in New Mexico is not subject to compensating tax unless that use is the initial use of the service, as that term is defined under Subsection E of Section 7-9-3 NMSA 1978 and applicable regulations.

B. Examples:

(1) X acquires financial advisory services from Y. Y performs the services entirely outside New Mexico resulting in recommendations for investing in certain assets. Y delivers the recommendations to X in New Mexico and has no reason to believe that X will not make initial use of the recommendations in New Mexico. X does not owe compensating tax on the service. Instead, Y owes the gross receipts tax on that service because it was initially used in New Mexico.

(2) Same facts as Paragraph (1) of Subsection B of 3.2.10.23 NMAC except that Y relies in good faith on X's representation that X will make initial use of the

recommendations outside New Mexico. X owes the compensating tax if initial use of the recommendations is made in New Mexico.

(3) Same facts as Paragraph (2) of Subsection B of 3.2.10.23 NMAC except that X makes initial use of the recommendations outside of New Mexico. Subsequently, X makes use of the recommendations in New Mexico. Because that subsequent use is not the initial use, X does not owe compensating tax.

[3.2.10.23 NMAC - N, 7/7/2021]

3.2.10.24 PURCHASER ENTITLED TO RELY ON SELLER'S STATEMENT AS TO WHETHER TAX WAS CHARGED:

In determining whether compensating tax is owed, the purchaser may rely on the seller's invoice or other written billing or contract documentation that indicates that the seller has charged the gross receipts tax or has included the tax in the amount billed (whether by name or indicating that taxes for the state of New Mexico were charged or included). Under Section 7-9-6 NMSA 1978, the seller need not state the amount of tax charged or paid.

[3.2.10.24 NMAC - N, 7/7/2021]

PART 11: PRESUMPTION OF TAXABILITY AND VALUE

3.2.11.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.11.1 NMAC - Rn, 3 NMAC 2.8.1, 4/30/01]

3.2.11.2 SCOPE:

This part applies to each person using property in New Mexico.

[11/15/96; 3.2.11.2 NMAC - Rn, 3 NMAC 2.8.2, 4/30/01]

3.2.11.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.11.3 NMAC - Rn, 3 NMAC 2.8.3, 4/30/01]

3.2.11.4 DURATION:

Permanent.

[11/15/96; 3.2.11.4 NMAC - Rn, 3 NMAC 2.8.4, 4/30/01]

3.2.11.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.11.5 NMAC - Rn & A, 3 NMAC 2.8.5, 4/30/01]

3.2.11.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.11.6 NMAC - Rn, 3 NMAC 2.8.6, 4/30/01]

3.2.11.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.11.7 NMAC - Rn, 3 NMAC 2.8.7, 4/30/01]

3.2.11.8 VALUE - FREIGHT CHARGES:

A. Transportation costs that are paid by the seller to the carrier are an element of the sales price of the property.

B. Transportation costs that are paid to the carrier by the buyer are not an element of the sales price of the property.

C. If the buyer transports the property in equipment owned or leased by the buyer, the cost of the transportation does not increase the value of the property.

D. If the seller transports the property in equipment owned or leased by the seller, the cost of the transportation is already included in the price of the property and it is considered an element of the sales price of the property.

E. If the seller, acting as an agent for the buyer, pays the transportation charges, the cost of the transportation is not an element of the sales price.

F. Note: Section 3.2.11.8 NMAC also applies to the treatment of freight charges for purposes of computing gross receipts tax.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 10/17/84, 4/2/86, 11/26/90, 11/15/96; 3.2.11.8 NMAC - Rn & A, 3 NMAC 2.8.8, 4/30/01]

3.2.11.9 VALUE OF DRUG SAMPLES:

The compensating tax on drug samples manufactured outside New Mexico and distributed to New Mexico physicians free of charge is assessed on the value of the finished product in the hands of the manufacturer. This value is the full price which would have been charged by the manufacturer if the samples had been sold, not just the cost of materials and packaging supplies. As of January 1, 1999, the compensating tax does not apply to the use of drugs which are "prescription drugs".

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 10/17/84, 4/2/86, 11/26/90, 11/15/96, 10/29/99; 3.2.11.9 NMAC - Rn, 3 NMAC 2.8.9, 4/30/01]

3.2.11.10 RESTAURANT FOOD FOR EMPLOYEES:

A. Restaurant owners are liable for compensating tax on the value of food served to employees where no amount includable in the owner's gross receipts is received from the employees for the food served to them, if such food was purchased by the owner subject to the deduction from gross receipts for sales of tangible personal property for subsequent sale and no compensating tax was paid.

B. For convenience in accounting and auditing, two dollars per day per employee shall be used as the value of the food served to employees in computing the compensating tax due.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 10/17/84, 2/15/85, 4/2/86, 11/26/90, 11/15/96; 3.2.11.10 NMAC - Rn, 3 NMAC 2.8.10, 4/30/01]

PART 12: LIABILITY OF USER FOR PAYMENT OF COMPENSATING TAX

3.2.12.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.12.1 NMAC - Rn, 3 NMAC 2.9.1, 4/30/01]

3.2.12.2 SCOPE:

This part applies to each person using property in New Mexico.

[11/15/96; 3.2.12.2 NMAC - Rn, 3 NMAC 2.9.2, 4/30/01]

3.2.12.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.12.3 NMAC - Rn, 3 NMAC 2.9.3, 4/30/01]

3.2.12.4 DURATION:

Permanent.

[11/15/96; 3.2.12.4 NMAC - Rn, 3 NMAC 2.9.4, 4/30/01]

3.2.12.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.12.5 NMAC - Rn & A, 3 NMAC 2.9.5, 4/30/01]

3.2.12.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.12.6 NMAC - Rn, 3 NMAC 2.9.6, 4/30/01]

3.2.12.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.12.7 NMAC - Rn, 3 NMAC 2.9.7, 4/30/01]

3.2.12.8 SEPARATE STATING OF THE TAX:

A seller of property who is required to collect and pay over to the department the compensating tax due on the value of property sold for delivery into New Mexico must separately state the compensating tax on the invoice. If the compensating tax is not separately stated on the invoice, it will be presumed that it was not collected and paid over and the buyer must pay the compensating tax. The seller who is liable to collect and pay over the compensating tax may become liable for penalties and interest if the seller fails to collect and pay over.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.12.8 NMAC - Rn, 3 NMAC 2.9.8, 4/30/01]

3.2.12.9 GENERAL EXAMPLE:

A. The following example illustrates the application of Section 7-9-9 NMSA 1978.

B. Example: A purchases a piece of equipment from X, an El Paso dealer, for $l,000. X is registered with the department as an agent for collection of compensating tax. X bills A as follows:

Equipment	$ 1,000
N.M. Comp. Tax	50
	$ 1,050

Since X is registered as an agent to collect and pay over compensating tax pursuant to Section 7-9-10 NMSA 1978 and collected compensating tax from A, A is relieved of any compensating tax liability, even if X fails to remit the tax to the department.

[2/15/85, 4/2/86, 11/26/90, 11/15/96; 3.2.12.9 NMAC - Rn & A, 3 NMAC 2.9.9, 4/30/01]

PART 13: AGENTS FOR COLLECTION OF COMPENSATING TAX - DUTIES

3.2.13.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.13.1 NMAC - Rn, 3 NMAC 2.10.1, 4/30/01]

3.2.13.2 SCOPE:

This part applies to each person using property in New Mexico.

[11/15/96; 3.2.13.2 NMAC - Rn, 3 NMAC 2.10.2, 4/30/01]

3.2.13.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.13.3 NMAC - Rn, 3 NMAC 2.10.3, 4/30/01]

3.2.13.4 DURATION:

Permanent.

[11/15/96; 3.2.13.4 NMAC - Rn, 3 NMAC 2.10.4, 4/30/01]

3.2.13.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.13.5 NMAC - Rn & A, 3 NMAC 2.10.5, 4/30/01]

3.2.13.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.13.6 NMAC - Rn, 3 NMAC 2.10.6, 4/30/01]

3.2.13.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.13.7 NMAC - Rn, 3 NMAC 2.10.7, 4/30/01]

3.2.13.8 [RESERVED]

[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 3/3/1986, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.13.8 NMAC - Rn, 3 NMAC 2.10.8, 4/30/2001; Repealed, 7/7/2021]

3.2.13.9 [RESERVED]

[6/18/1979, 4/7/1982, 5/4/1984, 3/3/1986, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.13.9 NMAC - Rn, 3 NMAC 2.10.9, 4/30/2001; Repealed, 7/7/2021]

3.2.13.10 COLLECTION OF COMPENSATING TAX BY BROADCASTERS:

A. Receipts from the sale by a New Mexico radio or television broadcaster to an out-of-state advertising agency of broadcast time which is intended for subsequent sale to a national or regional seller or advertiser not having its principal place of business in or being incorporated in New Mexico but which broadcast time is resold instead to an in-state seller or advertiser (a New Mexico seller or advertiser or a national or regional seller or advertiser having its principal place in or incorporated in New Mexico) are subject to compensating tax pursuant to Subsection B of Section 7-9-7 NMSA 1978. The initial sale to the advertising agency was not subject to gross receipts tax but the subsequent use of that service by the in-state seller or advertiser means the sale should have been subject to the gross receipts tax. The New Mexico radio or television broadcaster providing the broadcast service used by the in-state seller or advertiser under these circumstances shall act as agent for collection of compensating tax from the in-state seller or advertiser pursuant to Section 7-9-10 NMSA 1978 and shall collect, report and pay over such compensating tax unless the out-of-state advertising agency

pays gross receipts tax or collects, reports and pays over the compensating tax on the transaction.

B. The New Mexico radio or television broadcaster may effect collection of such compensating tax from the in-state seller or advertiser or the national or regional seller or advertiser having its principal place of business in or being incorporated in New Mexico by collecting the compensating tax through the out-of-state advertising agency representing the seller or advertiser. When collecting the compensating tax from the advertising agency, the radio or television broadcaster must identify the seller or advertiser and the amount of compensating tax due in its billing to the advertising agency. Payment of the compensating tax by the advertising agency to the broadcaster discharges the liability, under Section 7-9-9 NMSA 1978, of the in-state seller or advertiser for the compensating tax arising from the use of the broadcast services.

C. If the out-of-state advertising agency resells the time to another out-of-state entity ("cooperative advertising group") which, in turn, resells the time to in-state sellers or advertisers, the broadcaster is relieved from responsibility for identifying the seller or advertiser if the broadcaster's records identify the out-of-state other entity to which the out-of-state advertising agency resold the time. When the advertising agency resells the time to an out-of-state cooperative advertising group, the in-state seller or advertiser is discharged from liability for compensating tax if, on audit, the seller or advertiser presents an accounting from the out-of-state cooperative advertising group showing payment of the applicable compensating tax by the out-of-state cooperative advertising group to the advertising agency.

[2/14/86, 3/3/86, 4/2/86, 12/29/89, 11/26/90, 12/31/91, 11/15/96; 3.2.13.10 NMAC - Rn & A, 3 NMAC 2.10.10, 4/30/01]

PART 14-19: [RESERVED]

PART 20: GOVERNMENTAL GROSS RECEIPTS

3.2.20.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.20.1 NMAC - Rn, 3 NMAC 2.100.1, 4/30/01]

3.2.20.2 SCOPE:

This part applies to all governmental bodies of the state of New Mexico and its political subdivisions.

[11/15/96; 3.2.20.2 NMAC - Rn, 3 NMAC 2.100.2, 4/30/01]

3.2.20.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.20.3 NMAC - Rn, 3 NMAC 2.100.3, 4/30/01]

3.2.20.4 DURATION:

Permanent.

[11/15/96; 3.2.20.4 NMAC - Rn, 3 NMAC 2.100.4, 4/30/01]

3.2.20.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.20.5 NMAC - Rn, 3 NMAC 2.100.5 & A, 4/30/01]

3.2.20.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.20.6 NMAC - Rn, 3 NMAC 2.100.6, 4/30/01]

3.2.20.7 DEFINITIONS:

A. **Admission:** An "admission" to a recreational, athletic or entertainment event includes the granting of permission to observe or participate in a recreational, athletic or entertainment activity.

(1) Example 1: City C charges a "greens fee" for use of a public golf course maintained by the city. Receipts from the greens fee are admissions.

(2) Example 2: County Y charges a fee for use of a swimming pool and surrounding area maintained by the county. Receipts from this fee are admissions.

B. **Agency, institution or instrumentality:**

(1) An agency, institution or instrumentality includes all parts of the agency, institution or instrumentality. An entity which is administratively attached to an agency, institution or instrumentality is not thereby part of the agency, institution or instrumentality. An agency, institution or instrumentality which is subject to the supervisory or regulatory authority of another is not thereby part of the supervising or regulating entity.

(2) Example 1: The New Mexico museum of natural history is part of the museum division of the office of cultural affairs. The New Mexico museum of natural history is not an "agency" or "institution" for purposes of the governmental gross receipts tax but only a component of an agency. In contrast, the office of cultural affairs is administratively attached to the department of finance and administration. The office of cultural affairs is not part of the department of finance and administration, which merely provides the office with some administrative support. The office of cultural affairs is an "agency" for the purposes of the governmental gross receipts and is responsible for reporting for all of its components.

(3) Example 2: Under the Property Tax Code, the taxation and revenue department has general supervisory power over county assessors and the department of finance and administration has certain enforcement powers relating to county treasurers. The existence of these authorities does not make either county officer a part of the superintending state agency.

C. **Entertainment, athletic or recreational services or events:** The term "entertainment, athletic or recreational services or events" includes any recreational, athletic or entertainment activity.

D. **State of New Mexico and any agency, institution, instrumentality or political subdivision thereof:**

(1) For the purposes of the Gross Receipts and Compensating Tax Act, the term "state of New Mexico and any agency, institution, instrumentality or political subdivision thereof" includes:

(a) the legislature of the state of New Mexico and any committee or employee thereof; examples of committee: the legislative council, the legislative finance committee, the legislative education study committee and any interim committee; staff of such a committee are part of the committee;

(b) the supreme court, court of appeals, district courts, metropolitan courts, magistrate courts, probate courts and any agency thereof; examples of agency: the administrative office of the courts, the judicial standards commission and the compilation commission;

(c) the office of the governor and every state executive agency subject to the authority of the governor; examples of agency: every state cabinet agency, such as the taxation and revenue department, every agency not a cabinet agency whose head is directly responsible to the governor for the operations of the agency, such as the public defender department, whether or not the agency is administratively attached to a state cabinet agency, and every advisory committee established pursuant to Section 9-1-9 NMSA 1978;

(d) every other state executive agency, board, commission or authority whose governing body is a board or commission either elected by the people or appointed by the governor, with or without consent of the Senate, whose actions are not formally subject to the control or approval of the governor, whether or not such agency is administratively attached to a state cabinet agency; examples: the state public regulation commission, the state racing commission, the public service commission, the state personnel board, and the state game commission;

(e) a state officer other than the governor whose office is created by the state constitution, together with the agency or office such person heads, whether or not the officer is elected or appointed; examples: the secretary of state, the attorney general, the state treasurer, the state auditor, the commissioner of public lands and the state mine inspector;

(f) every executive agency created by the state constitution not included in items c through e above; examples: the state board of education, the state department of education and the department of agriculture;

(g) every health, educational, penal or other institution of the state; every entity controlled or operated by such an institution is part of that institution;

(i) examples of institutions: the entities enumerated in Article XII, Section 11 and Article XIV, Section 1 of the state constitution, community colleges, branch colleges, junior colleges, technical and vocational institutions, area vocational institutions and hospitals not enumerated in Article XIV, Section 11 of the state constitution;

(ii) examples of controlled entities: any newspaper published by a state university or college, whether or not operated as an educational function of the university, or any radio or televisions stations, the license to operate which is held by an entity or entities described in Section 3.2.20.1 NMAC;

(h) every instrumentality of the state which has the power to levy a tax or assessment, whether the instrumentality was created by the state constitution or by law, whether the governing power is vested in an officer or a board or commission or whether the officer or members of the board or commission are elected or appointed; examples: New Mexico beef council, economic advancement districts, irrigation districts, conservancy districts, soil and water conservation districts and flood control districts;

(i) every instrumentality of the state administering state retirement and other programs benefiting employees of the state: examples: the public employees retirement association and its governing board and the educational retirement board;

(j) every instrumentality of the state other than those described in Subparagraph (h) of Subsection D of Section 3.2.20.7 above, whether created by the

state constitution or by law, whether the governing power is vested in an officer or a board or commission or whether the officer or members of the board or commission are elected or appointed; examples: the mortgage finance authority, the industrial and agricultural finance authority, the business development corporation and any corporation established under the Educational Assistance Act;

(k) every county of New Mexico, which includes all of its parts, instrumentalities and elected officials; example: a county hospital, regardless of whether operation of the hospital is conducted by another entity under contract, or any entity with power of taxation or assessment authorized to be established with the permission of the county commission or the voters of the county under Article 4 NMSA 1978, such as a county improvement district;

(l) every municipality of New Mexico, whether incorporated under special law or general law, which includes all of its parts, instrumentalities and elected officials; examples: any municipal housing authority, any municipally-owned transit, water, sewer, electric or gas utility, any municipally-controlled organization operating a convention center, any regional planning commission or any entity with power of taxation or assessment authorized to be established with the permission of the governing body of the municipality or the voters of the municipality under Article 3 NMSA 1978, such as a municipal parking authority or community development agency;

(m) every public school district of New Mexico;

(n) community ditch or acequia associations;

(o) community land grants, whether incorporated or not, which have statutory power of taxation or assessment; and

(p) every other political subdivision of New Mexico, including every component or instrumentality of that political subdivision;

(2) the term "state of New Mexico and any agency, institution, instrumentality or political subdivision thereof" does not include:

(a) organizations created by interstate compact; examples: Cumbres and Toltec scenic railroad commission, multistate tax commission, interstate agricultural grain marketing commission, western interstate commission for higher education and the council of state governments.

(b) or any entity not created by the state constitution or by law or local ordinance, which has no power of taxation and in which membership is voluntary; examples: New Mexico association of counties, New Mexico municipal league, any union of government employees and any association advancing the professional interests of its members.

[6/28/91, 9/17/91, 10/2/92, 11/15/96; 3.2.20.7 NMAC - Rn, 3 NMAC 2.100.7 & A, 4/30/01; A, 10/31/05]

3.2.20.8 RESERVED.

3.2.20.9 "RECEIPTS" AND "TAXABLE ACTIVITY" DEFINED:

A. "Receipts" means the total amount of money or the value of other consideration received by the state of New Mexico or any agency, institution, instrumentality or political subdivision thereof from another person.

B. Example: City Y operates a zoo. Admissions are charged; annual passes are also sold. A nonprofit organization, called Zoo People, is established by concerned citizens to provide various services to or for the zoo. Zoo People collects donations to defray the costs of its activities on behalf of the zoo. The zoo agrees to provide a limited number of annual passes to the organization in exchange for certain services. Zoo People sells these passes through raffles and other means. Although Zoo People does not turn over the proceeds from these sales to the zoo, the money helps pay for services provided to or for the zoo. The value of the services supplied is other consideration. City Y has receipts equal to the value of the consideration, up to the value of the passes supplied. The zoo also occasionally exchanges animals with other zoos which are parts of the state of New Mexico. In an exchange, the value of the other consideration received (in this case the value of the animal received) must be included in receipts.

C. Money or other consideration received in transactions among parts of an agency, institution, instrumentality or political subdivision are not receipts and therefore are not governmental gross receipts.

D. Example: City A's water department is operated on an enterprise basis. It sells water to City A's recreation department which must pay monthly, just as all of the water department's outside customers do. This is a transaction entirely within City A. City A as a whole has no receipts and therefore no governmental gross receipts from the transaction; money merely moved from one department's account to another's.

E. As used in Part 3.2.20 NMAC, the term "taxable activity" means:

(1) the sale of tangible personal property other than water from facilities open to the general public;

(2) the sale of water by a utility owned or operated by a political subdivision of New Mexico;

(3) the performance of or admissions to recreational, athletic or entertainment services or events in facilities open to the general public; or

(4) the performance of refuse collection, refuse disposal or sewage services.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.9 NMAC - Rn, 3 NMAC 2.100.9 & A, 4/30/01]

3.2.20.10 "FACILITY OPEN TO THE GENERAL PUBLIC" DEFINED:

A. The term "facility open to the general public" means a physical structure or location through which a member of the general public may transact business with the governmental entity to purchase tangible personal property or a service. A "facility open to the general public" does not necessarily involve the personal physical access by the member of the general public to the physical structure or location so long as any member of the general public may arrange through the facility the purchase of tangible personal property or a service.

B. Example: State agency X publishes a magazine which it sells to the general public. The magazine is physically prepared and printed in State A. It is mailed to subscribers through delivery in State A to the United States postal service. A person may subscribe to the magazine only by contacting a subscription service located in State B. Although there is little, if any, direct contact between the agency publishing the magazine and its customers, nevertheless the agency is selling tangible personal property through a facility open to the general public. Its receipts from selling the magazine are governmental gross receipts.

[6/28/91, 11/15/96; 3.2.20.10 NMAC - Rn, 3 NMAC 2.100.10, 4/30/01]

3.2.20.11 INTANGIBLES - INDEBTEDNESS:

A. Proceeds from the sale of indebtedness by any agency, institution, instrumentality or political subdivision of the state of New Mexico are not receipts from a taxable activity and are not governmental gross receipts.

B. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from repayment of indebtedness are not receipts from a taxable activity and are not governmental gross receipts.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.11 NMAC - Rn, 3 NMAC 2.100.11, 4/30/01]

3.2.20.12 INTANGIBLES - RECEIPTS FROM SALE OF LICENSES OR PERMITS:

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from a transaction which is primarily the granting of a license or a permit other than admissions to recreational, athletic or entertainment services or events are not governmental gross receipts, even if tangible evidence of the license or permit is given to the licensee or permittee.

B. Example 1: Under the Motor Vehicle Code, the state of New Mexico requires resident drivers of motor vehicles to be licensed by the taxation and revenue department. Upon passing of certain tests and payment of a fee for the license, the driver is licensed and a card is issued to a qualifying driver containing the driver's picture and certain information about the driver. The card is merely the physical evidence that the driver to whom the card was issued is licensed with the department in accordance with law. Receipts from issuing such driver's licenses are not receipts from the sale of tangible personal property and are not governmental gross receipts.

C. Example 2: Several municipalities (under Section 3-38-1 NMSA 1978) and counties (under Section 4-37-1 NMSA 1978) require persons engaged in certain types of business to obtain a license prior to engaging or continuing to engage in that business. A certificate is issued documenting the granting of the license; sometimes the certificate is required to be displayed on the premises of the licensed business. Receipts from issuing such licenses are not receipts from the sale of tangible personal property and are not governmental gross receipts.

D. Example 3: Marriage licenses are required of persons desiring to marry in the state of New Mexico. Upon payment of the fee and other requirements, a document is issued. Receipts from issuing such licenses are not receipts from the sale of tangible personal property and are not governmental gross receipts.

[6/28/91, 11/15/96; 3.2.20.12 NMAC - Rn, 3 NMAC 2.100.12 & A, 4/30/01]

3.2.20.13 REPORTING, FILING OR REGISTRATION FEES:

A. Whenever a person is required by law to report to or register with a governmental agency or to register possession or use of tangible personal property, receipts of an agency, institution, instrumentality or political subdivision of the state of New Mexico from such registrations are not governmental gross receipts, regardless of whether tangible personal property is given to the person registering as evidence of the registration.

B. Example 1: The owner or operator of a facility in which a hazardous chemical is present in certain quantities is required to file an inventory report on such chemicals. A fee is charged for each inventory form filed. Receipts from such fees are not governmental gross receipts.

C. Example 2: The New Mexico owner of a motor vehicle which is to be driven upon the public highways is obliged to register the vehicle with the taxation and revenue department. A metal plate, to be affixed to the motor vehicle, is given to the owner upon registration as evidence of the registration. The transaction is not primarily the sale of tangible personal property but the registration of the motor vehicle. Receipts from such registrations are not governmental gross receipts.

D. Fees charged by any agency, institution, instrumentality or political subdivision of the state of New Mexico as a pre-condition for official action by that entity are not receipts from a taxable activity.

E. Example 1: Docketing fees are charged by New Mexico courts to defray the administrative costs of accepting a case. Cases will not be accepted in absence of payment of the fee. Such fees are not governmental gross receipts.

F. Example 2: The state public regulation commission charges fees for incorporating a corporation and will not recognize the corporation unless the fees are paid. Such fees are not governmental gross receipts.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.13 NMAC - Rn, 3 NMAC 2.100.13 & A, 4/30/01; A, 12/30/10]

3.2.20.14 RECEIPTS FROM GRANTING LICENSES TO USE REAL PROPERTY:

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from granting licenses to use real property, other than admissions or the grantings of permission to participate in a recreational, athletic or entertainment activity, or to park vehicles, tie-down spaces or dock boats, are not receipts from a taxable activity. Such revenues are not governmental gross receipts.

B. Example 1: City X operates a parking garage open to the general public. It sells permits for use of designated parking spaces for an entire month. It also charges a fee for use of any undesignated spaces on a hourly basis. The revenues from the monthly permits and the hourly use charges are governmental gross receipts.

C. Example 2: The commissioner of public lands receives fees from granting ranchers the right to graze livestock on public lands. These fees are not governmental gross receipts.

D. Example 3: University A rents its auditorium to a private group for a rock concert. The rental agreement calls for payment to A of a flat fee plus a percentage of the gate. A's receipts are receipts from the granting of a license to use real property and are not governmental gross receipts. If, in addition to the basic terms of the rental arrangement, A also agreed to furnish security, janitorial services and ticket selling services for additional fees, A's receipts from performing such services are not governmental gross receipts because these services are not refuse collection, refuse disposal, sewage or recreational, entertainment or athletic services.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.14 NMAC - Rn, 3 NMAC 2.100.14, 4/30/01; A, 1/30/09]

3.2.20.15 RECEIPTS FROM GRANTING LICENSES TO USE INFORMATION OR PERSONAL PROPERTY:

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from granting licenses to use information or personal property are not receipts from a taxable activity. Such revenues are not governmental gross receipts.

B. Example 1: A governmental agency charges a fee for electronic access to its data files. The fee is composed of two parts, a monthly connection charge and a charge per item searched. The charges are not governmental gross receipts.

C. Example 2: A governmental agency charges a fee for use by private persons of its telefax machine to transmit documents to other locations. Receipts from the fee are not governmental gross receipts.

D. Example 3: For a fee, a state museum allows state officials to borrow paintings to decorate their state offices. The museum's receipts from these fees are receipts from granting a license to use personal property and are not governmental gross receipts.

E. Example 4: A library provides a coin-operated photocopying machine for use by its patrons. Receipts from use of the machine are receipts from granting a license to use personal property and are not governmental gross receipts.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.15 NMAC - Rn, 3 NMAC 2.100.15, 4/30/01]

3.2.20.16 RECEIPTS FROM LEASING:

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from leasing real property or tangible personal property are not receipts from a taxable activity.

B. Example 1: Municipality X, under an industrial development project agreement with Company A, has arranged for the construction and equipping of a factory which it leases to Company A. The lease sets a monthly fee sufficient to cover the repayment of bonds issued by the municipality which provided the funds for the construction and equipping of the factory. At the end of the lease period, Company A may buy the factory and its equipment for a stated sum. The monthly receipts of the municipality from the lease are not governmental gross receipts but its receipts from the sale of the project's tangible personal property at the end of the lease are governmental gross receipts.

C. Example 2: Municipality B owns a baseball stadium which it leases to a professional team on a long-term basis for the team's use as its home park for specified portions of each year covered by the lease. B receives a fixed annual fee plus a percentage of gate receipts as well as a percentage of income from certain concessions. As part of the lease agreement, the team also agrees to perform certain maintenance functions and to construct some improvements to the stadium. The monetary and other consideration given B are receipts from leasing real property and are not governmental gross receipts.

D. The receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from the sale of season passes or season tickets to recreational, entertainment or athletic events in facilities open to the general public are receipts from admissions and not from leasing. Such receipts are governmental gross receipts.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.16 NMAC - Rn, 3 NMAC 2.100.16, 4/30/01]

3.2.20.17 RECEIPTS FROM SERVICES - GENERAL:

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from performing services other than services which are entirely or predominantly refuse collection, refuse disposal, sewage or recreational, entertainment or athletic services are not governmental gross receipts.

B. Example: Receipts from the sale of advertising space in a publication of a state agency are not receipts from performing a refuse collection, refuse disposal, sewage or recreational, entertainment or athletic service and are not governmental gross receipts.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.17 NMAC - Rn, 3 NMAC 2.100.17, 4/30/01]

3.2.20.18 RECEIPTS FROM SERVICES - REFUSE COLLECTION, REFUSE DISPOSAL AND SEWAGE:

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from performing refuse collection, refuse disposal or sewage services are governmental gross receipts regardless of how or for whom they are performed.

B. Refuse collection services include picking up the refuse, transporting the refuse to a disposal site and disposing of the refuse. Receipts from operating a landfill by itself and not as part of a service of picking up, transporting and disposing of refuse are receipts from a refuse disposal service. Similarly, operation of a septic disposal service is a refuse disposal service.

C. Example: City X operates both a landfill and a refuse collection service. X charges each residential and commercial customer a monthly fee to pick up refuse at the residence or business, transport the refuse to the landfill and dump the refuse properly at the landfill. The landfill also charges commercial refuse collection firms for the privilege of disposing of refuse collected by them in the landfill. The receipts from X's refuse collection service are governmental gross receipts. X's receipts from the landfill charges to the private refuse collection companies are also governmental gross receipts.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.18 NMAC - Rn, 3 NMAC 2.100.18, 4/30/01]

3.2.20.19 RECEIPTS FROM SERVICES - RECREATIONAL, ENTERTAINMENT AND ATHLETIC SERVICES:

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from performing services which are entirely or predominantly recreational, entertainment or athletic services in facilities which are open to the general public are governmental gross receipts and are subject to the governmental gross receipts tax.

B. Example: A public university sells season tickets to the games of its basketball team. The price of the season ticket includes use of a parking space in a parking lot near the place where the games are played. All receipts from the sale of the season tickets, including any receipts that might otherwise be attributable to the value of right to use the parking space, are governmental gross receipts.

C. Admissions fees to a recreational, entertainment or athletic facility open to the general public or to a recreational, entertainment or athletic event in a facility open to the general public are governmental gross receipts.

D. Example 1: Municipality X maintains a museum. An admissions fee of $2 is charged for admission to the museum, except that no fee is charged to school classes or accompanying adults. Receipts from the admissions fees collected are governmental gross receipts.

E. Example 2: A state agency maintains parks. It charges campers an admissions fee which also permits the use of a camping spot (whether designated or not). Receipts from the admissions fees collected are governmental gross receipts.

F. Student activity fees received by a state university, college or school are governmental gross receipts to the extent that the fees permit attendance at recreational, entertainment or athletic events in facilities open to the general public. When the portion of the student activity fees permitting attendance at recreational, entertainment or athletic events in facilities open to the general public is not readily determinable, reasonable methods may be used to estimate that portion, including the following.

(1) Reserved seats method. If a specific number of seats or places are reserved for students at the event, governmental gross receipts is estimated by multiplying the number of reserved seats or places times the amount of the lowest price ticket available to the general public.

(2) Face value method. When the student activity fee permits attendance of a student at an event at a reduced price (but not free), the governmental gross receipts from the sale of a discounted ticket is the cash received plus the amount of the discount, i.e., the face value of the ticket.

(3) Budget method. When the student activity fees are commingled with other revenue sources and the total is used to carry on several activities, including at least one taxable activity such as a program of athletic contests in facilities open to the general public, the portion of the student activity fees which are governmental gross receipts is estimated by multiplying the total amount of student activity fees by a fraction, the numerator of which is the amount budgeted for taxable activities and events and the denominator of which is the total amount of commingled funds budgeted for all activities and events.

(4) Any other method agreed to by the secretary or the secretary's delegate.

G. Fees received by a municipality for providing a swimming instruction program are not governmental gross receipts. Teaching someone to swim is an educational service and not a recreational, athletic or entertainment service. Fees for permitting individuals to use pool facilities or to swim are receipts from admissions to a recreational, athletic or entertainment event and are governmental gross receipts. See Paragraph (2) of Subsection A of 3.2.20.7 NMAC regarding admissions.

[6/28/91, 11/15/96; 3.2.20.19 NMAC - Rn, 3 NMAC 2.100.19, 4/30/01; A, 12/30/10]

3.2.20.20 RECEIPTS FROM TRANSACTIONS WHICH ARE PREDOMINANTLY THE SALE OF TANGIBLE PERSONAL PROPERTY:

A. The entire receipts from transactions which are predominantly the sale of tangible personal property but which also include incidental services are governmental gross receipts. This version of Subsection A of Section 3.2.20.20 NMAC applies to transactions occurring on or after July 1, 2000.

B. Receipts from using the personnel and resources of the governmental agency to make reproductions (whether photocopies, tapes, disks or similar formats) of records or other documents for members of the general public or other governmental entities are primarily receipts from selling information or the granting of a license to use information, provided that ten or fewer copies of the record or other document are made for each person requesting copies. When more than ten copies of a record or other document are produced for a person, it will be presumed, in the absence of a preponderance of evidence to the contrary, that the transaction is predominantly the manufacture and sale of tangible personal property and that the receipts are governmental gross receipts.

[6/28/91, 11/15/96; 3.2.20.20 NMAC - Rn, 3 NMAC 2.100.20 & A, 10/31/2000]

3.2.20.21 RECEIPTS FROM SALES OF TANGIBLES - FACILITIES NOT OPEN TO THE GENERAL PUBLIC:

A. Receipts from sales of tangible personal property to persons through facilities not open to the general public are not governmental gross receipts.

B. Example 1: The bookstore of a state university sells textbooks and other course-related materials to its students in a facility to which access is denied to anyone without a current student, faculty or staff identification card. Purchase of the materials is accomplished entirely within this facility. Receipts from selling these textbooks and other educational materials are not sales of tangible personal property through facilities open to the general public. Therefore such receipts are not governmental gross receipts.

C. Example 2: The cafeterias of public schools generally provide lunches to students, faculty and staff only. Members of the general public as a general rule are denied access; special permission is required for parents or other school visitors to purchase food from the cafeterias. Receipts from sale of food, drink and other tangibles by school cafeterias operating as described above are not sales of tangible personal property through facilities open to the general public. Therefore such receipts are not governmental gross receipts.

[6/28/91, 11/15/96; 3.2.20.21 NMAC - Rn, 3 NMAC 2.100.21, 4/30/01]

3.2.20.22 TAXES:

A. The receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from the imposition of any tax, assessment or levy, including the governmental gross receipts tax, whether imposed by that entity or any other governmental entity, are not receipts from a taxable activity and are not governmental gross receipts.

B. Example 1: Municipality A receives a share of the gross receipts tax imposed by the state on taxable activities in Municipality A. A also imposes its own municipal gross receipts tax on those same activities. A's tax is collected by a state agency at the same time and in the same manner as the state gross receipts tax. Neither the share of the state tax nor the proceeds from A's own tax are governmental gross receipts.

C. Example 2: Upon a certain property in Municipality B, ad valorem taxes are levied by the state, county, municipality and certain special districts. All taxes are collected by the county treasurer and distributed to the entities imposing tax. None of the property taxes collected are governmental gross receipts for the county treasurer or any imposing entity.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.22 NMAC - Rn, 3 NMAC 2.100.22, 4/30/01]

3.2.20.23 GRANTS - DONATIONS:

A. The proceeds of any agency, institution, instrumentality or political subdivision of the state of New Mexico from grants from other governmental entities (federal, state or local) or grants, donations or bequests from private persons are not receipts from a taxable activity and are not governmental gross receipts.

B. Example: The Hospital Auxiliary holds a bake sale, the proceeds of which are donated to County X's hospital. The hospital's receipts are from donations and are not governmental gross receipts.

C. The proceeds from any raffle, lottery or similar game are receipts from a game of chance and are not governmental gross receipts. Such receipts will be treated as donations for the purposes of Section 7-9-3.2 NMSA 1978. In the event that tangible personal property (such as an automobile or camera) is offered as a prize by the raffle, lottery or other game, the tangible personal property will be deemed to be donated to the winner.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.23 NMAC - Rn, 3 NMAC 2.100.23 & A, 4/30/01]

3.2.20.24 AGENCY:

A. The receipts of an agent acting for an agency, institution, instrumentality or political subdivision of the state of New Mexico are subject to the governmental gross receipts tax if the receipts are from a taxable activity.

B. Example 1: City X operates a library open to the general public. A nonprofit organization called "Friends of the X Library" agrees to help raise funds for the library by, among other activities, selling Library X's excess or obsolete books and other materials. Money resulting from these sales are turned over to Library X. These receipts are governmental gross receipts.

C. Example 2: City Y operates a zoo. Admissions are charged; annual passes are also sold. A nonprofit organization, called Zoo People, is established by concerned citizens to provide various services to or for the zoo. Zoo People collects donations to defray the costs of its activities on behalf of the zoo. The zoo agrees to provide a limited number of annual passes in exchange for certain services to the organization. Zoo People sells these passes through raffles and other means. Although Zoo People does not turn over the proceeds from these sales to the zoo, the money helps pay for services provided to or for the zoo. The value of the services supplied is other consideration; the value of the consideration, up to the value of the passes supplied, is subject to the governmental gross receipts tax.

D. Receipts of groups or organizations (other than corporations) created by an agency, institution, instrumentality or political subdivision will be considered receipts of the agency, institution, instrumentality or political subdivision for the purposes of the governmental gross receipts tax if the group or organization is acting as an agent for the agency, institution, instrumentality or political subdivision.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.24 NMAC - Rn, 3 NMAC 2.100.24, 4/30/01]

3.2.20.25 IMPLEMENTATION OF GOVERNMENTAL GROSS RECEIPTS TAX FOR CASH BASIS TAXPAYERS AND ACCRUAL BASIS TAXPAYERS:

A. Receipts of a cash basis taxpayer received prior to July 1, 1991 from selling tangible personal property or from performing a refuse collection, sewage or recreational, entertainment or athletic service which is to be delivered or performed after June 30, 1991 are not governmental gross receipts. Receipts received after June 30, 1991 by a cash basis taxpayer for tangible personal property sold prior to July 1, 1991 or from performing a refuse collection, sewage or recreational, entertainment or athletic service prior to July 1, 1991 are governmental gross receipts.

B. Example: Village C reports governmental gross receipts tax on a cash basis. The Village sells a water heater and other tangible personal property being removed from a building which is to be demolished. The Village sells the items for $1,000 and receives payment on June 20, 1991 and delivers all but the water heater to the purchaser that same day. The purchaser does not actually pick up the water heater until July 2. Because the Village is a cash basis taxpayer, it does not matter that some of the tangible personal property was delivered after June 30, 1991. The $1,000 receipts are not governmental gross receipts.

C. Receipts of an accrual basis taxpayer received prior to July 1, 1991 from selling tangible personal property or from performing a refuse collection, sewage or recreational, entertainment or athletic service which is to be delivered or performed after June 30, 1991 are governmental gross receipts to the extent of the revenues recognized for accounting purposes after June 30, 1991. Receipts received after June 30, 1991 by an accrual basis taxpayer with respect to revenues recognized for accounting purposes on the taxpayer's accounts prior to July 1, 1991 for selling tangible personal property sold prior to July 1, 1991 or from performing a refuse collection, sewage or recreational, entertainment or athletic service prior July 1, 1991 are not governmental gross receipts.

D. Example: U, a state university, is an accrual basis taxpayer. U runs a series of concerts during the period June through August 1991. U sells season tickets to the concerts. U recognizes the revenue from the season tickets as the concerts are performed. That part of U's receipts from season ticket sales received prior to July 1, 1991 are governmental gross receipts with respect to the receipts related to the concerts to be performed after June 30, 1991. Governmental gross receipts tax is due on the receipts related to the post-June concerts as they are recognized for accounting purposes as revenues on U's books.

E. Accrual basis taxpayers which bill customers for services or tangible personal property already delivered may reduce the amount reported as governmental gross receipts which represents the value of the service or tangible personal property provided prior to July 1, 1991. If the value of such services or tangible personal property is separately determinable, then that amount may be removed from the amount of governmental gross receipts to be otherwise reportable. If the amount is not readily determinable but the billing represents delivery of service or tangible personal property for a period of time, such as a month, then the portion which may be removed from the amount otherwise reportable is the amount of the bill times a fraction, the numerator of

which is the number of days in the billing period prior to July 1, 1991 and the denominator of which is the number of days in the billing period.

F. Example: City G operates a water utility. It uses an accrual method of accounting and reporting revenues. It bills monthly but divides its customers among 20 different billing cycles, each of which begins on a different day of the month. In July 1991, some of the bills will be for water delivered almost entirely during the month of June 1991. Other customers will have only a few days of June delivery on their July bills. City A could reduce the amount of reportable governmental gross receipts for a billing cycle which runs from June 10, 1991 through July 9, 1991 by subtracting 70% of the total amount received from the billing.

G. Section 3.2.20.25 NMAC is retroactively applicable to transactions occurring on or after July 1, 1991.

[6/28/91, 9/17/91, 10/2/92, 11/15/96; 3.2.20.25 NMAC - Rn, 3 NMAC 2.100.25 & A, 4/30/01]

3.2.20.26 REGISTRATION AND FILING:

An agency, institution, instrumentality or political subdivision of the state of New Mexico does not have to register to file tax returns under the Gross Receipts and Compensating Tax Act only if the entity's receipts are entirely from:

A. activities or sources other than taxable activities; and

B. activities which are exempt under the sections cited in Section 7-9-12 NMSA 1978.

[9/17/91, 10/2/92, 11/15/96; 3.2.20.26 NMAC - Rn, 3 NMAC 2.100.26 & A, 4/30/01]

3.2.20.27 GOVERNMENTALLY-OWNED WATER UTILITIES - INSTALLATION AND STAND-BY CHARGES - MINIMUM CHARGES:

A. Receipts of a water utility owned or operated by an agency, institution, instrumentality or political subdivision of the state of New Mexico from connect, disconnect, installation or stand-by charges or the like are not receipts from selling water or another taxable activity and therefore are not governmental gross receipts.

B. "Stand-by" charges are receipts other than from the sale of water by a utility and are imposed only where water has not been connected or is not being furnished. Minimum usage charges imposed upon persons connected to the utility are charges for the sale of water and are not stand-by charges.

[9/17/91, 10/2/92, 11/15/96; 3.2.20.27 NMAC - Rn, 3 NMAC 2.100.27, 4/30/01]

3.2.20.28 TIME-PRICE DIFFERENTIALS - INCOME FROM INVESTMENTS:

A. Receipts of an agency, institution, instrumentality or political subdivision of the state of New Mexico from any type of time-price differential are not receipts from a taxable activity and are not governmental gross receipts.

B. Example 1: University X charges full-time students $500 tuition per semester. Students may elect to pay the tuition owed on a 4-month installment plan. Each installment payment amount is $130. The receipts of University X from the $20 time-price differential are not governmental gross receipts.

C. Example 2: City Z charges a fee at the rate of 12% per annum when charges for water sold by Z are not paid timely. Receipts from imposition of the late charges are receipts of a time-price differential and are not governmental gross receipts.

D. Receipts of an agency, institution, instrumentality or political subdivision of the state of New Mexico from interest, dividends or other forms of income from investment are not receipts from a taxable activity and are not governmental gross receipts.

E. Receipts of an agency, institution, instrumentality or political subdivision of the state of New Mexico from the gain on the sale of real estate or securities are not receipts from a taxable activity and are not governmental gross receipts.

[9/17/91, 10/2/92, 11/15/96; 3.2.20.28 NMAC - Rn, 3 NMAC 2.100.28, 4/30/01]

3.2.20.29 [RESERVED]

3.2.20.30 RECEIPTS FROM SALE OF REAL ESTATE:

A. Receipts of an agency, institution, instrumentality or political subdivision of the state of New Mexico from the sale of real estate are not receipts from a taxable activity and are not governmental gross receipts.

B. Example 1: In the course of a project undertaken pursuant to the Metropolitan Redevelopment Code, City A sells a half-acre lot to a private interest. Receipts from the sale are receipts from the sale of real property and are not governmental gross receipts.

C. Example 2: City R maintains a cemetery. It sells plots in the cemetery to individuals. Receipts from the sale of the plots are receipts from the sale of real estate and are not governmental gross receipts.

[9/17/91, 10/2/92, 11/15/96; 3.2.20.30 NMAC - Rn, 3 NMAC 2.100.30, 4/30/01]

3.2.20.31 RECEIPTS FROM RECREATIONAL, ATHLETIC AND ENTERTAINMENT SERVICES:

A. Receipts of an agency, institution, instrumentality or political subdivision of the state of New Mexico from participating in an athletic event open to the general public which is conducted by another agency, institution, instrumentality or political subdivision of the state of New Mexico are receipts from performing an athletic service and are governmental gross receipts.

B. Example 1: The basketball team of University X, an institution of the state of New Mexico, plays the basketball team of University Y, another institution of the state of New Mexico. X is the host and collects $20,000 in admissions to the contest. X pays Y $8,000 for its team's participation. X has $20,000 in governmental gross receipts; Y has $8,000 in governmental gross receipts.

C. Repealed

D. Repealed

E. Receipts of a New Mexico agency, institution, instrumentality or political subdivision from performance of or admissions to a recreational, athletic or entertainment service or event are governmental gross receipts regardless of where the service or event takes place.

F. Example: University E is an institution of the state of New Mexico. University E's team is invited to play in a post-season tournament in another state. E's receipts from its team's participation in the tournament are governmental gross receipts.

G. This section is retroactively applicable to transactions occurring on or after July 1, 1991.

[9/17/91, 10/2/92, 11/15/96, 4/30/99; 3.2.20.31 NMAC - Rn, 3 NMAC 2.100.31, 4/30/01]

3.2.20.32 FINES:

A. Receipts from the imposition of criminal or civil fines or forfeitures are not receipts from a taxable activity and are not governmental gross receipts.

B. Example 1: The taxation and revenue department charges penalty (at 2% per month, or portion thereof, up to a maximum of 20%) for late payment of taxes. A $5 minimum penalty applies even when no tax is due if a report due is late. The penalties collected are not governmental gross receipts.

C. Example 2: A governmentally-operated library charges a fine for late return of borrowed materials. Such fines are not governmental gross receipts.

D. Example 3: Police agencies under some laws are entitled to seize certain tangible personal property if the property is connected with certain unlawful behavior. The value of such property when seized is "receipts" but is not reportable as

governmental gross receipts. If the agency sells the property from a facility open to the general public or to another part of the state, however, receipts from that sale are governmental gross receipts.

[9/17/91, 10/2/92, 11/15/96; 3.2.20.32 NMAC - Rn, 3 NMAC 2.100.32, 4/30/01; A, 12/30/10]

PART 21: IMPOSITION AND RATE OF GOVERNMENTAL GROSS RECEIPTS TAX

3.2.21.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.21.1 NMAC - Rn, 3 NMAC 2.101.1, 4/30/01]

3.2.21.2 SCOPE:

This part applies to all governmental bodies of the state of New Mexico and its political subdivisions.

[11/15/96; 3.2.21.2 NMAC - Rn, 3 NMAC 2.101.2, 4/30/01]

3.2.21.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.21.3 NMAC - Rn, 3 NMAC 2.101.3, 4/30/01]

3.2.21.4 DURATION:

Permanent.

[11/15/96; 3.2.21.4 NMAC - Rn, 3 NMAC 2.101.4, 4/30/01]

3.2.21.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.21.5 NMAC - Rn & A, 3 NMAC 2.101.5, 4/30/01]

3.2.21.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.21.6 NMAC - Rn, 3 NMAC 2.101.6, 4/30/01]

3.2.21.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.21.7 NMAC - Rn, 3 NMAC 2.101.7, 4/30/01]

3.2.21.8 APPLICATION OF GOVERNMENTAL GROSS RECEIPTS TAX:

The governmental gross receipts tax is imposed only on agencies, institutions, instrumentalities and political subdivisions of the state of New Mexico. The tax is not imposed on any other person.

[6/28/91, 10/2/92, 11/15/96; 3.2.21.8 NMAC - Rn, 3 NMAC 2.101.8, 4/30/01]

3.2.21.9 LICENSED ENTITIES PROVIDING HEALTH CARE SERVICES:

A. On and after July 1, 1992, the governmental gross receipts tax does not apply to receipts of any entity primarily engaged in providing health care services if the entity is licensed by the New Mexico department of health.

B. Examples of entities providing health care services: general and special hospitals, nursing homes, diagnostic and treatment centers, rehabilitation centers and home health care services.

C. If the receipts of an entity licensed by the New Mexico department of health are principally from engaging in the provision of health care services, none of the entity's receipts are subject to the governmental gross receipts tax.

D. Example: Hospital H is an institution of the state of New Mexico, principally engaged in the provision of health care services. The hospital is licensed by the New Mexico department of health. The hospital operation includes a cafeteria and vending machines for the convenience of staff, patients and visitors. None of the receipts of H, including receipts from operating the cafeteria and vending machines, are subject to the governmental gross receipts tax.

E. A licensed entity may be either an agency, institution, instrumentality or political subdivision of the state of New Mexico or may be only a component of such an agency, institution, instrumentality or political subdivision. When that entity is an agency, institution, instrumentality or political subdivision of the state, the receipts of that agency, institution, instrumentality or political subdivision are not subject to the governmental gross receipts tax. If that entity is only a component of an agency,

institution, instrumentality or political subdivision, the exception under Section 7-9-4.3 NMSA 1978 to the imposition of the governmental gross receipts tax applies only to the receipts of the entity and not to receipts from other components if those other components either are not principally engaged in providing health care services or are not licensed by the New Mexico department of health. The receipts of the agency, institution, instrumentality or political subdivision from taxable activities through its components which are not principally engaged in providing health care services or licensed by the New Mexico department of health are subject to the governmental gross receipts tax.

F. Example 1: County C owns and operates a hospital licensed by the New Mexico department of health to provide health care services for its residents. County C has no other components principally engaged in the provision of health care services. The county, through its non-hospital components, has receipts from taxable activities, such as receipts from operating landfills and selling tangible personal property in facilities open to the general public. The receipts of County C from taxable activities conducted by its components other than the hospital are subject to governmental gross receipts.

G. Example 2: University N, an institution of the state of New Mexico, operates a teaching hospital licensed by the New Mexico department of health. The hospital's primary purpose is to provide health care services even though it is also a facility for teaching health care professionals. The other components of the university provide educational services, sell tangible personal property to the general public, conduct athletic and entertainment services in facilities open to the general public and provide lodging. The exception from the imposition of the governmental gross receipts tax applies only to the receipts of the university from the hospital; it does not apply to the receipts from taxable activities of other components of the university.

[10/2/92, 11/15/96, 4/30/99; 3.2.21.9 NMAC - Rn & A, 3 NMAC 2.101.9, 4/30/01]

PART 22-99: [RESERVED]

PART 100: EXEMPTIONS

3.2.100.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.100.1 NMAC - Rn, 3 NMAC 2.12.1, 5/15/01]

3.2.100.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.100.2 NMAC - Rn, 3 NMAC 2.12.2, 5/15/01]

3.2.100.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.100.3 NMAC - Rn, 3 NMAC 2.12.3, 5/15/01]

3.2.100.4 DURATION:

Permanent.

[11/15/96; 3.2.100.4 NMAC - Rn, 3 NMAC 2.12.4, 5/15/01]

3.2.100.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.100.5 NMAC - Rn, 3 NMAC 2.12.5 & A, 5/15/01]

3.2.100.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.100.6 NMAC - Rn, 3 NMAC 2.12.6, 5/15/01]

3.2.100.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.100.7 NMAC - Rn, 3 NMAC 2.12.7, 5/15/01]

3.2.100.8 REGISTRATION AND FILING:

A. If a person conducts only activities which are exempt from the Gross Receipts and Compensating Tax Act under the sections cited in Section 7-9-12 NMSA 1978, that person does not have to register to file tax returns under the Gross Receipts and Compensating Tax Act.

B. If a person is engaged in business or businesses in which some of the transactions are subject to the tax and some are exempt, that person must register and file reports. However, the person is not required to include in reported gross receipts those receipts which are exempt. The person also is not required to include in computing the compensating tax the value of property which is exempt from compensating tax.

C. Example: A Co., which employs eight persons, is engaged solely in the business of buying and selling livestock on its own account. Since A's receipts are exempt from taxation under Section 7-9-18 NMSA 1978, it is not required to register for gross receipts taxation with the department under this Act. However, A is required to register and file the necessary returns under the Withholding Tax Act, Sections 7-3-1 through 7-3-12 NMSA 1978 and comply with any other tax laws that pertain to A's business.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.100.8 NMAC - Rn, 3 NMAC 2.12.8 & A, 5/15/01]

3.2.100.9 EXEMPTIONS FROM GROSS RECEIPTS:

The exemptions provided in the Gross Receipts and Compensating Tax Act apply only to those receipts which are included in and defined as gross receipts pursuant to Section 7-9-3.5 NMSA 1978.

[10/21/86, 11/26/90, 11/15/96; 3.2.100.9 NMAC - Rn, 3 NMAC 2.12.9 & A, 5/15/01; A, 12/30/10]

3.2.100.10 EXEMPTIONS OF GROSS RECEIPTS OF MARKETPLACE SELLERS AND MARKETPLACE PROVIDERS:

Under Section 7-9-3.5 NMSA 1978, marketplace sellers may have gross receipts from selling, leasing or licensing property or selling services in the state and marketplace providers may have receipts from receipts collected from selling, leasing, licensing property or selling services. The exemptions provided in the Gross Receipts and Compensating Tax Act apply to the gross receipts of marketplace sellers and marketplace providers to the extent that the sale, lease or licensing of property or selling of services would be exempt.

[3.2.100.10 NMAC - N, 7/7/2021]

PART 101: EXEMPTIONS - GROSS RECEIPTS TAX - GOVERNMENTAL AGENCIES

3.2.101.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.101.1 NMAC - Rn, 3 NMAC 2.13.1, 5/15/01]

3.2.101.2 SCOPE:

This part applies only to governments.

[11/15/96; 3.2.101.2 NMAC - Rn, 3 NMAC 2.13.2, 5/15/01]

3.2.101.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.101.3 NMAC - Rn, 3 NMAC 2.13.3, 5/15/01]

3.2.101.4 DURATION:

Permanent.

[11/15/96; 3.2.101.4 NMAC - Rn, 3 NMAC 2.13.4, 5/15/01]

3.2.101.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.101.5 NMAC - Rn, 3 NMAC 2.13.5 & A, 5/15/01]

3.2.101.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.101.6 NMAC - Rn, 3 NMAC 2.13.6, 5/15/01]

3.2.101.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.101.7 NMAC - Rn, 3 NMAC 2.13.7, 5/15/01]

3.2.101.8 GOVERNMENTALLY-OWNED UTILITIES - INSTALLATION AND STAND-BY CHARGES - MINIMUM CHARGES:

A. Receipts of a gas or electric utility owned or operated by a county, municipality or other political subdivision of the state of New Mexico from connect, disconnect, installation or stand-by charges are exempt from the gross receipts tax.

B. "Stand-by" charges are receipts other than from the sale of gas or electricity by a utility and are imposed only where gas or electricity has not been connected or is not being furnished. Minimum usage charges imposed upon persons connected to the utility are charges for the sale of gas or electricity and are not stand-by charges.

C. Section 3.2.101.8 NMAC applies to receipts from transactions occurring on or after July 1, 1991.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 9/17/91, 11/15/96; 3.2.101.8 NMAC - Rn, 3 NMAC 2.13.8 & A, 5/15/01]

3.2.101.9 RECEIPTS OF GOVERNMENTAL ENTITIES:

A. Except for the receipts from the sale of gas or electricity by a utility owned or operated by a political subdivision of the state and receipts of a municipality from the ownership or operation of a cable television station owned by the municipality, the receipts of the United States or any agency or instrumentality of the United States, the state of New Mexico or any political subdivision of the state or any Indian nation, tribe or pueblo from activities or transactions occurring on its sovereign territory are exempt from the gross receipts tax. This exemption applies to the receipts of such governmental entity from the sale, leasing or licensing of property, granting a franchise or from the sale of a service by that governmental entity. This exemption, however, does not apply to the imposition of the governmental gross receipts tax under the provisions of Section 7-9-4.3 NMSA 1978.

B. Example 1: A New Mexico municipality publishes and sells to the public a compilation of all its municipal ordinances. The receipts from these sales are not subject to the gross receipts tax but the receipts will be subject to the governmental gross receipts tax.

C. Example 2: X Sporting Goods Store sells a hunting license for $7.50. Of this $7.50, X remits $7.25 to the state of New Mexico and $0.25 is retained by X as a commission. The $7.25 that is remitted to the state is exempt from the gross receipts tax. However, the $0.25 retained by X is subject to the gross receipts tax. This amount is not deductible under Section 7-9-66 NMSA 1978 because a license is not tangible personal property under Section 7-9-3 NMSA 1978. The $0.25 is a receipt derived from services performed in New Mexico.

D. Example 3: M Utility Company obtains a franchise from a New Mexico municipality to operate an electric utility. The receipts the municipality obtains from M for granting of this franchise are exempt from the gross receipts tax.

E. Example 4: The university of New Mexico sells copies of transcripts to students. These receipts are not subject to the gross receipts tax because the university of New Mexico is the state of New Mexico. Provided that the conditions set forth in 3.2.20.21 NMAC are met, the receipts from selling the transcript copies are not governmental gross receipts.

F. Example 5: The receipts of a public housing authority which is an agency either of the state of New Mexico or any political subdivision thereof or of the United States or any agency or instrumentality thereof are exempted from the gross receipts tax to the

extent provided in Section 7-9-13 NMSA 1978. The receipts of the public housing authority from the sale of tangible personal property from a facility open to the general public or providing refuse collection, refuse disposal or sewage services are governmental gross receipts subject to the governmental gross receipts tax; its receipts in the form of rentals are not governmental gross receipts.

G. Example 6: The receipts of concessionaires who are not agencies or instrumentalities of the federal government or the state of New Mexico or any political subdivision of the state from carrying on activities within a federal area are subject to the gross receipts tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 9/17/91, 3/19/92, 10/28/94, 11/15/96, 1/15/98; 3.2.101.9 NMAC - Rn, 3 NMAC 2.13.9 & A, 5/15/01; A, 12/30/10]

3.2.101.10 AMERICAN NATIONAL RED CROSS:

The American national red cross chartered pursuant to 36 U.S.C. 300101 et seq. is immune from state taxation as an instrumentality of the federal government. As such, its receipts are exempt from gross receipts tax under Section 7-9-13 NMSA 1978.

[5/31/97; 3.2.101.10 NMAC - Rn, 3 NMAC 2.13.10 & A, 5/15/01; A, 12/30/10]

PART 102: EXEMPTIONS - COMPENSATING TAX - GOVERNMENTAL AGENCIES - INDIANS

3.2.102.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.102.1 NMAC - Rn, 3 NMAC 2.14.1, 5/15/01]

3.2.102.2 SCOPE:

This part applies to each person using property in New Mexico.

[11/15/96; 3.2.102.2 NMAC - Rn, 3 NMAC 2.14.2, 5/15/01]

3.2.102.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.102.3 NMAC - Rn, 3 NMAC 2.14.3, 5/15/01]

3.2.102.4 DURATION:

Permanent.

[11/15/96; 3.2.102.4 NMAC - Rn, 3 NMAC 2.14.4, 5/15/01]

3.2.102.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.102.5 NMAC - Rn, 3 NMAC 2.14.5 & A, 5/15/01]

3.2.102.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.102.6 NMAC - Rn, 3 NMAC 2.14.6, 5/15/01]

3.2.102.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.102.7 NMAC - Rn, 3 NMAC 2.14.7, 5/15/01]

3.2.102.8 USE OF PROPERTY BY GOVERNMENTAL ENTITIES:

A. For purposes of Section 7-9-14 NMSA 1978, the phrase "United States" does not include individual states or any agency, department, instrumentality or political subdivision of an individual state. The phrase "the state of New Mexico" includes any agency, institution of higher education, board, commission or department which has been created by statute, executive order or action of the legislature and which has been charged with the administration or enforcement of certain provisions of New Mexico statutes. The phrase "or any political subdivision thereof" includes incorporated municipalities, counties, school districts, conservation districts or other entities authorized by statute and which are governed by representatives elected by the public. The use of property in New Mexico by the United States or any of its agencies, departments or instrumentalities is exempt from compensating tax. Except for tangible personal property incorporated into a metropolitan redevelopment project or into a construction project, the use of property in New Mexico by the state of New Mexico or any of its agencies, departments, instrumentalities or political subdivisions is exempt from compensating tax.

B The following examples illustrate the application of Section 7-9-14 NMSA 1978:

(1) Example 1: The air force purchases a fighter jet for use at an air force base in New Mexico. The use of this plane in New Mexico by the United States is exempt from the compensating tax.

(2) Example 2: Z, a soil and water conservation district created pursuant to the Soil and Water Conservation District Act, buys equipment and trees for its use in controlling erosion. Because Z is a political subdivision of New Mexico, its use of the equipment and trees are not subject to the compensating tax.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 3/16/95, 11/15/96; 3.2.102.8 NMAC - Rn, 3 NMAC 2.14.8 & A, 5/15/01; A, 12/30/10]

3.2.102.9 TANGIBLE PERSONAL PROPERTY INCORPORATED INTO A METROPOLITAN REDEVELOPMENT PROJECT:

Tangible personal property purchased by a New Mexico municipality and incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code is subject to the compensating tax if purchased from an out-of-state supplier who does not pay either the New Mexico gross receipts tax or the New Mexico compensating tax on behalf of the buyer on the sale. Tangible personal property purchased by a New Mexico municipality for an otherwise nontaxable use and subsequently converted to use in a metropolitan redevelopment project created under the Metropolitan Redevelopment Code is subject to the compensating tax. The value of tangible personal property in either fact situation is subject to New Mexico compensating tax.

[10/2/85, 4/2/86, 11/26/90, 11/15/96; 3.2.102.9 NMAC - Rn, 3 NMAC 2.14.9, 5/15/01]

3.2.102.10 USE OF PROPERTY BY INDIAN GOVERNMENTS:

A. Use of property by an Indian nation, tribe or pueblo in Indian country is exempt from compensating tax. The use, to be exempt, is not required to be on the territory of the Indian nation, tribe or pueblo using the property but must be in Indian country.

B. The exemption from compensating tax created by Subsection B of Section 7-9-14 NMSA 1978 does not extend to the use of property owned by individuals who are members of an Indian nation, tribe or pueblo. The use of such property on the territory of the member's nation, tribe or pueblo, however, is not subject to the compensating tax if taxation is prohibited by federal law.

C. The following examples illustrate the provisions of Section 3.2.102.10 NMAC.

(1) Example 1: The Y Tribe purchases a bulldozer outside New Mexico, for use in clearing land in New Mexico on its own land and that of other Indian governments. Compensating tax is not applicable to this transaction.

(2) Example 2: X, an Indian, purchases a tractor outside New Mexico, for use in New Mexico. X contends that, being an Indian, X is exempt from the payment of the compensating tax. The exemption set forth in Section 7-9-14 NMSA 1978 does not apply to individual Indians. It applies only to Indian nations, tribes or pueblos. As long as federal law prohibits taxation of it, however, X's use of the tractor on land within the territory of X's nation, tribe or pueblo is exempt from compensating tax.

[3/16/95, 11/15/96; 3.2.102.10 NMAC - Rn, 3 NMAC 2.14.10 & A, 5/15/01]

3.2.102.11 AMERICAN NATIONAL RED CROSS:

The American national red cross chartered pursuant to 36 U.S.C. 300101 et seq. is immune from state taxation as an instrumentality of the federal government. As such, its use of property in New Mexico is exempt from compensating tax under Section 7-9-14 NMSA 1978.

[5/31/97; 3.2.102.11 NMAC - Rn, 3 NMAC 2.14.11 & A, 5/15/01; A, 12/30/10]

PART 103: EXEMPTIONS - COMPENSATING TAX - CERTAIN ORGANIZATIONS

3.2.103.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.2.103.1 NMAC - N, 1/15/15]

3.2.103.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[3.2.103.2 NMAC - N, 1/15/15]

3.2.103.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.2.103.3 NMAC - N, 1/15/15]

3.2.103.4 DURATION:

Permanent.

[3.2.103.4 NMAC - N, 1/15/15]

3.2.103.5 EFFECTIVE DATE:

January 15, 2015, unless a later date is cited at the end of a section.

[3.2.103.5 NMAC - N, 1/15/15]

3.2.103.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.103.6 NMAC - N, 1/15/15]

3.2.103.7 DEFINITIONS:

[RESERVED]

[3.2.103.7 NMAC - N, 1/15/15]

3.2.103.8 SINGLE MEMBER LIMITED LIABILITY COMPANY WHOSE SOLE MEMBER IS A 501(c)(3) ORGANIZATION:

A. A single member limited liability company (llc) whose sole member is a 501(c)(3) organization will be treated like a 501(c)(3) organization and receive the same treatment for purposes of Section 7-9-15 NMSA 1978 so long as the llc is recognized by the internal revenue service as a disregarded entity for federal income tax purposes.

B. An llc described in Subsection A above that uses the property in the conduct of an unrelated trade or business as defined in Section 513 of the Internal Revenue Code of 1986, as amended or renumbered, is not exempt pursuant to Section 7-9-15 NMSA 1978.

[3.2.103.8 NMAC - N, 1/15/15]

PART 104: EXEMPTION - GROSS RECEIPTS TAX - CERTAIN NONPROFIT FACILITIES [REPEALED]

[This part was repealed effective September 26, 2023.]

PART 105: EXEMPTION - GROSS RECEIPTS TAX - WAGES

3.2.105.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.105.1 NMAC - Rn, 3 NMAC 2.17.1, 5/15/01]

3.2.105.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.105.2 NMAC - Rn, 3 NMAC 2.17.2, 5/15/01]

3.2.105.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.105.3 NMAC - Rn, 3 NMAC 2.17.3, 5/15/01]

3.2.105.4 DURATION:

Permanent.

[11/15/96; 3.2.105.4 NMAC - Rn, 3 NMAC 2.17.4, 5/15/01]

3.2.105.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.105.5 NMAC - Rn, 3 NMAC 2.17.5 & A, 5/15/01]

3.2.105.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.105.6 NMAC - Rn, 3 NMAC 2.17.6, 5/15/01]

3.2.105.7 DEFINITIONS - EMPLOYEE:

A. In determining whether a person is an employee, the department will consider the following indicia:

(1) is the person paid a wage or salary;

(2) is the "employer" required to withhold income tax from the person's wage or salary;

(3) is F.I.C.A. tax required to be paid by the "employer";

(4) is the person covered by workmen's compensation insurance;

(5) is the "employer" required to make unemployment insurance contributions on behalf of the person;

(6) does the person's "employer" consider the person to be an employee;

(7) does the person's "employer" have a right to exercise control over the means of accomplishing a result or only over the result (control does not mean "mere suggestion").

B. If all of the indicia mentioned Subsection A of Section 3.2.105.7 NMAC are present, the department will presume that the person is an employee. However, a person may be an employee even if one or more of the indicia are not present.

C. The following examples illustrate the provisions of Section 3.2.105.7 NMAC.

(1) Example 1: B is a carpenter who works for Y and is paid on an hourly basis. Y withholds income tax from the money paid to B. Y treats B as an employee and controls the details of B's work. B is covered by Y's workmen's compensation insurance. B is an employee working for a wage or salary. B does not have to report the wages as gross receipts.

(2) Example 2: A sells bibles door to door for the X Bible Company. X pays A a commission, does not control the details of A's work, is not required by applicable law to withhold income tax from A's commission, and is not required to make unemployment insurance contributions on A. A is not an employee. A is an independent contractor and is subject to the gross receipts tax on A's commissions.

(3) Example 3: Q is a used car salesman for the R Used Car Center. Q receives a 3% commission on each car Q sells. R retains authority to supervise all sales Q makes and approves all sales before they can become final. Every two weeks R issues Q a check based upon the commissions Q has earned. R withholds federal and state income taxes and F.I.C.A. taxes. Q is an employee of R.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.105.7 NMAC - Rn, 3 NMAC 2.17.7 & A, 5/15/01]

3.2.105.8 BLIND OPERATORS OF VENDING STANDS:

A. Except as provided in Subsection B of this section, receipts of blind operators of vending stands established in business pursuant to the Vending Stands for Blind in Federal Buildings Act, 20 U.S.C. Sections 107-107(f), or Sections 22-14-24 to 22-14-29 NMSA 1978 are subject to the gross receipts tax. Such operators are not employees within the indicia outlined in 3.2.105.7 NMAC.

B. The receipts of a blind "disabled street vendor" are exempt under Section 7-9-41.3 NMSA 1978.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.105.8 NMAC - Rn, 3 NMAC 2.17.8 & A, 5/15/01; A, 12/30/10]

3.2.105.9 SCHOOL BUS OPERATORS:

The receipts of a person who furnishes a bus and operates that bus pursuant to a contract with a New Mexico school district are receipts from performing a service and are subject to the gross receipts tax; however, if that person is an employee of the school district, that portion of the receipts which is treated by the school district as wages or salary is not subject to the gross receipts tax.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.105.9 NMAC - Rn, 3 NMAC 2.17.9, 5/15/01]

3.2.105.10 COMMISSIONED SALESPERSONS:

A salesperson who sells for a company on a commission basis is not an employee of the company where the company exercises no direct control over the details of performance of the salesperson's duties beyond general statements about the scope and nature of the salesperson's obligations under the contract between the salesperson and the company. In addition, where commissions paid to a salesperson are not subject to withholding taxes or social security taxes, the salesperson is not considered an employee of the company. Therefore, receipts from commissions paid to such salesperson for selling property in New Mexico are subject to the gross receipts tax.

[6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.105.10 NMAC - Rn, 3 NMAC 2.17.10, 5/15/01]

3.2.105.11 EMPLOYER REIMBURSEMENT OF EXPENDITURES TO EMPLOYEES:

An employee's receipts of reimbursements from the employer for expenses incurred by that employee in the performance of the duties and responsibilities assigned to the employee are exempt from gross receipts tax as remuneration paid to the employee. The provisions of Section 3.2.105.11 NMAC shall not be construed to allow an exemption under the provisions of Section 7-9-17 NMSA 1978 of any receipts of the employer which are represented to be charges to the customer for employee wages, salaries, commissions, reimbursement of employee expenditures or any other form of remuneration paid or to be paid to the employee.

[12/29/89, 11/26/90, 11/15/96; 3.2.105.11 NMAC - Rn, 3 NMAC 2.17.11 & A, 5/15/01]

PART 106: EXEMPTION - GROSS RECEIPTS TAX - AGRICULTURAL PRODUCTS

3.2.106.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.106.1 NMAC - Rn, 3 NMAC 2.18.1.1, 5/15/01]

3.2.106.2 SCOPE:

This part applies to each person engaging in business in New Mexico and selling or dealing in livestock or agricultural products.

[11/15/96; 3.2.106.2 NMAC - Rn, 3 NMAC 2.18.1.2, 5/15/01]

3.2.106.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.106.3 NMAC - Rn, 3 NMAC 2.18.1.3, 5/15/01]

3.2.106.4 DURATION:

Permanent.

[11/15/96; 3.2.106.4 NMAC - Rn, 3 NMAC 2.18.1.4, 5/15/01]

3.2.106.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.106.5 NMAC - Rn, 3 NMAC 2.18.1.5 & A, 5/15/01]

3.2.106.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.106.6 NMAC - Rn, 3 NMAC 2.18.1.6, 5/15/01]

3.2.106.7 DEFINITIONS:

A. AGRICULTURAL PRODUCTS:

(1) Agricultural products are those products and the intermediate stages thereof which are normally raised or grown primarily for use as fiber or food for human or animal consumption.

(2) Cannabis is not an agricultural product.

B. POULTRY: The term "poultry " means domestic fowl raised for sale or use in the ordinary course of business or for the production of meat, eggs, hides or feathers for sale or use in the ordinary course of business.

[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 12/23/92, 11/15/1996; 3.2.106.7 NMAC - Rn, 3 NMAC 2.18.1.7, 5/15/2001; A, 8/15/12; A, 11/29/2022]

3.2.106.8 LEASE OF LIVESTOCK:

Receipts derived from the lease of livestock employed in New Mexico are subject to the gross receipts tax. The exemption provided in Section 7-9-18 NMSA 1978 does not apply to these receipts.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.106.8 NMAC - Rn, 3 NMAC 2.18.1.8 & A, 5/15/01]

3.2.106.9 COOPERATIVE ASSOCIATIONS:

A. A cooperative agricultural association organized under the Cooperative Marketing Association Act, Sections 76-12-1 to 76-12-23 NMSA 1978 is deemed to be nonprofit, inasmuch as it is not organized to make a profit for itself as such, nor for its members as such, but only for its members as producers or users of products purchased. The receipts of such an association from the sale of unprocessed agricultural products are receipts of a nonprofit marketing association derived from selling unprocessed agricultural products. Such receipts are exempt from the gross receipts tax pursuant to Section 7-9-18 NMSA 1978.

B. The receipts of a marketing association corporation, which is organized for profit, derived from selling, for its own account, unprocessed agricultural products which are purchased from growers, are not exempt pursuant to Section 7-9-18 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.106.9 NMAC - Rn, 3 NMAC 2.18.1.9 & A, 5/15/01]

3.2.106.10 NURSERY:

The receipts of a nursery from the sale of shrubs, trees and other plants are subject to the gross receipts tax. The receipts from the sale of shrubs, trees and other plants are not receipts from the sale of unprocessed agricultural products.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.106.10 NMAC - Rn, 3 NMAC 2.18.1.10, 5/15/01]

3.2.106.11 TREE FARMS:

Receipts of a "tree farm" or a "tree plantation" from the sale of trees for ornamental purposes, such as for landscaping or religious decorations, and from the sale of by-products of such trees, such as tree components for the production of medicines and seed cones for decorative purposes are subject to the gross receipts tax. Such receipts are not receipts from the sale of unprocessed agricultural products which are grown primarily for use as fiber or food for human or animal consumption.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.106.11 NMAC - Rn, 3 NMAC 2.18.1.11, 5/15/01]

3.2.106.12 BULL SEMEN:

A. Receipts from the sale of bull semen are exempt from the gross receipts tax because bull semen is an intermediate stage of an unprocessed agricultural product which is normally raised as food for human and animal consumption.

B. Nonreturnable containers used in transporting the semen are incidental to the sale of the semen. Therefore, the total receipts from the sale of the semen, including the nonreturnable containers, are exempted from the gross receipts tax.

C. However, receipts from leasing refrigeration equipment to purchasers, for storing the semen in New Mexico, are subject to the gross receipts tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.106.12 NMAC - Rn, 3 NMAC 2.18.1.12, 5/15/01]

3.2.106.13 GENERAL EXAMPLES:

The following examples illustrate the application of Section 7-9-18 NMSA 1978:

A. Example 1: B is engaged in the business of trading horses. B buys a horse from M, keeps the horse for two days and then sells it to W. B contends that the gross receipts which are derived from the transaction are exempt under Section 7-9-18 NMSA 1978. B does not have to pay gross receipts tax measured by the total receipts which are received from the sale of the horse. B is a producer of livestock for the purposes of Section 7-9-18 NMSA 1978 since B buys and sells livestock on B's own account.

B. Example 2: A owns a herd of dairy cattle. A milks them and sells the milk from door to door. A's dairy products are sold at retail and therefore A's receipts are not exempt.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.106.13 NMAC - Rn, 3 NMAC 2.18.1.13 & A, 5/15/01]

3.2.106.14 SALE OF WORMS FOR AERATION:

The receipts of a person engaged in the business of raising worms for sale to farmers and gardeners for aeration purposes are subject to the gross receipts tax.

[6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.106.14 NMAC - Rn, 3 NMAC 2.18.1.14, 5/15/01]

3.2.106.15 CANNABIS:

Receipts of a licensed cannabis retailer from the sale of cannabis products, including without limitation cannabis flowers as defined in Section 26-2C-2 NMSA 1978, are subject to the gross receipts tax. The receipts from the sale of cannabis products, including cannabis flowers as defined in Section 26-2C-2 NMSA 1978, are not receipts from the sale of unprocessed agricultural products.

[3.2.106.15 NMAC - N, 11/29/2022]

PART 107: EXEMPTION GROSS RECEIPTS TAX - LIVESTOCK FEEDING

3.2.107.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.107.1 NMAC - Rn, 3 NMAC 2.19.1, 5/15/01]

3.2.107.2 SCOPE:

This part applies to each person engaging in business in New Mexico and feeding, pasturing, penning, handling or training livestock.

[11/15/96; 3.2.107.2 NMAC - Rn, 3 NMAC 2.19.2, 5/15/01]

3.2.107.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.107.3 NMAC - Rn, 3 NMAC 2.19.3, 5/15/01]

3.2.107.4 DURATION:

Permanent.

[11/15/96; 3.2.107.4 NMAC - Rn, 3 NMAC 2.19.4, 5/15/01]

3.2.107.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.107.5 NMAC - Rn, 3 NMAC 2.19.5 & A, 5/15/01]

3.2.107.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.107.6 NMAC - Rn, 3 NMAC 2.19.6, 5/15/01]

3.2.107.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.107.7 NMAC - Rn, 3 NMAC 2.19.7, 5/15/01]

3.2.107.8 RECEIPTS FROM FEEDING ANIMALS:

A. Only the receipts from feeding, pasturing, penning or handling livestock are exempt under Section 7-9-19 NMSA 1978. The receipts from feeding, pasturing, penning or handling any animals which are not livestock are subject to the gross receipts tax.

B. The following examples illustrate the application of Section 7-9-19 NMSA 1978.

(1) Example 1: A owns 1,000 sheep. A pastures them with B, who owns a ranch, for fifteen cents ($0.15) per head per month. The receipts which B receives are exempt from the gross receipts tax.

(2) Example 2: V, a veterinarian, maintains facilities for boarding animals. V boards cats and dogs that are under veterinary care. V's receipts from these services are not exempt under Section 7-9-19 NMSA 1978 because the cats and dogs are not livestock.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 4/30/99; 3.2.107.8 NMAC - Rn, 3 NMAC 2.19.8 & A, 5/15/01; A, 12/30/10]

PART 108: EXEMPTION - GROSS RECEIPTS TAX - CERTAIN RECEIPTS OF HOMEOWNERS ASSOCIATIONS

3.2.108.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.108.1 NMAC - Rn, 3 NMAC 2.20.1, 5/15/01]

3.2.108.2 SCOPE:

This part applies to homeowners associations in New Mexico and their members.

[11/15/96; 3.2.108.2 NMAC - Rn, 3 NMAC 2.20.2, 5/15/01]

3.2.108.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.108.3 NMAC - Rn, 3 NMAC 2.20.3, 5/15/01]

3.2.108.4 DURATION:

Permanent.

[11/15/96; 3.2.108.4 NMAC - Rn, 3 NMAC 2.20.4, 5/15/01]

3.2.108.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.108.5 NMAC - Rn, 3 NMAC 2.20.5 & A, 5/15/01]

3.2.108.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.108.6 NMAC - Rn, 3 NMAC 2.20.6, 5/15/01]

3.2.108.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.108.7 NMAC - Rn, 3 NMAC 2.20.7, 5/15/01]

3.2.108.8 OWNERSHIP OF PROPERTY WITHIN THE DEVELOPMENT OR SUBDIVISION REQUIRED:

A. To be exempt from gross receipts tax under the provisions of Section 7-9-20 NMSA 1978, the receipts of the homeowners association must be from members of the association who own residential property within the development or subdivision which the homeowner association serves.

B. The receipts of a homeowner association which are received as membership fees, dues, assessments or other charges from persons who are not owners of residential units, residences or residential lots within the development or subdivision which the association serves are not exempt from gross receipts under Section 7-9-20 NMSA 1978.

[3/8/91, 11/15/96; 3.2.108.8 NMAC - Rn, 3 NMAC 2.20.8 & A, 5/15/01]

3.2.108.9 RECEIPTS OTHER THAN MEMBERSHIP FEES, DUES OR ASSESSMENTS:

A. The receipts of any homeowner association from the sale or lease of property to any individual, whether or not the individual is a member of the association, are not exempt from the gross receipts tax under Section 7-9-20 NMSA 1978. The receipts of any homeowner association from the sale of a service performed solely for the benefit of an individual, whether or not the individual is a member of the association, are not exempt from the gross receipts tax under Section 7-9-20 NMSA 1978 when the service is not performed on common areas served or controlled by the association.

B. The following examples illustrate the application of Section 7-9-20 NMSA 1978.

(1) Example 1: Association A maintains vending and other coin operated machines for the convenience of its members and their guests. The receipts which Association A receives from the operation of the coin operated machines are not exempt from gross receipts tax under the provisions of Section 7-9-20 NMSA 1978. Association A will be liable for gross receipts tax on any sale of tangible personal property through vending machines and on any service provided by coin operated machines.

(2) Example 2: Association B owns and operates a golf course for the sole use by its members and their guests. Association B also rents golf carts on a per use basis. Its receipts from the rental of the golf carts are not received as membership fees, dues or assessments from members for payment of taxes, insurance, utility expenses, management or improvement, maintenance or rehabilitation of common areas, elements or facilities. The receipts from the rental of the golf carts are subject to the gross receipts tax.

(3) Example 3: Association C has contracted to paint the interior and exterior of an individual member's residence. The maintenance of an individual's residence is not maintenance of common areas, elements or facilities. Therefore, Association C's receipts used for painting the member's individual property are subject to the gross receipts tax and are not exempt under Section 7-9-20 NMSA 1978.

[3/8/91, 11/15/96; 3.2.108.9 NMAC - Rn, 3 NMAC 2.20.9 & A, 5/15/01]

3.2.108.10 RECEIPTS OF ASSOCIATIONS WHERE COMMON AREAS ARE OPEN TO NON-MEMBERS:

If a homeowners association allows the use of the common areas or facilities by persons other than members of the association or their guests, the association's receipts from use of the common areas or facilities by such non-members are not exempt from gross receipts tax under Section 7-9-20 NMSA 1978 since those common areas, elements or facilities are not for the sole use of the owners and their guests.

[3/8/91, 11/15/96; 3.2.108.10 NMAC - Rn, 3 NMAC 2.20.10 & A, 5/15/01]

PART 109: EXEMPTION - GROSS RECEIPTS TAX - VEHICLES

3.2.109.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.109.1 NMAC - Rn, 3 NMAC 2.22.1.1, 3/14/01]

3.2.109.2 SCOPE:

This part applies to each person engaging in business in New Mexico and selling vehicles.

[11/15/96; 3.2.109.2 NMAC - Rn, 3 NMAC 2.22.1.2, 3/14/01]

3.2.109.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.109.3 NMAC - Rn, 3 NMAC 2.22.1.3, 3/14/01]

3.2.109.4 DURATION:

Permanent.

[11/15/96; 3.2.109.4 NMAC - Rn, 3 NMAC 2.22.1.4, 3/14/01]

3.2.109.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.109.5 NMAC - Rn, 3 NMAC 2.22.1.5 & A, 3/14/01]

3.2.109.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.109.6 NMAC - Rn, 3 NMAC 2.22.1.6, 3/14/01]

3.2.109.7 DEFINITIONS:

Reserved.

[11/15/96; 3.2.109.7 NMAC - Rn, 3 NMAC 2.22.1.7, 3/14/01]

3.2.109.8 MOTOR VEHICLE EXCISE TAX:

A. The receipts from the sale of a vehicle of a type excepted from registration under Section 66-3-1 NMSA 1978 are not subject to any taxes imposed upon the issuance of a certificate of title under the Motor Vehicle Excise Tax Act and are therefore subject to gross receipts tax.

B. Example: The receipts from the sale of a logging truck used off the highway except for the purpose of crossing the highway from one property to another, are subject to gross receipts tax because there is no tax imposed upon the issuance of a certificate of title for that vehicle under the Motor Vehicle Excise Tax Act since it is exempted from registration in this state under Section 66-3-l NMSA 1978.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.109.8 NMAC - Rn, 3 NMAC 2.22.1.8 & A, 3/14/01]

3.2.109.9 ADDITIONAL EQUIPMENT:

A. Receipts from the sale of motor vehicle bodies, accessories, equipment and the like, whether sold separately or mounted on the vehicle are not subject to this exemption except where their value is included in computing the tax paid under the Motor Vehicle Excise Tax Act on the sale of a vehicle.

B. Example: M buys a pickup from R Motor Company. Three days after the truck is purchased, M buys a camper attachment for the pickup from R. The value of the camper attachment was not included in computing the tax imposed by the Motor Vehicle

Excise Tax Act on the pickup. R's receipts from the sale of the camper are subject to the gross receipts tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.109.9 NMAC - Rn, 3 NMAC 2.22.1.9, 3/14/01]

3.2.109.10 DISCOUNTING OF VEHICLES SALES CONTRACTS:

The receipts of automobile dealers who sell automobiles and other vehicles subject to registration pursuant to Section 66-3-1 NMSA 1978 which are derived from the sale of financing agreements on such automobiles and vehicles to a bank or financial corporation are not subject to the gross receipts tax because the underlying transaction is exempted from that tax pursuant to Section 7-9-22 NMSA 1978 and the sale of commercial paper, an intangible, is not subject to the gross receipts tax.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.109.10 NMAC - Rn & A, 3 NMAC 2.22.1.10, 3/14/01]

3.2.109.11 MANUFACTURED HOMES:

Receipts from selling manufactured homes are subject to the gross receipts tax. Manufactured homes are exempted from the motor vehicle excise tax by Section 7-14-3 NMSA 1978.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.109.11 NMAC - Rn, 3 NMAC 2.22.1.11, 3/14/01; A, 12/30/10]

3.2.109.12 SERVICE CONTRACT SALE PRICE AND TRANSFER FEES ON VEHICLE SALE NOT DEDUCTIBLE AS TAXABLE UNDER MOTOR VEHICLE EXCISE TAX:

Receipts from the sale of automotive service contracts and from charges for transfer services (document fees) are not covered by the exemption provided by Section 7-9-22 NMSA 1978 and shall not be included in computing the tax paid under Section 7-14-4 NMSA 1978 on the sale of the vehicle since the receipts are not "price paid for the vehicle" as required by Section 7-14-4 NMSA 1978.

[6/28/89, 11/26/90, 11/15/96; 3.2.109.12 NMAC - Rn, 3 NMAC 2.22.1.12 & A, 3/14/01]

3.2.109.13 ATVs:

Receipts from selling all-terrain vehicles (ATVs) are receipts from selling vehicles on which a tax is imposed by the Motor Vehicle Excise Tax. Therefore receipts from selling ATVs are exempt from gross receipts.

[3.2.109.13 NMAC - N, 3/14/01]

PART 110: EXEMPTION - GROSS RECEIPTS TAX - BOATS

3.2.110.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.110.1 NMAC - Rn, 3 NMAC 2.22.2.1, 5/15/01]

3.2.110.2 SCOPE:

This part applies to each person engaging in business in New Mexico and selling boats.

[11/15/96; 3.2.110.2 NMAC - Rn, 3 NMAC 2.22.2.2, 5/15/01]

3.2.110.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.110.3 NMAC - Rn, 3 NMAC 2.22.2.3, 5/15/01]

3.2.110.4 DURATION:

Permanent.

[11/15/96; 3.2.110.4 NMAC - Rn, 3 NMAC 2.22.2.4, 5/15/01]

3.2.110.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.110.5 NMAC - Rn, 3 NMAC 2.22.2.5 & A, 5/15/01]

3.2.110.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.110.6 NMAC - Rn, 3 NMAC 2.22.2.6, 5/15/01]

3.2.110.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.110.7 NMAC - Rn, 3 NMAC 2.22.2.7, 5/15/01]

3.2.110.8 ADDITIONAL EQUIPMENT:

A. Receipts from the sale of boat accessories, optional equipment and the like, whether sold separately or mounted on the boat, are not subject to this exemption except where such equipment is included in and is part of the sale of a boat and the value is included in computing the tax paid under Section 66-12-6.1 NMSA 1978 on the sale of a boat, as that term is defined in Section 66-12-3 NMSA 1978.

B. Example: M buys a boat from A Marina. Three days after M has purchased the boat M buys a canopy attachment for the boat from A. The value of the canopy attachment was not included in computing the tax imposed by Section 66-12-6.1 NMSA 1978 on the boat. A's receipts from the sale of the canopy are subject to the gross receipts tax.

C. Section 3.2.110.8 NMAC applies to transactions on or after July 1, 1987.

[12/17/87, 11/26/90, 11/15/96; 3.2.110.8 NMAC - Rn, 3 NMAC 2.22.2.8 & A, 5/15/01]

3.2.110.9 DISCOUNTING OF BOATS SALES CONTRACTS:

Because the sale of commercial paper in itself is not subject to the gross receipts tax and because receipts from underlying transactions are exempt under Section 7-9-22.1 NMSA 1978, receipts from the sale of financing agreements to a bank or a financial corporation with respect to the sale of a boat subject to taxation under Section 66-12-6.1 NMSA 1978 are also exempt.

[12/17/87, 11/26/90, 11/15/96; 3.2.110.9 NMAC - Rn, 3 NMAC 2.22.2.9 & A, 5/15/01]

PART 111: EXEMPTION - COMPENSATING TAX - VEHICLES

3.2.111.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.111.1 NMAC - Rn, 3 NMAC 2.23.1.1, 5/15/01]

3.2.111.2 SCOPE:

This part applies to each person engaging in business in New Mexico or using vehicles in New Mexico.

[11/15/96; 3.2.111.2 NMAC - Rn, 3 NMAC 2.23.1.2, 5/15/01]

3.2.111.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.111.3 NMAC - Rn, 3 NMAC 2.23.1.3, 5/15/01]

3.2.111.4 DURATION:

Permanent.

[11/15/96; 3.2.111.4 NMAC - Rn, 3 NMAC 2.23.1.4, 5/15/01]

3.2.111.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.111.5 NMAC - Rn, 3 NMAC 2.23.1.5 & A, 5/15/01]

3.2.111.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.111.6 NMAC - Rn, 3 NMAC 2.23.1.6, 5/15/01]

3.2.111.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.111.7 NMAC - Rn, 3 NMAC 2.23.1.7, 5/15/01]

3.2.111.8 CREDIT FOR TAXES PAID IN OTHER STATES:

The tax imposed by the Motor Vehicle Excise Tax Act will be considered paid if the credit received for excise taxes paid in another state equals the amount of tax due in New Mexico.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.111.8 NMAC - Rn, 3 NMAC 2.23.1.8, 5/15/01]

PART 112: EXEMPTION - GROSS RECEIPTS TAX - INSURANCE COMPANIES

3.2.112.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.112.1 NMAC - Rn, 3 NMAC 2.24.1, 5/15/01]

3.2.112.2 SCOPE:

This part applies to each insurance company, insurance agent or property bondsman engaging in business in New Mexico.

[11/15/96; 3.2.112.2 NMAC - Rn, 3 NMAC 2.24.2, 5/15/01]

3.2.112.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.112.3 NMAC - Rn, 3 NMAC 2.24.3, 5/15/01]

3.2.112.4 DURATION:

Permanent.

[11/15/96; 3.2.112.4 NMAC - Rn, 3 NMAC 2.24.4, 5/15/01]

3.2.112.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.112.5 NMAC - Rn, 3 NMAC 2.24.5 & A, 5/15/01]

3.2.112.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.112.6 NMAC - Rn, 3 NMAC 2.24.6, 5/15/01]

3.2.112.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.112.7 NMAC - Rn, 3 NMAC 2.24.7, 5/15/01]

3.2.112.8 PREMIUMS FROM BONDS & POLICIES:

A. Receipts of insurance companies or any agent thereof from premiums for surety bonds or insurance policies are exempt under Section 7-9-24 NMSA 1978.

B. For purposes of Section 7-9-24 NMSA 1978, the term "insurance companies" includes:

(1) health maintenance organizations having a certificate of authority pursuant to the Health Maintenance Organization Law;

(2) nonprofit health care plans having a certificate of authority pursuant to the Nonprofit Health Care Plan Law;

(3) prepaid dental plans having a certificate of authority pursuant to the Prepaid Dental Plan Law; and

(4) prearranged funeral plans subject to the Prearranged Funeral Plan Regulatory Law.

C. For purposes of Section 7-9-24 NMSA 1978, the term "insurance companies" does not include motor clubs as defined in Section 59A-50-2 NMSA 1978.

D. For purposes of Section 7-9-24 NMSA 1978, receipts of insurance companies from premiums includes:

(1) health maintenance organization receipts which either are subject to the premium tax imposed by Section 59A-6-2 NMSA 1978 or are payments from the federal secretary of health and human services pursuant to a contract issued under the provisions of 42 U.S.C. Section 1395 mm(g);

(2) nonprofit health care plan receipts which are subject to the premium tax imposed by Section 59A-6-2 NMSA 1978;

(3) prepaid dental plan receipts which are subject to the premium tax imposed by Section 59A-6-2 NMSA 1978;

(4) prearranged funeral plan receipts which are subject to the premium tax imposed by Section 59A-6-2 NMSA 1978;

(5) premiums attributable to contracts purchased by the state or any of its political subdivisions whether or not the premiums are subject to premium tax; and

(6) such other receipts as are defined as premiums under the Insurance Code.

E. Section 3.2.112.8 NMAC applies to receipts from transactions occurring on or after January 1, 1992.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 5/1/92, 11/15/96; 3.2.112.8 NMAC - Rn, 3 NMAC 2.24.8 & A, 5/15/01]

3.2.112.9 INSURANCE ADJUSTERS OR ADJUSTING FIRMS:

Receipts of insurance adjusters or adjusting firms are not receipts from premiums and are not exempt under Section 7-9-24 NMSA 1978.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.112.9 NMAC - Rn, 3 NMAC 2.24.9 & A, 5/15/01]

3.2.112.10 UNRELATED BUSINESSES:

A. The receipts of an insurance company or any agent thereof from the operation of a business or trade other than the insurance business in New Mexico are subject to the gross receipts tax.

B. Such receipts are not exempted from the gross receipts tax pursuant to Section 7-9-24 NMSA 1978 because they are not receipts derived from premiums.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.112.10 NMAC - Rn, 3 NMAC 2.24.10 & A, 5/15/01]

PART 113: EXEMPTION - GROSS RECEIPTS TAX - DIVIDENDS AND INTEREST

3.2.113.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.113.1 NMAC - Rn, 3 NMAC 2.25.1, 5/15/01]

3.2.113.2 SCOPE:

This part applies to each person engaging in business in New Mexico and each person receiving interest or dividends.

[11/15/96; 3.2.113.2 NMAC - Rn, 3 NMAC 2.25.2, 5/15/01]

3.2.113.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.113.3 NMAC - Rn, 3 NMAC 2.25.3, 5/15/01]

3.2.113.4 DURATION:

Permanent.

[11/15/96; 3.2.113.4 NMAC - Rn, 3 NMAC 2.25.4, 5/15/01]

3.2.113.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.113.5 NMAC - Rn, 3 NMAC 2.25.5 & A, 5/15/01]

3.2.113.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.113.6 NMAC - Rn, 3 NMAC 2.25.6, 5/15/01]

3.2.113.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.113.7 NMAC - Rn, 3 NMAC 2.25.7, 5/15/01]

3.2.113.8 STOCKBROKER'S COMMISSIONS:

Commissions received by stockbrokers, located in New Mexico, are not receipts from the sale of stocks, bonds or securities. The commissions are receipts from the performance of a service in New Mexico and are subject to the gross receipts tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.113.8 NMAC - Rn, 3 NMAC 2.25.8, 5/15/01]

3.2.113.9 PAWNBROKERS:

Receipts of a person from engaging in pawn transactions, as that term is defined in Section 56-12-2 NMSA 1978, which are received as interest upon money loaned are exempt from the gross receipts tax pursuant to Section 7-9-25 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.113.9 NMAC - Rn, 3 NMAC 2.25.9 & A, 5/15/01; A, 12/30/10]

PART 114: EXEMPTION - GROSS RECEIPTS AND COMPENSATING TAX - FUEL

3.2.114.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.114.1 NMAC - Rn, 3 NMAC 2.26.1, 5/15/01]

3.2.114.2 SCOPE:

This part applies to all persons engaging in business in New Mexico and selling or using gasoline, special fuel or alternative fuel.

[11/15/96; 3.2.114.2 NMAC - Rn, 3 NMAC 2.26.2, 5/15/01]

3.2.114.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.114.3 NMAC - Rn, 3 NMAC 2.26.3, 5/15/01]

3.2.114.4 DURATION:

Permanent.

[11/15/96; 3.2.114.4 NMAC - Rn, 3 NMAC 2.26.4, 5/15/01]

3.2.114.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.114.5 NMAC - Rn, 3 NMAC 2.26.5 & A, 5/15/01]

3.2.114.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96, 3.2.114.6 NMAC - Rn, 3 NMAC 2.26.6, 5/15/01]

3.2.114.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.114.7 NMAC - Rn, 3 NMAC 2.26.7, 5/15/01]

3.2.114.8 REFUND OF TAX:

When a refund of tax imposed by Sections 7-13-3 and 7-16A-3 NMSA 1978 is given the purchaser under Sections 7-13-17 or 7-16A-13.1 NMSA 1978, the compensating tax will be deducted from such refund and no gross receipts tax will be charged at the time of sale of the product. The reasonable value of gasoline or special fuel for compensating tax purposes will be the price paid for the fuel, including any applicable excise taxes whether separately stated or included in the price. This version of 3.2.114.8 NMAC applies to transactions on or after July 1, 1998.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.114.8 NMAC - Rn, 3 NMAC 2.26.8 & A, 10/31/00; A, 10/15/02; A, 12/30/10]

3.2.114.9 TURBO PROP AND JET FUEL:

A. Receipts from the sale of fuel, specially prepared and sold for use in turbo prop or jet type engines, are subject to the gross receipts tax.

B. These receipts are not exempt under Section 7-9-26 NMSA 1978 because products specially prepared and sold for use in turbo prop or jet type engines are not taxed under Section 7-13-3 NMSA 1978 or Section 7-16A-3 NMSA 1978, because of the definition of gasoline in Section 7-13-2 NMSA 1978 and special fuel in Section 7-16A-2 NMSA 1978.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.114.9 NMAC - Rn, 3 NMAC 2.26.9 & A, 5/15/01]

3.2.114.10 TRANSFER OF FUEL INCIDENTAL TO A SALE OR LEASE:

A. The provisions of Section 7-9-26 NMSA 1978 do not apply when the transfer or sale of the fuel is incidental to the sale or lease of a vehicle.

B. Example: X Company leases a truck to Y Company in New Mexico. X furnishes all parts and labor required to maintain and repair the leased vehicle and provides tires, oil and gasoline needed during the lease term. Y pays X a fixed predetermined rental charge for the truck along with the above items. The lease contract requires X to furnish the truck filled with gasoline at the beginning of the lease term and to continue to furnish gasoline during the lease term. X furnishes gasoline to Y only in conjunction with the rental of the truck. Z Company sells to X all the gasoline X requires for the truck it leased to Y. X's total receipts from leasing the truck to Y are subject to the gross receipts tax. No part of X's receipts are exempt from the gross receipts tax, because X's receipts are not receipts from "selling and the use of gasoline". Z's receipts from selling gasoline to X are exempt from the gross receipts tax if the tax imposed by Section 7-13-3 NMSA 1978 or Section 7-16A-3 NMSA 1978 has been paid on that gasoline and not refunded.

[3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.114.10 NMAC

- Rn, 3 NMAC 2.26.10 & A, 5/15/01]

PART 115: EXEMPTION - COMPENSATING TAX - PERSONAL EFFECTS

3.2.115.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.115.1 NMAC - Rn, 3 NMAC 2.27.1, 5/15/01]

3.2.115.2 SCOPE:

This part applies to all persons engaging in business in New Mexico and to individuals.

[11/15/96; 3.2.115.2 NMAC - Rn, 3 NMAC 2.27.2, 5/15/01]

3.2.115.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.115.3 NMAC - Rn, 3 NMAC 2.27.3, 5/15/01]

3.2.115.4 DURATION:

Permanent.

[11/15/96; 3.2.115.4 NMAC - Rn, 3 NMAC 2.27.4, 5/15/01]

3.2.115.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.115.5 NMAC - Rn, 3 NMAC 2.27.5 & A, 5/15/01]

3.2.115.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.115.6 NMAC - Rn, 3 NMAC 2.27.6, 5/15/01]

3.2.115.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.115.7 NMAC - Rn, 3 NMAC 2.27.7, 5/15/01

3.2.115.8 BUSINESS USE OF PROPERTY:

A. The provisions of Section 7-9-27 NMSA 1978 do not apply to property used in connection with the engaging in business in New Mexico. The use of property for business purposes in New Mexico is not exempt from the imposition of the compensating tax.

B. The following examples illustrate the application of Section 7-9-27 NMSA 1978.

(1) Example 1: A, a Colorado corporation, drills oil wells on contract. A moves a rig out of Colorado into New Mexico and sets it up at the well site. A maintains that no compensating tax is due on the value of the rig since A will only be in the state until the one contract is completed. A must report compensating tax measured by the value of the rig. The rig has been brought into New Mexico for business use. If A had leased the rig from a lessor in Colorado, and a substantial portion of the lessor's receipts were derived from leasing, no compensating tax would be imposed on A. However, the receipts of the lessor would be subject to the gross receipts tax.

(2) Example 2: X, a nonresident, obtains a nonresident hunting license for New Mexico. X brings guns and camping gear to New Mexico for the hunt. The use of this equipment is exempt from the compensating tax.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.115.8 NMAC - Rn, 3 NMAC 2.27.8 & A, 5/15/01]

PART 116: EXEMPTION - GROSS RECEIPTS TAX - OCCASIONAL SALE OF PROPERTY OR SERVICES

3.2.116.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.2.116.1 NMAC - Rp, 3.2.116.1 NMAC 9/24/2024]

3.2.116.2 SCOPE:

This part applies to each person occasionally selling or leasing property or performing service but who is not regularly engaged in business of selling or leasing that type of property or performing that type of service.

[3.2.116.2 NMAC - Rp, 3.2.116.2 NMAC 9/24/2024

3.2.116.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.2.116.3 NMAC - Rp, 3.2.116.3 NMAC 9/24/2024]

3.2.116.4 DURATION:

Permanent.

[3.2.116.4 NMAC - Rp, 3.2.116.4 NMAC 9/24/2024]

3.2.116.5 EFFECTIVE DATE:

September 24, 2024, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.116.5 NMAC - Rp, 3.2.116.5 NMAC 9/24/2024]

3.2.116.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.116.6 NMAC - Rp, 3.2.116.6 NMAC 9/24/2024]

3.2.116.7 DEFINITIONS:

[RESERVED]

[3.2.116.7 NMAC - Rp, 3.2.116.7 NMAC 9/24/2024]

3.2.116.8 CRITERIA USED IN DETERMINING ISOLATED OR OCCASIONAL SALES:

The department will use the following criteria, but not exclusively, in determining whether or not a transaction involves only an "isolated or occasional" sale or lease:

A. the nature of the service or property;

B. the nature of the market for the service or property sold or leased;

C. the frequency of the service or property sold or leased;

D. any promotional activity such as advertising for the type of sale, business listing on a website, or in any media, physical or otherwise;

E. any holding themselves out as or representing as being in business by the seller or lessor;

F. if found to be engaging in business pursuant to Section 7-9-3.3 NMSA 1978, the type of sale in relation to the transaction in question.

[3.2.116.8 NMAC - Rp, 3.2.116.8 NMAC 9/24/2024]

3.2.116.9 LICENSE TO DO BUSINESS OR HOLDING OUT TO DO BUSINESS:

A. Any person who holds a license to sell or lease property or to carry on services or who regularly advertises similar property or services for lease or sale, is engaged in the business of selling or leasing the same or similar property or services and is not entitled to the exemption under Section 7-9-28 NMSA 1978 for the transaction in question.

B. The following general categories illustrate the correct application of Section 7-9-28 NMSA 1978 for a business that is selling property or services that is not related to their business. To determine the taxability of the examples below the criteria in 3.2.116.8 NMAC were used.

(1) Receipts from the sale of equipment and other tangible personal property that has been employed in private and personal use are exempt from gross receipts tax pursuant to Section 7-9-28 NMSA 1978, unless the seller is regularly engaged in the activity of selling private tangible personal property.

(2) Receipts from garage sales and yard sales and similar types of sales events are exempt from gross receipts tax under Section 7-9-28 NMSA 1978, unless the seller is regularly engaged in the activity of holding such sales, as determined by the frequency of such sales, advertising of such sales, and other criteria set out in 3.2.116.8 NMAC.

(3) Receipts from services performed by a person for someone other than in a capacity as an employee as defined pursuant to 3.2.105.7 NMAC are not exempt from the gross receipts tax if the services are of the same or similar nature as those performed for an employer.

(4) Receipts from the sale of a person's principal residence, including receipts attributable to improvements to that residence as defined pursuant to Section 7-9-53 NMSA 1978, are exempt from gross receipts pursuant to Section 7-9-28 NMSA 1978. Receipts from the sale of real property and improvements that are not exempt from gross receipts tax pursuant to Section 7-9-28 NMSA 1978 may be deductible pursuant to Section 7-9-53 NMSA 1978 and Sections 3.2.211.9 and 3.2.211.10 NMAC.

[3.2.116.9 NMAC - Rp, 3.2.116.9 NMAC 9/24/2024]

3.2.116.10 PERSONS HAVING RENTAL UNITS:

A. Any person who rents or leases rental units of real property may qualify for the deduction under Section 7-9-53 NMSA 1978. Taxpayers should review that statute and its regulations under Chapter 2 Part 211 of NMAC to determine if they qualify for this deduction. If the deduction applies, the person must register with the department and report the associated gross receipts and any applicable deductions.

B. If a person is engaging in the business of short-term rentals, the individual is subject to gross receipts tax. This person may also owe lodger's taxes to the specific county or municipality in which the rental unit of real property is located. Lodger's tax is not a tax administered by the taxation and revenue department.

C. For purposes of this section, a "short term rental" is defined as a rental of real property for fewer than thirty days at a time.

[3.2.116.10 NMAC - Rp, 3.2.116.10 NMAC 9/24/2024]

3.2.116.11 SALE OR LEASING THE SAME OR SIMILAR PROPERTY:

A. Receipts from an isolated or occasional sale are exempt pursuant to Section 7-9-28 NMSA 1978 only when the seller of the property is not engaged in the business of selling or leasing the same or similar property.

B. If the taxpayer is engaged in the business of selling or leasing property and they decide to terminate their business and plan on selling the property, those receipts would not qualify for the exemption under Section 7-9-28 NMSA 1978 because the line of business is the same or similar.

[3.2.116.11 NMAC - Rp, 3.2.116.11 NMAC 9/24/2024

3.2.116.12 EXECUTORS' AND ADMINISTRATORS' FEES:

A. The receipts of any person appointed as administrator or executor of an estate who advertises this service as part of their business and satisfies the requirements of 3.2.116.8 NMAC are subject to the gross receipts tax.

B. If the person appointed as an administrator or executor is not regularly engaged in this business and does not satisfy the requirements of 3.2.116.8 NMAC, any receipts the person receives for performing executor or administrator services are exempt under Section 7-9-28 NMSA 1978.

C. Where an administrator or executor effectively waives the right to receive statutory fees or commissions within a reasonable time after commencing to serve as the executor and all other actions by that person with respect to the estate are

consistent with the intention to render a gratuitous service, the administrator or executor is not subject to the gross receipts tax on the value of the services rendered.

[3.2.116.12 NMAC - Rp, 3.2.116.12 NMAC 9/24/2024]

3.2.116.13 TRUSTEE FEES:

The receipts of a person appointed as trustee, who is not an employee of the trust, court or other appointing authority, are not exempt from gross receipts tax under the provisions of Section 7-9-28 NMSA 1978.

[3.2.116.13 NMAC - Rp, 3.2.116.13 NMAC 9/24/2024]

3.2.116.14 SAFE HARBOR LEASE - SELLER/LESSEE:

A seller/lessee who enters into a qualified "safe harbor lease" transaction as defined in Section 168 of the Internal Revenue Code and who is not in the business of selling or leasing the same type of property being sold under the "safe harbor lease" will not be subject to the gross receipts tax on the sale and subsequent receipts derived from such transaction since those receipts are exempt under Section 7-9-28 NMSA 1978. A seller/lessee may not issue a nontaxable transaction certificate to purchase the property from a vendor.

[3.2.116.14 NMAC - Rp, 3.2.116.14 NMAC 9/24/2024]

PART 117: EXEMPTION - GROSS RECEIPTS TAX - CERTAIN ORGANIZATIONS

3.2.117.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.117.1 NMAC - Rn, 3 NMAC 2.29.1, 5/15/01]

3.2.117.2 SCOPE:

This part applies to each person engaging in business in New Mexico and to 501c(3) and certain 501c(6) organizations.

[11/15/96; 3.2.117.2 NMAC - Rn, 3 NMAC 2.29.2, 5/15/01]

3.2.117.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.117.3 NMAC - Rn, 3 NMAC 2.29.3, 5/15/01]

3.2.117.4 DURATION:

Permanent.

[11/15/96; 3.2.117.4 NMAC - Rn, 3 NMAC 2.29.4, 5/15/01]

3.2.117.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.117.5 NMAC - Rn, 3 NMAC 2.29.5 & A, 5/15/01]

3.2.117.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.117.6 NMAC - Rn, 3 NMAC 2.29.6, 5/15/01]

3.2.117.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.117.7 NMAC - Rn, 3 NMAC 2.29.7, 5/15/01]

3.2.117.8 RECEIPTS OF 501(c)(3) ORGANIZATIONS AFTER JULY 1, 1970:

Receipts of organizations which demonstrate to the department that they have been granted an exemption from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, Section 501(c)(3) of the U.S. Internal Revenue Code of 1954 or Section 101(6) of the U.S. Internal Revenue Code of 1939 are exempt from the gross receipts tax regardless of their source, unless the receipts are derived from an unrelated trade or business as defined in Section 513 of the Internal Revenue Code of 1986, Section 513 of the United States Internal Revenue Code of 1954 or Section 422(b) of the United States Internal Revenue Code of 1939.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.117.8 NMAC - Rn, 3 NMAC 2.29.8, 5/15/01]

3.2.117.9 RECEIPTS OF 501(c)(6) ORGANIZATIONS AFTER JULY 1, 1988 - GENERAL RULES:

A. For the purposes of the exemption provided by Subsection B of Section 7-9-29 NMSA 1978, a chamber of commerce, visitor bureau or convention bureau function is an activity commonly, usually or typically carried on by such an organization. Receipts of a 501(c)(6) organization from activities which are never, rarely or atypically carried on by chambers of commerce, visitor bureaus or convention bureaus are not exempt from gross receipts tax under Subsection B of Section 7-9-29 NMSA 1978, regardless of whether those receipts are exempt from federal income tax.

B. It is not necessary for the words "chamber of commerce", "visitor bureau" or "convention bureau" to appear in the name of the 501(c)(6) organization for the exemption to apply.

C. Section 3.2.117.9 NMAC is applicable to transactions occurring on or after July 1, 1988.

[6/28/89, 11/26/90, 11/15/96; 3.2.117.9 NMAC - Rn, 3 NMAC 2.29.9 & A, 5/15/01]

3.2.117.10 RECEIPTS OF 501(c)(6) ORGANIZATIONS - EXAMPLES:

A. Some examples of receipts of 501(c)(6) organizations from "carrying on chamber of commerce, visitor bureau and convention bureau functions" are:

(1) Receipts from sales of audio or video materials promoting the local area.

(2) Receipts from admission fees to business seminars sponsored by the 501(c)(6) organization either by itself or in cooperation with other entities.

(3) Receipts of the 501(c)(6) organization from fund-raising events.

B. Section 3.2.117.10 NMAC is applicable to transactions occurring on or after July 1, 1988.

[6/28/89, 11/26/90, 11/15/96; 3.2.117.10 NMAC - Rn, 3 NMAC 2.29.10, 5/15/01]

3.2.117.11 SINGLE MEMBER LIMITED LIABILITY COMPANY WHOSE SOLE MEMBER IS A 501(c)(3) ORGANIZATION:

A. A single member limited liability company (llc) whose sole member is a 501(c)(3) organization will be treated like a 501(c)(3) organization and receive the same treatment for purposes of Section 7-9-29 NMSA 1978 so long as the llc is recognized by the internal revenue service as a disregarded entity for federal income tax purposes.

B. Any receipts of an llc described in Subsection A above that are derived from an unrelated trade or business as defined in Section 513 of the Internal Revenue Code of 1986, as amended or renumbered, are not exempt from gross receipts tax under Subsection A of Section 7-9-29 NMSA 1978.

[3.2.117.11 NMAC - N, 1/15/15]

PART 118: EXEMPTION - COMPENSATING TAX - RAILROAD EQUIPMENT AND AIRCRAFT

3.2.118.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.118.1 NMAC - Rn, 3 NMAC 2.30.1, 5/15/01]

3.2.118.2 SCOPE:

This part applies to railroads and other persons using railroad equipment in railroad transportation and to airlines and other person using aircraft in interstate transportation.

[11/15/96; 3.2.118.2 NMAC - Rn, 3 NMAC 2.30.2, 5/15/01]

3.2.118.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.118.3 NMAC - Rn, 3 NMAC 2.30.3, 5/15/01]

3.2.118.4 DURATION:

Permanent.

[11/15/96; 3.2.118.4 NMAC - Rn, 3 NMAC 2.30.4, 5/15/01]

3.2.118.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.118.5 NMAC - Rn, 3 NMAC 2.30.5 & A, 5/15/01]

3.2.118.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.118.6 NMAC - Rn, 3 NMAC 2.30.6, 5/15/01]

3.2.118.7 RAILROAD DEFINED:

A "railroad" is an enterprise created and operated to carry on a fixed track passengers and freight, or passengers or freight, for rates or tolls, without discrimination as to those who demand transportation.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.118.7 NMAC - Rn, 3 NMAC 2.30.7, 5/15/01]

PART 119: EXEMPTION - GROSS RECEIPTS TAX AND COMPENSATING TAX - RESALE ACTIVITIES OF AN ARMED FORCES INSTRUMENTALITY

3.2.119.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.119.1 NMAC - Rn, 3 NMAC 2.31.1, 5/15/01]

3.2.119.2 SCOPE:

This part applies to all persons engaging in business in New Mexico on federal reservations and to all instrumentalities of the U.S. armed forces engaged in retail activities.

[11/15/96; 3.2.119.2 NMAC - Rn, 3 NMAC 2.31.2, 5/15/01]

3.2.119.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.119.3 NMAC - Rn, 3 NMAC 2.31.3, 5/15/01]

3.2.119.4 DURATION:

Permanent.

[11/15/96; 3.2.119.4 NMAC - Rn, 3 NMAC 2.31.4, 5/15/01]

3.2.119.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.119.5 NMAC - Rn, 3 NMAC 2.31.5 & A, 5/15/01]

3.2.119.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.119.6 NMAC - Rn, 3 NMAC 2.31.6, 5/15/01]

3.2.119.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.119.7 NMAC - Rn, 3 NMAC 2.31.7, 5/15/01]

3.2.119.8 CONCESSIONAIRES ON FEDERAL AREAS:

The receipts of and the use of property by concessionaires and others, who are carrying on activities within a military or other federal area, which is within the boundaries of New Mexico, except agencies or instrumentalities of the federal government (such as instrumentalities of the armed forces of the United States engaged in resale activities), are subject to the gross receipts and compensating tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.119.8 NMAC - Rn, 3 NMAC 2.31.8, 5/15/01]

PART 120: [RESERVED]

PART 121: EXEMPTION - GROSS RECEIPTS TAX - PRODUCTS SUBJECT TO OIL AND GAS EMERGENCY SCHOOL TAX ACT

3.2.121.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.121.1 NMAC - Rn, 3 NMAC 2.33.1, 5/15/01]

3.2.121.2 SCOPE:

This part applies to each person who has receipts from the sale of products the severance of which is subject to the Oil and Gas Emergency School Tax Act.

[11/15/96; 3.2.121.2 NMAC - Rn, 3 NMAC 2.33.2, 5/15/01]

3.2.121.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.121.3 NMAC - Rn, 3 NMAC 2.33.3, 5/15/01]

3.2.121.4 DURATION:

Permanent.

[11/15/96; 3.2.121.4 NMAC - Rn, 3 NMAC 2.33.4, 5/15/01]

3.2.121.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.121.5 NMAC - Rn, 3 NMAC 2.33.5 & A, 5/15/01]

3.2.121.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.121.6 NMAC - Rn, 3 NMAC 2.33.6, 5/15/01]

3.2.121.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.121.7 NMAC - Rn, 3 NMAC 2.33.7, 5/15/01]

3.2.121.8 FUEL IN THE OPERATION OF A "PRODUCTION UNIT":

Receipts from the sale of oil, natural gas or liquid hydrocarbon, individually or any combination thereof, including butane and propane, when such products are used as fuel in the operation of a "production unit" as defined in Section 7-31-2 NMSA 1978 of the Oil and Gas Emergency School Tax Act are subject to the gross receipts tax. Only the value of the oil, natural gas or liquid hydrocarbon, individually or any combination thereof, produced on a "production unit" and used as fuel on the same "production unit" is exempt from provisions of the Gross Receipts and Compensating Tax Act.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 10/31/97; 3.2.121.8 NMAC - Rn, 3 NMAC 2.33.8 & A, 5/15/01]

3.2.121.9 WHICH RECEIPTS ARE EXEMPT AND WHICH ARE TAXABLE:

A. To be exempt under Subsection A of Section 7-9-33 NMSA 1978, receipts are required to be from the sale of product for resale in the ordinary course of business, for consumption out of state or for use as an ingredient or component part of a manufactured product. Receipts from the sale of product for any other purpose are not exempt under Subsection A of Section 7-9-33 NMSA 1978.

B. Examples:

(1) A producer sells product to a public utility who uses the product in New Mexico to produce electricity. The product does not become an ingredient or component part of the electricity produced. Therefore the producer's receipts from the sale are not exempt from the gross receipts tax under Subsection A of Section 7-9-33 NMSA 1978. Unless some other exemption or deduction applies, the receipts from the sale are subject to gross receipts tax as well as to the emergency school tax.

(2) A producer sells product to a broker who, in turn, sells the product to a public utility who uses the product in New Mexico to produce electricity. The product does not become an ingredient or component part of the electricity produced. Because the sale by the producer to the broker is a sale for re-sale in the ordinary course of business, the producer's receipts from the transaction are exempt from gross receipts. The broker's sale of the product to the public utility, however, are not exempt from the gross receipts tax under Subsection A of Section 7-9-33 NMSA 1978. Unless some other exemption or deduction applies, the broker's receipts from the sale to the public utility are subject to gross receipts tax even though the producer was subject to the emergency school tax on the product.

(3) A producer sells natural gas to a chemical company which incorporates the gas into chemical fertilizer that it manufactures. The producer's receipts from this sale are exempt under Subsection A of Section 7-9-33 NMSA 1978.

(4) A producer sells natural gas to an out-of-state public utility that transports the gas out-of-state for sale to its out-of-state customers for consumption or other use outside New Mexico. The producer's receipts from the sale are exempt from gross receipts under Subsection A of Section 7-9-33 NMSA 1978.

(5) A producer sells oil to an in-state refinery that refines the oil into gasoline and other products. The oil is used as an ingredient of manufactured products and, therefore, the producer's receipts from the sale are exempt from gross receipts under Subsection A of Section 7-9-33 NMSA 1978.

[10/31/97; 3.2.121.9 NMAC - Rn, 3 NMAC 2.33.9 & A, 5/15/01]

PART 122: [RESERVED]

PART 123: EXEMPTION - GROSS RECEIPTS TAX - NATURAL RESOURCES SUBJECT TO RESOURCES EXCISE TAX ACT

3.2.123.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.123.1 NMAC - Rn, 3 NMAC 2.35.1, 5/15/01]

3.2.123.2 SCOPE:

This part applies to each person having receipts from the sale or processing of natural resources the sales or processing of which are subject to the Natural Resources Excise Tax Act.

[11/15/96; 3.2.123.2 NMAC - Rn, 3 NMAC 2.35.2, 5/15/01]

3.2.123.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.123.3 NMAC - Rn, 3 NMAC 2.35.3, 5/15/01]

3.2.123.4 DURATION:

Permanent.

[11/15/96; 3.2.123.4 NMAC - Rn, 3 NMAC 2.35.4, 5/15/01]

3.2.123.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.123.5 NMAC - Rn, 3 NMAC 2.35.5 & A, 5/15/01]

3.2.123.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.123.6 NMAC - Rn, 3 NMAC 2.35.6, 5/15/01]

3.2.123.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.123.7 NMAC - Rn, 3 NMAC 2.35.7, 5/15/01]

3.2.123.8 RECEIPTS NOT EXEMPT:

A. The receipts from any sale of natural resources made to the final consumer are not exempt under the provisions of Section 7-9-35 NMSA 1978. The receipts from

certain types of transactions may qualify for specific deductions allowed under the provisions of the Gross Receipts and Compensating Tax Act in which instance the seller must report and deduct such receipts on a CRS-1 Combined Report Form. Only those receipts from sales for subsequent resale in the ordinary course of business and from sales for use as an ingredient or component part of a manufactured product are exempt under Section 7-9-35 NMSA 1978 and not required to be reported on a CRS-1 Combined Report Form.

B. Example: T Co. mines turquoise; it sells some of its turquoise in its turquoise shop at the mine site and sells the remainder to a jewelry manufacturer, who delivers a nontaxable transaction certificate pursuant to Section 7-9-46 NMSA 1978, or who delivers a written statement pursuant to Section 7-9-74 NMSA 1978, that the turquoise purchased will be used in manufacturing jewelry. Even though the T Co. is required to pay the resources excise tax under Section 7-25-8 NMSA 1978, the receipts from the turquoise sold in the shop are subject to gross receipts tax, because the sale is not a sale for subsequent sale in the ordinary course of business or for use as an ingredient or component part of a manufactured product. However the receipts from the sale to the jewelry manufacturer are not subject to the gross receipts tax unless pursuant to Section 7-9-74 NMSA 1978, supra, sales to the jewelry manufacturer exceed $1,000 during a twelve-month period.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 4/30/99; 3.2.123.8 NMAC - Rn, 3 NMAC 2.35.8 & A, 5/15/01]

3.2.123.9 CLEARING LAND FOR MINING OPERATIONS:

Leveling or clearing land, including the removal of trees, brush and the overburden in order to prepare the land for mining operations, is "construction" under Section 7-9-3 NMSA 1978, and subject to the gross receipts tax. Such activity is not severing or processing pursuant to Section 7-9-35 NMSA 1978 and, therefore, is not exempt from the gross receipts tax.

[6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.123.9 NMAC - Rn, 3 NMAC 2.35.9 & A, 5/15/01]

3.2.123.10 [REPEALED]

[11/8/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 9/15/98; R 1/29/99; 3.2.123.10 NMAC - Rn, 3 NMAC 2.35.10; 5/15/01]

PART 124: EXEMPTION - GROSS RECEIPTS TAX - OIL AND GAS CONSUMED IN THE PIPELINE TRANSPORTATION OF OIL AND GAS PRODUCTS

3.2.124.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.124.1 NMAC - Rn, 3 NMAC 2.36.1, 5/15/01]

3.2.124.2 SCOPE:

This part applies to each person selling oil and gas products or transporting oil and gas products by pipeline.

[11/15/96; 3.2.124.2 NMAC - Rn, 3 NMAC 2.36.2, 5/15/01]

3.2.124.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.124.3 NMAC - Rn, 3 NMAC 2.36.3, 5/15/01]

3.2.124.4 DURATION:

Permanent.

[11/15/96; 3.2.124.4 NMAC - Rn, 3 NMAC 2.36.4, 5/15/01]

3.2.124.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.124.5 NMAC - Rn, 3 NMAC 2.36.5 & A, 5/15/01]

3.2.124.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.124.6 NMAC - Rn, 3 NMAC 2.36.6, 5/15/01]

3.2.124.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.124.7 NMAC - Rn, 3 NMAC 2.36.7, 5/15/01]

3.2.124.8 FUEL CONSUMED IN THE OPERATION OF A "PRODUCTION UNIT":

Receipts from the sale of oil, natural gas, liquid hydrocarbon or any combination of these products, including butane and propane, when these products are consumed as fuel in the operation of a "production unit" to lift oil, natural gas, liquid hydrocarbon or any combination thereof from its underground location to the surface, is not the sale of these products to be consumed as fuel in the pipeline transportation of these products. Therefore, receipts from the sale of these products are not exempt from the gross receipts tax pursuant to Section 7-9-36 NMSA 1978. In addition, the use of these products is not exempt from the compensating tax under Section 7-9-37 NMSA 1978. However, the use of these products on the "production unit" on which they were produced is exempt from the provisions of the Gross Receipts and Compensating Tax Act pursuant to Section 7-9-33 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.124.8 NMAC - Rn, 3 NMAC 2.36.8 & A, 5/15/01]

PART 125: [RESERVED]

PART 126: EXEMPTION - COMPENSATING TAX - USE OF ELECTRICITY IN THE PRODUCTION AND TRANSMISSION OF ELECTRICITY

3.2.126.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.126.1 NMAC - Rn, 3 NMAC 2.38.1, 5/15/01]

3.2.126.2 SCOPE:

This part applies to each person selling or transmitting electricity.

[11/15/96; 3.2.126.2 NMAC - Rn, 3 NMAC 2.38.2, 5/15/01]

3.2.126.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.126.3 NMAC - Rn, 3 NMAC 2.38.3, 5/15/01]

3.2.126.4 DURATION:

Permanent.

[11/15/96; 3.2.126.4 NMAC - Rn, 3 NMAC 2.38.4, 5/15/01]

3.2.126.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.126.5 NMAC - Rn, 3 NMAC 2.38.5 & A, 5/15/01]

3.2.126.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.126.6 NMAC - Rn, 3 NMAC 2.38.6, 5/15/01]

3.2.126.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.126.7 NMAC - Rn, 3 NMAC 2.38.7, 5/15/01]

3.2.126.8 USE OF ELECTRICITY IN PRODUCTION AND TRANSMISSION OF ELECTRICITY:

A. Electricity used directly in the operation of a generating plant of an electric utility in New Mexico and electricity used directly in the operation of transmission facilities of an electric utility in New Mexico is used in the production and transmission of electricity pursuant to Section 7-9-38 NMSA 1978 and is, therefore, exempted from the compensating tax.

B. Electricity used in the operation of offices, warehouses, or any facility of an electric utility in New Mexico other than directly in a generating plant or transmission facility is not used in the production or transmission of electricity within the meaning of Section 7-9-38 NMSA 1978 and the value of such electricity is, therefore, subject to the compensating tax.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.126.8 NMAC - Rn, 3 NMAC 2.38.8 & A, 5/15/01]

PART 127: EXEMPTION - GROSS RECEIPTS TAX - FEES FROM SOCIAL ORGANIZATIONS

3.2.127.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.127.1 NMAC - Rn, 3 NMAC 2.39.1, 5/15/01]

3.2.127.2 SCOPE:

This part applies to each nonprofit organization in New Mexico.

[11/15/96; 3.2.127.2 NMAC - Rn, 3 NMAC 2.39.2 & A, 5/15/01]

3.2.127.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.127.3 NMAC - Rn, 3 NMAC 2.39.3, 5/15/01]

3.2.127.4 DURATION:

Permanent.

[11/15/96; 3.2.127.4 NMAC - Rn, 3 NMAC 2.39.4, 5/15/01]

3.2.127.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.127.5 NMAC - Rn, 3 NMAC 2.39.5 & A, 5/15/01]

3.2.127.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.127.6 NMAC - Rn, 3 NMAC 2.39.6, 5/15/01]

3.2.127.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.127.7 NMAC - Rn, 3 NMAC 2.39.7, 5/15/01]

3.2.127.8 RECEIPTS DERIVED FROM ASSESSMENTS:

The receipts of a nonprofit social or fraternal organization from assessments made to its members when members who are assessed receive blazers, emblems, or services of more than nominal value upon payment of the assessments are subject to the gross receipts tax. These receipts are not exempted from the gross receipts tax pursuant to Section 7-9-39 NMSA 1978 because they are not receipts derived from either "dues" or "registration fees".

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.127.8 NMAC - Rn, 3 NMAC 2.39.8 & A, 5/15/01]

3.2.127.9 OTHER ORGANIZATIONS:

The receipts of organizations other than the type of organizations specifically referred to in Section 7-9-39 NMSA 1978 from "dues" and "registration fees" are not exempt from the gross receipts tax pursuant to Section 7-9-39 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.127.9 NMAC - Rn, 3 NMAC 2.39.9 & A, 5/15/01]

3.2.127.10 GENERAL EXAMPLES - REGISTRATION FEES:

A. Example 1: The XYZ Association holds a convention once each year. The registration fee is $10.00 per person. This registration fee is exempt.

B. Example 2: The D Club, a corporation not organized for profit, has an annual deer hunt on property which it owns. For a fee of $300 a member is allowed to hunt on the ranch for one week. The club refuses to pay gross receipts tax on these receipts on the theory that the receipts are in fact dues. These receipts are not dues. The term "dues" refers to amounts which a member of an organization pays at recurring intervals for the general maintenance and upkeep of an organization. The fee is not a registration fee because a deer hunt is not similar to a convention. Furthermore, the D Club is not a nonprofit social, fraternal, political, trade, labor or professional organization, nor a business league, therefore, the receipts from the annual hunt are subject to the gross receipts tax.

C. Example 3: The W Association, an association not organized for profit, is formed to supply water for non-irrigational purposes to the members of the association. A $200 initial fee is levied upon each new member. The fee is used to pay for the installation of service to the member's property and to apply to the debt owed on the existing equipment. Each month thereafter, the association levies a $5.00 charge on each member. The association maintains that the initial fee is a registration fee, the monthly charges membership dues, and therefore neither are subject to the gross receipts tax under Section 7-9-39 NMSA 1978. All receipts of the association are used for the purpose of providing services to the members. They are not dues or registration fees. Moreover, the association is not a nonprofit social, fraternal, political, trade, labor or professional organization, nor a business league. The receipts of the association are subject to gross receipts tax.

D. Example 4: Z is a food club organized to provide lower prices for its members through high volume and direct purchasing. It is not organized for profit. Each member pays $20.00 a year to cover the cost of administration. These receipts, though being members' dues, are subject to tax because Z is not a nonprofit social, fraternal, political,

trade, labor or professional organization, nor a business league. Receipts from the food purchases of the members are also subject to the gross receipts tax.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.127.10 NMAC - Rn, 3 NMAC 2.39.10 & A, 5/15/01]

3.2.127.11 RENTAL OF ROOMS IN A ROOMING HOUSE:

Receipts from rental of rooms in a rooming house, even though denominated as "dues and registration fees" by nonprofit, social, fraternal, political, trade, business, labor or professional organizations are subject to the gross receipts tax. Such receipts, no matter how denominated, are not dues and registration fees as used in Section 7-9-39 NMSA 1978.

[6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.127.11 NMAC - Rn, 3 NMAC 2.39.11 & A, 5/15/01]

3.2.127.12 CIVIC ORGANIZATIONS ARE "SOCIAL" ORGANIZATIONS:

Civic leagues, civic organizations and social welfare organizations that have been determined by the commissioner of internal revenue to be organizations described by Section 501(c)(4) of the Internal Revenue Code are "social" organizations for the purposes of Section 7-9-39 NMSA 1978.

[3.2.127.12 NMAC - N, 10/31/2000]

PART 128: EXEMPTION - GROSS RECEIPTS TAX - PURSES AND JOCKEY REMUNERATION AT NEW MEXICO RACETRACKS - RECEIPTS FROM GROSS AMOUNTS WAGERED

3.2.128.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.128.1 NMAC - Rn, 3 NMAC 2.40.1, 5/15/01]

3.2.128.2 SCOPE:

This part applies to horsemen, jockeys, trainers of horses and racetracks.

[11/15/96; 3.2.128.2 NMAC - Rn, 3 NMAC 2.40.2, 5/15/01]

3.2.128.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.128.3 NMAC - Rn, 3 NMAC 2.40.3, 5/15/01]

3.2.128.4 DURATION:

Permanent.

[11/15/96; 3.2.128.4 NMAC - Rn, 3 NMAC 2.40.4, 5/15/01]

3.2.128.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.128.5 NMAC - Rn, 3 NMAC 2.40.5 & A, 5/15/01]

3.2.128.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.128.6 NMAC - Rn, 3 NMAC 2.40.6, 5/15/01]

3.2.128.7 HORSEMEN DEFINED:

The term "horsemen" as used in Section 7-9-40 NMSA 1978 means the owners of race horses that win purse money in races held at New Mexico horse racetracks.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.128.7 NMAC - Rn, 3 NMAC 2.40.7 & A, 5/15/01]

PART 129: EXEMPTION - GROSS RECEIPTS TAX - RELIGIOUS ACTIVITIES

3.2.129.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.129.1 NMAC - Rn, 3 NMAC 2.41.1, 5/15/01]

3.2.129.2 SCOPE:

This part applies to each minister of a religious organization.

[11/15/96; 3.2.129.2 NMAC - Rn, 3 NMAC 2.41.2, 5/15/01]

3.2.129.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.129.3 NMAC - Rn, 3 NMAC 2.41.3, 5/15/01]

3.2.129.4 DURATION:

Permanent.

[11/15/96; 3.2.129.4 NMAC - Rn, 3 NMAC 2.41.4, 5/15/01]

3.2.129.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.129.5 NMAC - Rn, 3 NMAC 2.41.5 & A, 5/15/01]

3.2.129.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.129.6 NMAC - Rn, 3 NMAC 2.41.6, 5/15/01]

3.2.129.7 MINISTER DEFINED:

"Minister" within the meaning of Section 7-9-41 NMSA 1978 shall be construed to include priests, rabbis, christian science practitioners, bishops in the church of Jesus Christ of the latter day saints and other persons who perform services of a similar nature for, and as an integral part of the activities of, a religious organization granted exemption under Section 501(c)(3) of the United States Internal Revenue Code of 1954 or Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered.

[11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.129.7 NMAC - Rn, 3 NMAC 2.41.7 & A, 5/15/01]

PART 130: [RESERVED]

PART 131-199: [RESERVED]

PART 200: LOCAL OPTION TAXES

3.2.200.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/31/97; 3.2.200.1 NMAC - Rn, 3 NMAC 2.200.1, 11/15/01]

3.2.200.2 SCOPE:

This part applies to all persons engaging in business in New Mexico.

[1/31/97; 3.2.200.2 NMAC - Rn, 3 NMAC 2.200.2, 11/15/01]

3.2.200.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/31/97; 3.2.200.3 NMAC - Rn, 3 NMAC 2.200.3, 11/15/01]

3.2.200.4 DURATION:

Permanent.

[1/31/97; 3.2.200.4 NMAC - Rn, 3 NMAC 2.200.4, 11/15/01]

3.2.200.5 EFFECTIVE DATE:

1/31/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/31/97; 3.2.200.5 NMAC - Rn & A, 3 NMAC 2.200.5, 11/15/01]

3.2.200.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the local option gross receipts taxes.

[1/31/97; 3.2.200.6 NMAC - Rn, 3 NMAC 2.200.6, 11/15/01]

3.2.200.7 DEFINITIONS:

[Reserved.]

[1/31/97; 3.2.200.7 NMAC - Rn, 3 NMAC 2.200.7, 11/15/01]

3.2.200.8 FEDERAL PREEMPTION OF LOCAL TAXES:

A. Section 602 of the Federal Telecommunications Act of 1996 preempts the imposition of any local option gross receipts tax upon the gross receipts of a provider of direct satellite service from providing direct satellite service. Accordingly, no portion of any local option tax may be imposed on such services. Only the state tax imposed by Section 7-9-4 NMSA 1978 is due with respect to receipts from providing these services.

B. Because imposition of all local option taxes is prohibited, the credit provided in Section 7-9-82 NMSA 1978 does not apply against the state tax due on receipts from providing direct satellite services.

C. The term "direct satellite service" means "direct-to-home satellite service" as defined by Section 602 of the Telecommunications Act of 1996.

D. This section applies to direct-to-home satellite services provided on or after February 8, 1996.

[1/31/97; 3.2.200.8 NMAC - Rn & A, 3 NMAC 2.200.8, 11/15/01]

PART 201: NONTAXABLE TRANSACTION CERTIFICATES, FARMERS'AND RANCHERS' STATEMENTS AND OTHER EVIDENCE REQUIRED TO ENTITLE PERSONS TO DEDUCTIONS

3.2.201.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1150 South St. Francis Drive, P.O. Box 630, Santa Fe NM 97504-0630.

[3/15/96; 3.2.201.1 NMAC - Rn, 3 NMAC 2.43.1.1, 5/31/01]

3.2.201.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[3/15/96, 11/15/96; 3.2.201.2 NMAC - Rn, 3 NMAC 2.43.1.2, 5/31/01]

3.2.201.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3/15/96; 3.2.201.3 NMAC - Rn, 3 NMAC 2.43.1.3, 5/31/01]

3.2.201.4 DURATION:

Permanent.

[3/15/96; 3.2.201.4 NMAC - Rn, 3 NMAC 2.43.1.4, 5/31/01]

3.2.201.5 EFFECTIVE DATE:

3/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3/15/96, 11/15/96; 3.2.201.5 NMAC - Rn, 3 NMAC 2.43.1.5 & A, 5/31/01]

3.2.201.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3/15/96; 3.2.201.6 NMAC - Rn, 3 NMAC 2.43.1.6, 5/31/01]

3.2.201.7 DEFINITIONS:

[Reserved.]

[3/15/96; 3.2.201.7 NMAC - Rn, 3 NMAC 2.43.1.7, 5/31/01]

3.2.201.8 POSSESSION AND DELIVERY OF NONTAXABLE TRANSACTION CERTIFICATES - TYPES OF CERTIFICATES:

A. With respect to receipts and transactions deductible under the Gross Receipts and Compensating Tax Act:

(1) The taxpayer should be in possession of all nontaxable transaction certificates (nttcs) at the time the deductible transaction occurs.

(2) The taxpayer must be in possession of and have available for inspection all nttcs for the period of an audit within 60 days of notice by the department requiring such possession. This notice may be sent out or delivered no earlier than the commencement of an audit of the taxpayer claiming the deduction.

(3) An nttc acquired by the taxpayer after the 60 days following notice have expired will not be honored by the department for the period covered by the audit.

(4) An nttc executed using the department’s online system, and that is recorded on the online system, will be considered to be in the possession of the taxpayer to whom the nttc has been executed.

B. An audit of such a taxpayer commences when one of the following occurs:

(1) a department auditor physically gives a dated letter of introduction which states the auditor is commencing an authorized audit of the taxpayer or states the auditor requires the production of the taxpayer's books and records for examination; or

(2) a department employee begins an authorized office examination of files, books or records pertaining to the taxpayer, provided that the taxpayer or the taxpayer's representative is informed reasonably promptly by letter or in person that an audit has commenced.

C. The department issues different types of nttcs. Each type is of limited usage and relates only to one or more particular deductions. An nttc is not valid if it does not contain the information or is not in a form prescribed by the department. For a deduction that requires possession of the appropriate nttc, other types of proof of deductibility may not and will not be accepted by the department, unless other proof is permitted explicitly by the deduction or another provision of the Gross Receipts and Compensating Tax Act with respect to that deduction.

D. The taxpayer need be in possession of only one nttc of the type required by the department from each buyer or lessee in order to claim the particular deduction allowed by that type of nttc. A taxpayer need be in possession of only one nttc of the type required by the department in order to claim a particular deduction from a buyer which has several places of business, provided the buyer is operating under only one department identification number.

E. Nothing shall prevent the department from changing the substance, form or type of nttcs to be used. Nothing shall prevent the department from changing the form of notification requiring the possession of nttcs.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 9/20/93, 11/15/96, 4/30/99; 3.2.201.8 NMAC - Rn, 3 NMAC 2.43.1.8, 5/31/01; A, 12/14/12]

3.2.201.9 APPLICATION FOR AND USE OF NONTAXABLE TRANSACTION CERTIFICATES:

Except as provided in Section 3.2.201.17 NMAC, registration and identification of buyers or lessees who, by reason of their status or the nature of use of the property or service purchased or leased by them, would entitle the vendor or lessor to a deduction from gross receipts with respect to receipts from the purchases or leases of some kind of property or service, and application for department-issued nontaxable transaction certificates (nttcs) is accomplished in the following manner:

A. The buyer or lessee registers with the department for gross receipts tax purposes.

B. The buyer or lessee submits to the department a completed application form indicating the type and quantity of nttc forms required.

C. The department, upon receipt and approval of this application form, will issue the buyer or lessee serially numbered nttc forms.

D. After completion of the information required on the nttc and after proper signature, the buyer or lessee executes the original certificate to the seller or lessor and retains one copy for the buyer's or lessee's records. For all subsequent transactions with that seller or lessor, the buyer or lessee is responsible for informing the seller whenever a particular transaction is not covered by the nttc.

E. When a seller or lessor accepts a nttc form, other than the type the seller or lessor is required to possess to sustain the deduction which the seller or lessor is claiming, the deduction shall not be allowed.

F. Except as provided in Section 3.2.201.17 NMAC, only buyers or lessees who have applied for and have been issued nttcs by the department may execute nttcs. An nttc must be executed on the serially numbered form specifically issued to the buyer or lessee by the department. The department may require a person to whom the department has issued nttcs to account for all nttc forms issued to that person. nttcs may not be executed by anyone other than the person to whom the department has issued these certificates.

G. The buyer or lessee who has an excess of unexecuted nttc forms is required to return them to the department. Upon termination of business, the firm must return all unexecuted nttcs to the department. The department may seize excess unexecuted nttcs which are in the possession of a taxpayer.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 9/20/93, 10/28/94, 11/15/96, 9/30/98, 4/30/99; 3.2.201.9 NMAC - Rn, 3 NMAC 2.43.1.9 & A, 5/31/01]

3.2.201.10 DOCUMENTATION REQUIRED:

A. Receipts which are deductible under the Gross Receipts and Compensating Tax Act can be deducted only if documentation justifying the deduction is maintained so it can be verified upon audit.

B. The following examples illustrate the documentation requirements.

(1) Example 1: X sells tangible personal property to Y, a governmental agency. X may deduct the sale if the government purchase order is retained or a copy of the check, the check stub or voucher identifying the source of payment is retained for audit purposes.

(2) Example 2: A, a grocer, makes a cash sale to C, a cafe. C has issued the appropriate type nontaxable transaction certificate (nttc) to A. A may deduct the receipts from the sale if a sales ticket is prepared identifying the property purchased, the name of the customer and the date and amount of the transaction.

(3) Example 3: M, a motor parts store, deducts receipts for sales made over the counter to cash customers who have delivered proper nttcs. A sales ticket is prepared by M indicating the date, the amount and the items purchased. "CASH" is written in the space provided for the customer's name. If M is audited, the deduction would be disallowed; the transaction could not be related to a specific nttc.

C. A taxpayer claiming the deduction under Section 7-9-47 NMSA 1978 has the burden of proving that the sale was in fact a nontaxable sale for resale. If the sale was made to a person who was an active registered retailer or wholesaler at the time of the sale and the property purchased was of the type or types ordinarily purchased for resale by that purchaser, the presumption that the deduction of the receipts from the sale should be disallowed can be overcome during an audit or upon reconsideration. A taxpayer claiming a deduction pursuant to Section 7-9-47 NMSA 1978 who is unable to provide a nttc within the sixty-day period specified in Subsection A of Section 7-9-43 NMSA 1978 will be allowed to submit other evidence, as specified in Subsection F of this section. Such other evidence is meant to provide the department with sufficient information to verify that the deduction under Section 7-9-47 NMSA 1978 is appropriate and will only be accepted if the conditions of Subsection E of Section 7-9-43 NMSA 1978 are met.

D. For purposes of Subsection C of this section, "unable to provide a nttc" means the inability to obtain a nttc within the sixty-day period specified in Subsection A of Section 7-9-43 NMSA 1978 because:

(1) the buyer of the property is no longer engaged in business in New Mexico;

(2) the buyer was authorized by the department to execute nttcs at the time of the transaction but since then the authority to obtain or issue nttcs has been suspended by the department because the buyer is not in compliance with the department for the payment of their taxes;

(3) an act of God caused physical damage to the taxpayer's records or place of business; or

(4) there are other circumstances that reasonably justify a determination that the taxpayer is unable to provide a nttc.

E. The following are examples of when a taxpayer would be "unable to provide a nttc" as that phrase is used in Subsection C of this section:

(1) Example 1: X, a New Mexico retailer, sells tangible personal property to Y, another small retailer located in a rural part of New Mexico. Y purchases the tangible personal property with the intent of reselling it in the ordinary course of business but fails to provide X with the proper nttc to support the resale deduction. Two years later X is selected for an audit by the taxation and revenue department. At the beginning of the audit, X is given a sixty-day letter that requires X to obtain all necessary nttcs to support

any deductions taken during the periods being audited. X attempts to obtain a nttc from Y, but is unable to do so because Y is no longer in business in New Mexico. If X can show that Y is no longer in business, X will be considered unable to provide a nttc within the sixty-day period.

(2) Example 2: L, a small lighting company, receives a notice that an audit is to be conducted by the department. L has been instructed to have in its possession all nttcs that support any deductions for the period in questions within sixty days. While compiling the documentation requested by the department, L realizes it does not have the proper nttc for a number of transactions with D, a retail customer. L calls D to obtain the proper nttc but is told by D that the department will not issue nttcs to D because D has an outstanding tax liability and that it is not in compliance. Because D's ability to execute a nttc has been suspended, the department will consider L as being unable to provide a nttc within the sixty-day period specified in Subsection A of Section 7-9-43 NMSA 1978.

F. A taxpayer who is unable to provide a nttc, as provided in Subsection D and E of this section, can provide the department with other evidence, pursuant to the requirements of this section, that will provide the department with sufficient information to verify that the deduction under Section 7-9-47 NMSA 1978 is appropriate. Such other evidence must include one of the following:

(1) information identifying the buyer (i.e., name, address, identification number, etc.) that can be used to verify against department records that the buyer is no longer engaged in business and that the deduction under Section 7-9-47 is appropriate;

(2) a letter sent to the buyer inquiring as to the buyer's disposition of the property purchased from the seller; the letter shall include the following information:

(a) seller's name and combined reporting system (CRS) identification number;

(b) date of invoice(s) or date of transaction(s);

(c) invoice number(s) (copies of actual invoices may be attached);

(d) copies of purchase order(s), if available;

(e) amount of purchase(s);

(f) a description of the property purchased or other identifying information; and

(g) a section completed and signed by the buyer that includes:

(i) the buyer's name, combined reporting system (CRS) identification number, and printed name;

(ii) title of the signor;

(iii) a statement as to the nature of the purchase; and

(iv) a statement of the buyer or signor indicating that the buyer sold or intends to resell the tangible personal property purchased from the seller, either by itself or in combination with other tangible personal property in the ordinary course of business; or

(3) any other documentary evidence that has been approved by the department in writing prior to any assessment of tax or a protest that has been acknowledged by the department prior to December 31, 2011.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 9/30/98; 3.2.201.10 NMAC - Rn, 3 NMAC 2.43.1.10, 5/31/01; A, 8/15/11]

3.2.201.11 CONSTRUCTION CONTRACTORS:

A. Any person applying to execute nontaxable transaction certificates (nttcs) related to deductions found under Sections 7-9-51, 7-9-52 or 7-9-52.1 NMSA 1978 must indicate the applicant's New Mexico contractor's license number or furnish proof that no contractor's license is required by the construction industries division of the regulations and licensing department in order to engage in one of the construction activities listed in 7-9-3.4 NMSA 1978. Failure to comply with 3.2.201.11 NMAC will result in denial of the requested certificates.

B. A person engaged in the construction business who makes any false or misleading representations in any material respect in an application for nttcs may become subject to the penalties imposed by Section 7-1-73 NMSA 1978 as well as other penalties, civil or criminal, prescribed in the Tax Administration Act. False or misleading representations include, but are not confined to:

(1) indicating a contractor's license number on the application which is not issued to the applicant or which cannot lawfully be used by the applicant;

(2) applying for nttcs which someone other than the applicant will execute; or

(3) furnishing false or misleading documentation that a contractor's license is not required of the applicant by the construction industries division.

C. Any person who has previously applied for and been issued nttcs related to construction as defined in Section 7-9-3.4 NMSA 1978, under circumstances wherein the person would not have been entitled to obtain such certificates pursuant to 3.2.201.11 NMAC, will be assessed gross receipts or compensating tax, as appropriate, based on the representations actually made in the application for nttcs.

D. Any person engaged in the construction business is presumed not to be engaged in reselling services other than construction services, or, on or after January 1, 2013, construction-related services, in the ordinary course of business. Except as provided in Subsection E of this section, this person will not be issued nttcs other than those appropriate for the deductions under Sections 7-9-51, 7-9-52 and 7-9-52.1 NMSA 1978.

E. A person who can demonstrate to the department's satisfaction that the person is engaged in the construction business and also in the business of selling property other than construction materials or performing or selling one or more services, that are not construction services or, on or after January 1, 2013, construction-related services, may qualify for and be issued nttcs in addition to those appropriate for the deductions under Sections 7-9-51, 7-9-52 and 7-9-52.1 NMSA 1978. The additional types of nttc may be executed by the person only when the person is acquiring tangible personal property other than construction material, a service other than a construction service or, on or after January 1, 2013, a construction-related service, in a manner meeting the conditions for execution of the additional type of nttc. In determining whether the person engaged in the construction business is engaged in a business in addition to the construction business, the department will consider these factors:

(1) whether the person possesses, when possession is required, a current license to sell or lease the nonconstruction property or to perform or sell the nonconstruction service;

(2) whether the person has entered into a contract requiring the sale or lease of the nonconstruction property or the performance or sale of the nonconstruction service;

(3) whether the person holds himself out to be in the business; and

(4) other factors deemed appropriate by the secretary.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 9/20/93, 11/15/96, 4/30/99; 3.2.201.11 NMAC - Rn, 3 NMAC 2.43.1.11 & A, 5/31/01; A, 11/30/05; A, 12/14/12]

3.2.201.12 DELIVERY OF NTTC AFTER DATE REPORT DUE:

A. Except as provided otherwise in Subsection D of Section 3.2.201.12 NMAC, a taxpayer who receives a properly executed nontaxable transaction certificate (nttc) or other documentation required by Section 7-9-43 NMSA 1978 for a transaction included in a previously filed return and on which the taxpayer paid the gross receipts tax is entitled to a refund of that previously paid tax. To obtain the refund the taxpayer is required to file a claim for refund and submit either an amended return for each period to which the refund relates or a schedule acceptable to the department containing equivalent information.

B. A taxpayer may not accumulate the allowable deductible receipts for prior periods and take the entire amount as a deduction for the period in which the proper nttc or other documentation is received.

C. A taxpayer who has been audited by the department and has failed to present the nttcs or other documentation required within the time required to support deductions claimed after having been requested to do so pursuant to Section 3.2.201.8 NMAC is not entitled to the deductions.

D. The provisions of the preceding paragraphs do not apply to deductions claimed with respect to transactions occurring during the period July 1, 1992 through May 31, 1997 if the seller or lessor had received a notice from the department pursuant to Section 3.2.201.8 NMAC to present the nttcs or other documentation and the time for complying with the request expired prior to July 1, 1997. In such cases for receipts from transactions during the period July 1, 1992 through May 31, 1997, the nttc or other acceptable proof must be in the possession of the seller or lessor no later than the date gross receipts from the transaction are required to be reported. Receipt of the nttc or other acceptable proof after that date does not support the deduction or a claim for refund with respect to gross receipts required to be reported prior to that date; such nttc or other acceptable proof will support only deductions for gross receipts required to be reported on or after the date the nttc or other acceptable proof was received. With respect to gross receipts in the period July 1, 1992 through May 31, 1997 for which an appropriate nttc or other acceptable proof is not in the possession of the seller or lessor at the date the gross receipts are required to be reported, any deduction claimed will be disallowed and any claim for refund submitted prior to July 1, 1997 will be denied.

[9/8/86, 11/26/90, 1/20/93, 11/15/96, 9/30/98; 3.2.201.12 NMAC - Rn, 3 NMAC 2.43.1.12 & A, 5/31/01]

3.2.201.13 MULTIJURISDICTIONAL UNIFORM SALES AND USE TAX CERTIFICATES:

A. The department deems the uniform sales and use tax certificate issued by the multistate tax commission or by any member state other than New Mexico to a taxpayer not required to be registered in New Mexico to be a nontaxable transaction certificate (nttc) equivalent to those nttc types issued by the department to support the deductions under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978. As evidence of the deductibility of a specific transaction authorized under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978 the department will accept the multistate tax commission uniform sales and use tax certificate:

(1) only in those situations in which possession of a properly executed nttc is acceptable evidence of the deductibility of the transaction; and

(2) if the uniform sales and use tax certificate is issued by the multistate tax commission or a member state other than New Mexico to a taxpayer not required to be registered in New Mexico.

B. No certificate or other document from any other state or taxing jurisdiction is acceptable evidence under 3.2.201.13 NMAC.

[3/10/87, 11/26/90, 3/15/96, 9/30/98, 4/30/99; 3.2.201.13 NMAC - Rn, 3 NMAC 2.43.1.13 & A, 5/31/01; A, 3/15/10]

3.2.201.14 GOOD FAITH ACCEPTANCE OF NONTAXABLE TRANSACTION CERTIFICATES:

A. Acceptance of nontaxable transaction certificates (nttcs) in good faith that the property or service sold thereunder will be employed by the purchaser in a nontaxable manner is determined at the time of each transaction. The taxpayer claiming the protection of a certificate continues to be responsible that the goods delivered or services performed thereafter are of the type covered by the certificate.

B. Example 1: A type 6 nttc, which may be executed and accepted for the purchase of construction materials, will not protect the deduction taken by an automobile dealer for receipts from the sale of automobile parts or a lumber yard for receipts from the sale of a power saw.

C. Example 2: An automobile dealer who accepts a type 2 nttc from an airline for the purchase of parts cannot rely on the type 2 (resale of tangibles) nttc to protect the deduction of receipts from such sale unless the dealer can demonstrate good faith acceptance by showing that the airline is in the business of reselling parts. A statement on the back of or attached to the certificate separately signed by a responsible employee of the airline showing that the airline runs a retail parts store would protect the dealer who did not know the statement was false.

[6/28/89, 11/26/90, 11/15/96, 9/30/98; 3.2.201.14 NMAC - Rn, 3 NMAC 2.43.1.14, 5/31/01]

3.2.201.15 PHOTOCOPIES OR OTHER REPRODUCTIONS OF NONTAXABLE TRANSACTION CERTIFICATES:

A. Except as provided otherwise in Section 3.2.201.15 NMAC, no person may make photocopies of, or otherwise reproduce, nontaxable transaction certificates (nttcs) issued or executed by the department. Photocopies or other reproductions may be made:

(1) by the department or, upon request of the department, by the person to whom the nttcs have been issued or the seller or lessor who has accepted an nttc for audit, tax compliance or tax administration purposes;

(2) by the person to whom the nttcs have been issued by the department for internal record keeping purposes or in response to a request from a seller or lessor to whom the person has delivered an executed nttc for a duplicate of the executed nttc; and

(3) by the seller or lessor who has accepted in good faith a nttc executed by a buyer or lessee for internal record keeping purposes only.

B. In no event may any buyer, lessee, seller or lessor execute or attempt to execute a photocopy or other reproduction of a previously executed nttc. Doing so is grounds for suspension, pursuant to Section 7-9-44 NMSA 1978, of the right to use nttcs.

[1/20/93, 11/15/96; 3.2.201.15 NMAC - Rn, 3 NMAC 2.43.1.15 & A, 5/31/01]

3.2.201.16 DIFFERENCE BETWEEN "ISSUE" AND "EXECUTE":

As used in Section 7-9-43 NMSA 1978 and in regulations concerning nontaxable transaction certificates (nttcs), the verb "issue" indicates the process by which the department supplies a requesting taxpayer with one or more nttc forms, which in turn are to be completed by that taxpayer and delivered to the taxpayer's vendors to support a claim of deduction by the vendor. Only the department issues nttcs. The verb "execute" refers to the process by which a taxpayer, having already obtained the requisite forms from the department, completes an nttc form by entering the required information about the vendor to whom the nttc is to be delivered. When timely delivered, the executed nttc serves as the required or permitted proof to support a claim of deduction by the vendor with respect to certain transactions between the taxpayer and the vendor. The department, as a purchaser of goods or services, may also execute nttc forms for delivery to its vendors.

[1/20/93, 11/15/96; 3.2.201.16 NMAC - Rn, 3 NMAC 2.43.1.16 & A, 5/31/01]

3.2.201.17 SPECIAL NONTAXABLE TRANSACTION CERTIFICATE TYPE OSB AUTHORIZED FOR CERTAIN OUT-OF-STATE BUYERS:

A. Any person engaging in business in New Mexico who, within the time required by the provisions of Section 7-9-43 NMSA 1978, accepts a nontaxable transaction certificate denominated as an nttc-osb in good faith that the purchaser will, in the ordinary course of business, either resell the property purchased or incorporate the property purchased as an ingredient or component part of a manufactured product, may deduct the receipts from the sale under Section 7-9-46 or 7-9-47 NMSA 1978. A person who performs a manufacturing service in New Mexico and who, within the time required by the provisions of Section 7-9-43 NMSA 1978, accepts a nttc-osb in good faith that the purchaser is in the business of manufacturing and will have the manufacturing service performed directly upon tangible personal property the purchaser is in the

business of manufacturing, or ingredient or component parts thereof, may deduct the receipts from performing the manufacturing service under Section 7-9-75 NMSA 1978.

B. A purchaser qualifies to execute an nttc-osb if the purchaser:

(1) maintains its principle place of business and commercial domicile outside New Mexico;

(2) is registered with or licensed by the state or foreign jurisdiction in which the purchaser maintains a place of business for sales or similar taxes;

(3) does not maintain a business location in New Mexico;

(4) is not subject to New Mexico gross receipts tax pursuant to Section 7-9-4 NMSA 1978 on its receipts; and

(5) is not registered as an agent to collect and pay over New Mexico compensating tax pursuant to Section 7-9-10 NMSA 1978.

C. Any person who sells tangible personal property or performs a manufacturing service, who is engaged in business in New Mexico and who is registered with the department for gross receipts tax purposes, shall be referred to in Section 3.2.201.17 NMAC as a "seller" and may apply to receive blank nttc-osb forms. The seller may then provide a qualifying purchaser with a blank nttc-osb form which the purchaser shall complete and return to the seller. The seller shall not cause or allow the reproduction of any un-issued certificate and shall rely on the department as the sole source of the nttc-osb forms. The department may or may not, at the discretion of the secretary or the secretary's delegate, provide any seller with a supply of nttc-osb forms. A seller, who has received a supply of blank nttc-osb forms, shall retain a copy of each executed form and account for each nttc-osb which has been issued by the department to that seller whether or not each form has been executed by an out-of-state purchaser. If it becomes necessary to void a nttc-osb form, the word "void" shall be written boldly across the face of the form; the seller shall retain and account for the voided certificate.

D. Prior to providing the purchaser with a nttc-osb, the seller shall obtain adequate proof that the purchaser is either registered with or licensed by the appropriate taxing agency of another state or foreign jurisdiction for a sales or similar tax program. To meet this requirement the seller must obtain the purchaser's license or other identification number issued by the appropriate agency of the state or foreign jurisdiction in which the purchaser engages in business and other documentation which clearly identifies that the purchaser is engaged in business in that state. Such other documentation includes, but is not limited to, a business card, purchase order or letterhead which identifies the purchaser, the location of the business, the type of business and the business name under which the purchaser engages in business. The seller shall attach the other documentation to the seller's copy of the executed nttc-osb and retain both in the same manner used by the seller to retain other nontaxable

transaction certificates provided by other customers. Proper execution of the nttc-osb shall constitute registration with the department by the purchaser as required by Section 7-9-43 NMSA 1978 and Section 3.2.201.9 NMAC. Failure of the seller to obtain from the purchaser the documentation required by the provisions of Section 3.2.201.17 NMAC shall cause a presumption of acceptance of the nttc-osb without the required good faith that the purchaser will employ the property transferred in a nontaxable manner or had the manufacturing service performed directly on tangible personal property, or ingredient or component parts thereof, that the purchaser is in the business of manufacturing. In this instance, the transaction shall be presumed to be subject to the gross receipts tax and no deduction shall be allowed. If the purchaser fails to provide all information required to be provided by the purchaser on the face of the nttc-osb or if the purchaser either fails or refuses to sign the statement contained within the nttc-osb, such nttc-osb shall not be valid and no deduction shall be allowed for the receipts from selling to that purchaser.

E. The provisions of Section 3.2.201.17 NMAC are applicable to transactions occurring on or after April 1, 1994.

[10/28/94, 11/15/96, 12/15/99; 3.2.201.17 NMAC - Rn, 3 NMAC 2.43.1.17 & A, 5/31/01]

3.2.201.18 [RESERVED]

3.2.201.19 BORDER STATES UNIFORM SALE FOR RESALE CERTIFICATE:

A. For transactions specified below, the department deems a border states uniform sale for resale certificate issued by a border state other than New Mexico to a taxpayer not required to be registered in New Mexico to be a nontaxable transaction certificate (nttc) equivalent to those nttc types issued by the department that support the deductions under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978. The department will accept the border states uniform sale for resale certificate as evidence of the deductibility of a specific transaction authorized under Sections 7-9-46, 7-9-47 and 7-9-75 NMSA 1978, only when the following conditions exist:

(1) the buyer is purchasing tangible personal property for resale or incorporation as an ingredient or component part into a manufactured product in the ordinary course of the buyer's business or the buyer is purchasing a manufacturing service on a manufactured product or ingredient or component part thereof;

(2) the tangible personal property purchased or the product, or ingredient or component part thereof, upon which the manufacturing service is performed is to be transported across state or national boundaries; and

(3) the buyer is located in the northern border region or in a border state other than New Mexico.

B. No other certificate or document from any other state or taxing jurisdiction is acceptable evidence under 3.2.201.19 NMAC.

C. For the purposes of 3.2.201.19 NMAC:

(1) "border state" means Arizona, California, New Mexico and Texas and any other state joining the border states caucus subsequent to January 1, 1996; and

(2) "northern border region" means:

(a) the border strip of 20 kilometers parallel, north and south, to the international dividing line between the United Mexican States and the United States of America;

(b) all territory of the lower California states, south lower California and Quintana Roo, the municipality of Cananea, Sonora and part of the state of Sonora as delimited by the border states caucus; and

(c) any additional territory of the United Mexican States incorporated into the definition by the border states caucus subsequent to January 1, 1996.

[3/15/96, 9/30/98, 12/15/99; 3.2.201.19 NMAC - Rn, 3 NMAC 2.43.1.19 & A, 5/31/01; A, 3/15/10]

PART 202: SUSPENSION OF THE RIGHT TO USE A NONTAXABLE TRANSACTION CERTIFICATE [REPEALED]

[This part was repealed effective September 26, 2023.]

PART 203: DEDUCTIONS

3.2.203.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.203.1 NMAC - Rn, 3 NMAC 2.45.1, 5/31/01]

3.2.203.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.203.2 NMAC - Rn, 3 NMAC 2.45.2, 5/31/01]

3.2.203.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.203.3 NMAC - Rn, 3 NMAC 2.45.3, 5/31/01]

3.2.203.4 DURATION:

Permanent.

[11/15/96; 3.2.203.4 NMAC - Rn, 3 NMAC 2.45.4, 5/31/01]

3.2.203.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.203.5 NMAC - Rn, 3 NMAC 2.45.5 & A, 5/31/01]

3.2.203.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.203.6 NMAC - Rn, 3 NMAC 2.45.6, 5/31/01]

3.2.203.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.203.7 NMAC - Rn, 3 NMAC 2.45.7, 5/31/01]

3.2.203.8 LIMITATION ON NUMBER OF DEDUCTIONS ALLOWED:

A. The receipts from a single transaction may be deducted only once, even when two or more sections of the Gross Receipts and Compensating Tax Act allow a deduction for the receipts from that transaction.

B. Example: X appliance company sells electric ranges, refrigerators and dishwashers to Y, a home builder, who installs them in the kitchens of houses that Y is building for sale. X reports the receipts from the transaction to the department but deducts them first under Section 7-9-47 NMSA 1978, which allows a deduction for sales for resale, and then again under Section 7-9-51 NMSA 1978, which permits a deduction for sales of tangible personal property to persons engaged in the construction business. X will not be allowed to deduct the same receipts twice. Receipts, whether deductible under one or several sections (Sections 7-9-46 through 7-9-78.1 NMSA 1978 or Sections 7-9-83 through 7-9-90 NMSA 1978) may be deducted only once from gross receipts.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.203.8 NMAC - Rn, 3 NMAC 2.45.8 & A, 5/31/01]

3.2.203.9 PERSONS WHOSE RECEIPTS ARE DEDUCTIBLE:

Persons engaging in business, except those persons all of whose receipts are exempted by the provisions of Sections 7-9-13 through 7-9-42 NMSA 1978 or other law, must register and report their gross receipts to the department even if such receipts are deductible under one or more provisions of Sections 7-9-46 through 7-9-78.1 or 7-9-83 through 7-9-90 NMSA 1978.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.203.9 NMAC - Rn, 3 NMAC 2.45.9 & A, 5/31/01]

3.2.203.10 DEDUCTIONS FROM GROSS RECEIPTS:

The deductions provided by Sections 7-9-46 through 7-9-78.1 and 7-9-83 through 7-9-90 NMSA 1978 apply only to those receipts which are included in and defined as gross receipts pursuant to Section 7-9-3 NMSA 1978.

[10/21/86, 11/26/90, 11/15/96; 3.2.203.10 NMAC - Rn, 3 NMAC 2.45.10 & A, 5/31/01]

3.2.203.11 DEDUCTIONS OF GROSS RECEIPTS OF MARKETPLACE PROVIDERS AND MARKETPLACE SELLERS:

Under Section 7-9-3.5 NMSA 1978, marketplace sellers may have gross receipts from selling, leasing or licensing property or selling services in the state and marketplace providers may have receipts from receipts collected from selling, leasing, licensing property or selling services. The deductions provided in the Gross Receipts and Compensating Tax Act apply to the gross receipts of marketplace sellers and marketplace providers to the extent that the sale, lease or licensing of property or selling of services would be deductible.

[3.2.203.11 NMAC - N, 7/7/2021]

PART 204: DEDUCTION - GROSS RECEIPTS TAX - SALES TO MANUFACTURERS

3.2.204.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96, 3.2.204.1 NMAC - Rn, 3 NMAC 2.46.1, 5/31/01]

3.2.204.2 SCOPE:

This part applies to all persons engaging in business in New Mexico.

[11/15/96, 3.2.204.2 NMAC - Rn, 3 NMAC 2.46.2, 5/31/01]

3.2.204.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96, 3.2.204.3 NMAC - Rn, 3 NMAC 2.46.3, 5/31/01]

3.2.204.4 DURATION:

Permanent.

[11/15/96, 3.2.204.4 NMAC - Rn, 3 NMAC 2.46.4, 5/31/01]

3.2.204.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96, 3.2.204.5 NMAC - Rn, 3 NMAC 2.46.5 & A, 5/31/01]

3.2.204.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96, 3.2.204.6 NMAC - Rn, 3 NMAC 2.46.6, 5/31/01]

3.2.204.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.204.7 NMAC - Rn, 3 NMAC 2.46.7, 5/31/01]

3.2.204.8 MOTOR VEHICLE PARTS:

Receipts from the sale of parts, to be used in the repair of used motor vehicles or other items of equipment which are held by the purchaser of the parts for sale in the ordinary course of a used car or used equipment business, or to be used to fulfill the dealer's warranty obligation on used motor vehicles or other items of equipment, are deductible from the seller's gross receipts provided the purchaser gives the seller a nontaxable transaction certificate. The purchaser must use the parts in the nontaxable manner indicated on the certificate or be liable for the compensating tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.204.8 NMAC - Rn, 3 NMAC 2.46.8, 5/31/01]

3.2.204.9 PRINTING AND SILK-SCREENING:

A. Paper, ink, staples, glue, binding, chemicals, dyes and other tangible property used by a printer or a silk-screener in the production of a newspaper or other printed or silk-screened material for sale in the ordinary course of business are ingredients or component parts of a manufactured product. If all paper, ink, staples, glue, binding, chemicals, dyes and other tangible items are furnished to the printer or silk-screener by the customer as ingredients or component parts of the end product, then the printer or silk-screener is providing a service and not selling tangible personal property.

B. Example: N, a newspaper supply company, sells newsprint (paper), ink, offset plates, lithographic plates, linotype plates, lead plates, pre-cast type plates and photographic plates to newspapers. The newsprint and ink are ingredients or component parts because, when combined, they can be found in the product which is being manufactured. However, the various plates are not ingredients or component parts because they cannot be found in the manufactured product, the newspaper.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.204.9 NMAC - Rn, 3 NMAC 2.46.9 & A, 5/31/01]

3.2.204.10 [RESERVED]

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.204.10 NMAC - Rn, 3 NMAC 2.46.10, 5/31/01; Repealed, 6/28/13]

3.2.204.11 TRANSPORTATION EXPENSES:

Transportation expenses incurred in marketing a manufactured product are not deductible pursuant to Section 7-9-46 NMSA 1978.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.204.11 NMAC - Rn, 3 NMAC 2.46.11 & A, 5/31/01]

3.2.204.12 DENTAL SUPPLIES:

Gold, teeth and similar items used in making dentures for sale in the ordinary course of business are ingredients or component parts of a manufactured product.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.204.12 NMAC - Rn, 3 NMAC 2.46.12, 5/31/01]

3.2.204.13 PHOTOGRAPHIC SUPPLIES:

A. Sensitized paper, backing paper, frames, mounts, glass and other items used by a photographer, photographic processor or developer in the production of a photograph for sale in the ordinary course of business are ingredients or component parts of a manufactured product.

B. Film used by a photographer is not an ingredient or component part of a finished photograph but it is consumed in the manufacturing of the photographs. Therefore, the sale of film to a photographer may be deducted pursuant to Subsection B of Section 7-9-46 NMSA 1978 as tangible personal property consumed in the manufacturing process.

C. This version of 3.2.204.13 NMAC applies to transactions occurring on or after January 1, 2013.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.204.13 NMAC - Rn, 3 NMAC 2.46.13 & A, 5/31/01; A, 6/28/13]

3.2.204.14 UPHOLSTERY MATERIALS:

Upholsterers are engaged in the business of performing a service and are not manufacturers. If an upholsterer separately states on the billings to customers the value of the material used in conjunction with the services, the upholsterer may issue a Type 2 nontaxable transaction certificate (NTTC) to the supplier of the material. If the value of the material is not separately stated on the billings to customers and either an NTTC is executed or the materials are purchased without a sales or gross receipts tax appearing on the invoice from an out-of-state vendor, the upholsterer will be liable for compensating tax on the value of the material.

[1/6/84, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.204.14 NMAC - Rn, 3 NMAC 2.46.14, 5/31/01; A, 6/28/13]

3.2.204.15 SOFTWARE MATERIALS:

Materials such as blank diskettes, blank video disks, packaging, paper and labels which are used by a person who manufactures and sells in the ordinary course of business copies of computer software, together with explanatory materials and instructions, are ingredient and component parts of a manufactured product.

[4/30/97; 3.2.204.15 NMAC - Rn, 3 NMAC 2.46.15, 5/31/01]

3.2.204.16 RECEIPTS FROM CUSTOM SOFTWARE DEVELOPED FOR MANUFACTURER OF PACKAGED SOFTWARE NOT DEDUCTIBLE:

A. Receipts from developing custom software for a manufacturer of packaged software are not deductible under Section 7-9-46 NMSA 1978 because the deduction under Section 7-9-46 NMSA 1978 is available only for receipts from selling tangible

personal property which is incorporated as an ingredient or component part of the manufactured product. Developing custom software is a service.

B. Example: M, a manufacturer of packaged software, contracts with S, a software development company, for the development of a new personal finances program which M plans to manufacture and sell. S is performing a service under this contract. M may not execute and S may not accept a nontaxable transaction certificate.

[4/30/97; 3.2.204.16 NMAC - Rn, 3 NMAC 2.46.16 & A, 5/31/01; A, 6/28/13]

3.2.204.17 UNPROCESSED METAL ORES:

The receipts of a person who is not subject to the Resources Excise Tax Act and who sells unprocessed metal ores to a processor in this state are deductible under Section 7-9-46 NMSA 1978 provided the person is in possession of a properly executed nontaxable transaction certificate of the appropriate type.

[10/31/97; 3.2.204.17 NMAC - Rn, 3 NMAC 2.46.17 & A, 5/31/01]

3.2.204.18 CAR WASHING AND DETAILING:

Persons who engage in the business of car washing, car waxing or car detailing are not thereby in the business of manufacturing. The deduction provided by Section 7-9-46 NMSA 1978 does not apply to receipts from car washing, car waxing or car detailing.

[3.2.204.18 NMAC - N, 10/31/2000]

3.2.204.19 TOOLS AND EQUIPMENT:

A. Tools and equipment used by a person engaged in the manufacturing business to manufacture a product are not considered to be consumed in the manufacturing process and therefore are not deductible under Subsection B of Section 7-9-46 NMSA 1978. As used in Section 7-9-46 NMSA 1978 the terms "tool" and "equipment" are defined as follows:

(1) "tool" means an implement, instrument, utensil, usually hand held, that is used to form, shape, fasten, add to, take away from, or otherwise change the manufactured product or equipment; and

(2) "equipment" means an essential machine, mechanism or tool, or a component or fitting thereof, used directly and exclusively in a manufacturing operation and subject to depreciation for purposes of the Internal Revenue Code by the taxpayer carrying on the manufacturing operation.

B. If any piece of a tool or equipment that breaks during the manufacturing process that is required to be replaced, is not considered to be consumed in the manufacturing

process and the related receipts are not deductible under Subsection B of Section 7-9-46 NMSA 1978.

C. This version of 3.2.204.20 NMAC applies to transactions occurring on or after January 1, 2013.

[3.2.204.19 NMAC - N, 6/28/13]

PART 205: DEDUCTION - GROSS RECEIPTS TAX - SALE OF TANGIBLE PERSONAL PROPERTY FOR RESALE

3.2.205.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96, 3.2.205.1 NMAC - Rn, 3 NMAC 2.47.1, 5/31/01]

3.2.205.2 SCOPE:

This part applies to all persons engaging in business in New Mexico.

[11/15/96, 3.2.205.2 NMAC - Rn, 3 NMAC 2.47.2, 5/31/01]

3.2.205.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96, 3.2.205.3 NMAC - Rn, 3 NMAC 2.47.3, 5/31/01]

3.2.205.4 DURATION:

Permanent.

[11/15/96, 3.2.205.4 NMAC - Rn, 3 NMAC 2.47.4, 5/31/01]

3.2.205.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96, 3.2.205.5 NMAC - Rn, 3 NMAC 2.47.5, 5/31/01]

3.2.205.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96, 3.2.205.6 NMAC - Rn, 3 NMAC 2.47.6, 5/31/01]

3.2.205.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.205.7 NMAC - Rn, 3 NMAC 2.47.7, 5/31/01]

3.2.205.8 DELIVERY OF THE NONTAXABLE TRANSACTION CERTIFICATE:

A. In order for a taxpayer to qualify for the deduction provided in Section 7-9-47 NMSA 1978 the taxpayer must meet the requirements of Section 7-9-47 NMSA 1978, which include being the recipient of a nontaxable transaction certificate (nttc) of the type specified and furnished by the department to be delivered by a buyer who resells tangible personal property in the ordinary course of business. Other evidence in lieu of an appropriate nttc may be acceptable as provided in Section 7-9-43 NMSA 1978 and 3.2.201.10 NMAC.

B. Example: X, a retail grocer, buys $150 worth of brooms from Y. X, however, will not give Y a nttc. The sale from Y to X is a taxable transaction since X did not give Y a nttc. If X had presented the certificate, Y could have deducted the proceeds of the sale from Y's gross receipts.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.205.8 NMAC – Rn, 3 NMAC 2.47.8 & A, 5/31/01; A, 8/15/11]

3.2.205.9 SALE ON INSTALLED BASIS:

A. Receipts from selling tangible personal property to a person who resells that property on an installed basis are receipts derived from the sale of tangible personal property for resale even though material and services are not separately stated when the property is resold on an installed basis.

B. Example: C is in the carpeting and drapery business. When M came to see C about carpeting a bedroom, C quoted a price of $9.95 per square yard installed. The sale was completed and the carpet installed. Even though C did not separately state materials and services in the billing to M, C was correct in delivering a nontaxable transaction certificate to C's supplier because the sale from the supplier to C was in fact a sale of tangible personal property for resale.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.205.9 NMAC - Rn, 3 NMAC 2.47.9, 5/31/01]

3.2.205.10 TANGIBLES SOLD FOR USE IN PERFORMANCE OF A SERVICE VERSUS SIMULTANEOUS TRANSACTIONS - BILLING PRACTICES:

A. Use of tangible personal property in performing a service:

(1) When a taxpayer uses tangible personal property in the performance of a service, the tangible personal property is acquired for use and not for sale in the ordinary course of business. Therefore, a nontaxable transaction certificate may not be executed under Section 7-9-47 NMSA 1978 to acquire the tangible personal property.

(2) [Reserved.]

(3) [Reserved.]

(4) Example 1: X, a dry cleaner, mends clothing that is brought to X for cleaning. X uses thread, material and buttons to mend the clothing. X maintains that X is selling these products. X does not sell thread, buttons or material; rather X is engaged in performing a service and uses the materials in the performance of the service. Therefore, the sale of these products to X is not a sale for resale. If, in this situation, X delivered an nttc to its supplier for the purchase of thread and buttons and if the supplier did not pay the gross receipts tax on those receipts, X will be subject to the compensating tax.

(5) Example 2: A person giving tangible personal property as prizes for performing certain skills at carnivals, amusement parks, fairs or similar recreation facilities is using the tangible personal property in the performance of its entertainment service. If this tangible personal property is acquired within New Mexico, the person may not execute Type 2 nttcs to buy these items because the tangible personal property is not to be re-sold but used in the performance of an amusement or recreation service. If the tangible personal property were acquired from sources outside New Mexico, the person is subject to the compensating tax on the value of the tangible personal property.

(6) Example 3: An accountant purchases journal and ledger sheets, forms and supplies necessary to maintain books of account for clients. The accountant analyzes transactions and prepares journal entries and posts information to the ledgers. The accountant also prepares periodic financial statements and completes tax returns and other reports on behalf of the client. In billing for the services performed, the accountant separately states the value of the journal and ledger sheets, forms and other property used in the performance of the service. The accountant is using the tangible personal property in the performance of the service and may not execute a nontaxable transaction certificate under Section 7-9-47 NMSA 1978 to acquire these items. The fact that the accountant separately states the value of these tangibles is immaterial in this case.

(7) Example 4: O & G Service Company uses swabbing cups and other rubber goods in the course of its servicing an oil well. In fact, this tangible personal property loses its separate identity in the course of the service. As is customary in the industry, O & G Service Company separately states the value of the swabbing cups and other rubber goods in its billing to the person who contracted for the servicing of the well. O & G may not execute nontaxable transaction certificates under Section 7-9-47 NMSA 1978 to acquire the swabbing cups and other rubber goods because O & G is using those goods in the performance of its service. In this case, it is immaterial whether O & G Service Company separately states the value of such tangibles or whether it is the industry practice to do so.

(8) If a business regularly sells tangible personal property by itself as well as in connection with the performance of a service and if the property is not used by the business in the course of the performance of the service, a transaction in which tangible personal property is transferred to the buyer as the result of, or in connection with, the performance of a service contains as separate components both the performance of a service and the sale of tangible personal property. When it is the custom of both the industry and the business to separately state the value of the service and the value of the tangible personal property transferred to the buyer in the billing to the buyer, the tangible personal property is acquired for sale in the ordinary course of business. In this case, a nontaxable transaction certificate may be executed under Section 7-9-47 NMSA 1978 to acquire the tangible personal property.

B. Purchase of blueprints by architects: Architects are engaged in the business of performing services which include furnishing drawings and blueprints to their clients. Thus, they may not issue nontaxable transaction certificates for the purchase of extra copies of blueprints since they are not sellers of tangible personal property in the ordinary course of business as required under Section 7-9-47 NMSA 1978.

C. Lawn service: Receipts from selling fertilizer, insecticides, herbicides and similar items of tangible personal property to a person engaged in the business of providing lawn maintenance services may not be deducted from gross receipts pursuant to Section 7-9-47 NMSA 1978. Such receipts are not receipts from selling tangible personal property for resale since the property is being used by the person in the course of providing lawn maintenance services.

D. Sale of landscape items: Receipts from selling landscape items such as plants, shrubs, trees, rocks, seed, sod and ornaments to a person engaged in the business of designing landscapes and selling and installing landscape items are receipts from selling tangible personal property for resale since it is the trade practice of persons engaged in the landscape business to bill landscape items separately from the design and installation services involved.

E. Morticians: Receipts from selling boxes and vaults, shipping pouches, burial clothing, monuments, grave markers, tombstones, flowers, memorial books, acknowledgement cards and caskets to morticians for use in their business are receipts

from selling tangible personal property for resale since it is the custom of the undertaking industry to bill these items separately from the services rendered.

F. Watch repair: The receipts from selling watch repair parts and materials to watchmakers for use in the repair of watches are not receipts from selling tangible personal property for resale because it is not the custom of watchmakers to bill these parts and materials separately from watch repair services.

G. Photographic processors: If a person engaged in the business of processing photographic materials bills the charge for a finished photographic print separately from the charge for the services and the cost of the finished photographic print bears a reasonable relation to the cost of production of the finished photographic print, the receipts from the sale of the finished photographic print may be deducted from gross receipts if the sale of the print is made to a buyer who delivers a nontaxable transaction certificate under Section 7-9-47 NMSA 1978, because it is the custom of the photographic processing industry to bill labor separately from tangibles.

H. Sale of paint to body shops: Receipts from selling paint, primer, filler and other tangible personal property that is applied to and becomes part of a repaired vehicle, when such sales are made to a body shop, may be deducted from the gross receipts of the seller if the body shop issues a Type 2 nontaxable transaction certificate (nttc), it being the custom of this industry to state separately those items in billings. If the seller delivering the nttc does not separately state the tangible personal property in its billings, compensating tax is due. A body shop may not issue a Type 2 nttc for items such as emery cloth, grinding wheels, buffers and sand for blasting which are consumed by the body shop in the performance of its services.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 9/7/78, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 10/31/97, 4/30/99; 3.2.205.10 NMAC - Rn, 3 NMAC 2.47.10 & A, 5/31/01]

3.2.205.11 SALE OF TANGIBLE PERSONAL PROPERTY TO A FEDERAL CONTRACTOR OR SUBCONTRACTOR:

A. Receipts from selling tangible personal property to a federal contractor or subcontractor may be deducted from the seller's gross receipts if the federal contractor or subcontractor issues a Type 15 nontaxable transaction certificate (nttc) to the seller. The federal contractor or subcontractor is authorized to issue a Type 15 nttc only if the federal contract number is entered on the appropriate line of the Type 15 nttc and all of the criteria contained in the agreement between New Mexico and the U.S. Government are met and if the contracting agency is one of the United States agencies signatory to the agreement.

B. If the federal contractor or subcontractor issuing the Type 15 nttc does not meet the criteria outlined in the agreement, it shall be liable for compensating tax on the value

of the tangible personal property. A federal contractor or subcontractor may not issue a Type 15 nttc for the purchase of services.

[1/14/86, 4/2/86, 11/26/90, 11/15/96; 3.2.205.11 NMAC - Rn, 3 NMAC 2.47.11 & A, 5/31/01]

3.2.205.12 CONSIGNMENT SALES:

Receipts of a consignor from the sale of tangible personal property handled on consignment, when the sale is made by the consignee, may be deducted from gross receipts if the consignee delivers either a nontaxable transaction certificate to the consignor pursuant to Section 7-9-47 NMSA 1978 or other proof acceptable to the department that the consignor's tangible personal property was sold by consignment.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.205.12 NMAC - Rn, 3 NMAC 2.47.12 & A, 10/31/2000]

3.2.205.13 PACKAGING AND RELATED MATERIALS:

A. Containers, wrapping paper and other packaging products.

(1) Nonreturnable containers. Sales of nonreturnable containers to persons who use them to package tangible personal property so that the containers become part of the products ultimately sold are sales for resale. The buyer of this type of container may give a nontaxable transaction certificate (nttc) for the containers purchased. Thus a person who sells nonreturnable containers to one who has delivered an nttc and uses the containers in packaging food which is then sold may deduct the receipts from the sales to the person who delivered the nttc under Section 7-9-47 NMSA 1978.

(2) Returnable containers. Sales of returnable containers to persons who use the containers for the delivery of their goods are not sales for resale. The purchase of the returnable containers by the person who packages the goods for sale is a purchase for use. Therefore, the seller of the containers must pay the gross receipts tax on the receipts from the sale. Normally included in the category of returnable containers are glass milk bottles, some gasoline and oil cans, water bottles and milk and soft drink cases.

(3) Wrapping materials. The sale of bags, wrapping paper, twine and similar articles to persons who use the materials to package merchandise which has been sold is a sale for resale. The receipts from these sales may be deducted by a seller who has received an nttc from the buyer. The buyer of the bags, wrapping paper and twine may give an nttc for their purchase.

(4) Paper towels, sales slips. Sales of paper towels, toilet tissue, and like items, when sold to a person engaged in the business of performing a service are not sales for resale. The seller must pay the gross receipts tax on these sales. The sale of

sales slips is subject to tax unless the buyer resells the sales slips in the ordinary course of business.

(5) Crowns, bottles, crates, cartons.

(a) Crowns. The sale of caps or crowns to persons who use them in bottling soft drinks are treated as sales for resale. The sale of caps or crowns as a part of the bottled beverage to a person selling the beverage for ultimate consumption also is a sale for resale.

(b) Bottles. The sale of nonreturnable bottles, cans or other types of containers to a bottler or canner for use in packaging soft drinks is a sale for resale. The sale of the bottle or can as a part of the drink to a person selling the beverage for ultimate consumption also is a sale for resale.

(c) Crates. The sale of crates, made of any material, to a soft drink bottler is not a sale for resale. The seller of the crate must pay the gross receipts tax if the sale is made in New Mexico. If the sale is not made in this state then the compensating tax must be paid by the buyer.

(d) Cartons or cases. The sale of paper, cardboard or plastic cartons and can and bottle holders to a soft drink bottler or canner is a sale for resale. The sale of the carton to a person engaged in selling soft drinks to consumers also is a sale for resale.

(6) Labels, product name tags, price tags. Receipts from selling labels, product name tags or price tags to a person who delivers a Type 2 nttc to the seller may be deducted from gross receipts. The buyer delivering the nttc must resell the labels, product name plates or price tags either by themselves or in combination with other tangible personal property in the ordinary course of business, or the buyer is subject to the compensating tax on their value. These items are resold in combination with tangible personal property if they are affixed to and sold along with the other property.

(7) *Example:* Z, a book and stationery store, is engaged in the business of selling office supplies. Among the items Z carries for sale to other merchants are sales slips which Z purchases from X. The sales slips which Z sells to its customers who use the sales slips in the regular course of their businesses are not sales for resale. Z must pay the gross receipts tax on its receipts from selling sales slips to other stores. X Company will be allowed to treat the sale of sales slips to Z as sales for resale if it has received an nttc from Z. Z also uses some of the sales slips which it purchases to record transactions between itself and its customers and to bill the customers. As to these purchases, Z may abide by the following procedure: Z may give X an nttc for the total purchases and then pay compensating tax on those sales slips which it uses because Z is in the business of purchasing sales slips for resale and its own use of the slips is minor in comparison to the total number of slips purchased.

B. Sales to a burlap bag processor.

(1) Receipts derived from the sale of used burlap bags to a person engaged in the business of processing burlap bags for sale in the ordinary course of business may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate (nttc) to the seller pursuant to Section 7-9-47 NMSA 1978.

(2) If the buyer delivering the nttc does not resell the used burlap bags in the ordinary course of business, the compensating tax is due.

C. Sale of bagging and ties. Receipts from the sale of bagging and ties to a person who operates a cotton gin for use in baling cotton are not receipts from selling tangible personal property for resale since the bagging and ties are used by the person in the course of his service of baling cotton.

D. Steel strapping.

(1) Receipts from selling strapping used to contain individual ingots of copper in packages may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate (nttc) to the seller. The buyer delivering an nttc must resell the steel strapping either by itself or in combination with other tangible personal property in the ordinary course of business.

(2) If the buyer delivering the nttc does not resell the steel strapping in the ordinary course of business, the compensating tax is due.

E. Sale of baling wire to a farmer.

(1) Receipts from selling baling wire to a farmer who bales hay for sale to others may be deducted from the seller's gross receipts if the farmer issues a Type 2 nontaxable transaction certificate. The baling wire is resold by the farmer in combination with other tangible personal property. The deduction would not apply to sales made to farmers of baling wire for their own use.

(2) A seller may not deduct the receipts from selling baling wire to a "custom worker" who bales hay for farmers for a consideration, since the wire is used by the worker in the course of performing his services.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 4/30/99, 3.2.205.13 NMAC - Rn, 3 NMAC 2.47.13 & A, 10/31/2000]

3.2.205.14 MEDICINES AND MEDICAL SUPPLIES:

A. **Dental supplies:**

(1) The receipts from selling supplies, gold, silver and similar items of tangible personal property used in making dentures, cement used in fillings, amalgam, anesthetics, orthodontia platinum wire, facing, backing, x-ray film and the like to dentists

for use in their practices are not receipts from selling tangible personal property for resale since it is not the custom of the dental profession to bill material separately from the services involved.

(2) The receipts derived from selling the items mentioned in Paragraph (1) of Subsection A of Section 3.2.205.14 NMAC may not be deducted from gross receipts pursuant to Section 7-9-73 NMSA 1978 because the items sold are not prosthetic devices within the meaning of Section 7-9-73 NMSA 1978.

B. **Medical supplies:** Receipts from selling supplies, drugs, bandages, splints, syringes, tongue depressors, medicine used as injections and other similar items to practitioners of the healing arts for use in their practices are not receipts derived from selling tangible personal property for resale since it is not the custom of such practitioners to bill material separately from the services involved.

C. **Sale of radioisotopes:**

(1) Receipts from selling radioisotopes to a professional association of medical radiologists which furnishes a nontaxable transaction certificate (nttc) are receipts derived from selling tangible personal property for resale since it is the custom of radiologists to bill these materials separately from the services involved.

(2) If the radiologists delivering the nttc do not resell the radioisotopes in the ordinary course of business, the compensating tax is due.

D. **Issuance of nontaxable transaction certificates by oncologists:** Receipts from selling drugs used in the treatment of cancer by an oncologist who separately states these items in billings may be deducted by the seller if the oncologist delivers to the seller a Type 2 nontaxable transaction certificate (nttc). If the oncologist delivering the nttc does not sell the items in the ordinary course of business or does not separately state the charges for the sale price of the items on the billings, the compensating tax is due. Receipts from the sale of other tangibles, such as supplies, bandages, syringes, etc., are not deductible.

E. **Sale of medicine to veterinarians:**

(1) Receipts from selling drugs, medicine, braces, dressings and other substances and preparations used in treating animals to a veterinarian who is engaged in the business of selling such items and who does not administer the items are receipts derived from selling tangible personal property for resale and may be deducted by the seller if the veterinarian delivers a Type 2 nontaxable transaction certificate (nttc). If the veterinarian delivering the nttc does not resell the above items in the ordinary course of business, the compensating tax is due.

(2) Receipts from selling drugs, medicine, braces, dressings and other substances and preparations used in treating animals to a veterinarian who administers

the items and who separately states these items in the billings may be deducted by the seller if the veterinarian delivers to the seller a Type 2 nttc because it is the custom of the trade to separately state these items in billings. If the veterinarian delivering the nttc does not resell the items in the ordinary course of business or does not separately state the charges for the sale price of the items on the billings, the compensating tax is due.

F. **Vitamins and drugs sold to sale barn:** Receipts from selling vitamins and drugs to a person engaged in the business of conducting a sale barn who administers vitamins and drugs to livestock consigned to the barn and who bills the consignor of the livestock for this property without charge for the service of administering the property are receipts from selling tangible personal property for resale.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/17/83, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.205.14 NMAC - Rn, 3 NMAC 2.47.14 & A, 5/31/01]

3.2.205.15 FOOD AND RELATED SUPPLIES:

A. **Sale of food:** Receipts from the sale of food to a person engaged in the business of operating a nursing home, day care facility, kindergarten or a facility for retired elderly persons may be deducted from gross receipts if the person delivers a nontaxable transaction certificate to the seller. The person engaged in the business of operating a nursing home, day care facility, kindergarten or a facility for retired elderly persons must resell the food either by itself or in combination with other tangible personal property in the ordinary course of business or be subject to the compensating tax for the value of the food.

B. **Sale of food to certain nonprofit organizations:** Receipts from selling food and beverages to a nonprofit organization which furnishes meals to persons who pay a boarding fee may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate to the seller pursuant to Section 7-9-47 NMSA 1978.

C. **Sale of animal food:**

(1) Receipts from selling animal food, animal accessories and similar items of tangible personal property to a veterinarian who is engaged in the business of selling such items may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate (nttc) to the seller pursuant to Section 7-9-47 NMSA 1978.

(2) If the veterinarian delivering the nttc does not resell the items mentioned in Paragraph (1) of Subsection C of Section 3.2.205.15 NMAC in the ordinary course of business, the compensating tax is due.

D. **Restaurants - nonreuseable items - supplies:** Receipts from the sale of straws, toothpicks, coffee stirrers, coffee coasters, steak markers, paper doilies, paper mats, paper napkins, menus which normally are retained by the customer, nonreturnable food containers, including disposable plastic or paper cups, plates,

spoons, forks and knives as well as receipts from the sale of materials used to wrap food, such as aluminum foil, plastic wrap and wax paper may be deducted from gross receipts if the sale is made to a person, e.g., a restaurant, who delivers a nontaxable transaction certificate (nttc) to the seller. The buyer delivering the nttc must resell the item purchased either by itself or in combination with other tangible personal property in the ordinary course of business or become liable for compensating tax on the value of the item purchased. Receipts from selling garbage can liners, paper hats, aprons and uniforms used by restaurant personnel, guest checks, candles, fuel for candle burners, sterno, janitorial supplies, toilet tissue and paper towels may not be deducted from gross receipts. Such items are not resold by the buyer.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.205.15 NMAC - Rn, 3 NMAC 2.47.15 & A, 5/31/01]

3.2.205.16 VENDING MACHINES:

A. Receipts from selling tangible personal property to the owner or lessee of vending machines, which property will be sold through the vending machines, may be deducted from gross receipts if the owner or lessee delivers a nontaxable transaction certificate (nttc) to the seller pursuant to Section 7-9-47 NMSA 1978.

B. If the owner or lessee delivering the nttc does not resell the tangible personal property in the ordinary course of business, the compensating tax is due.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.205.16 NMAC - Rn & A, 3 NMAC 2.47.16, 5/31/01]

3.2.205.17 SALE TO AN ELECTRIC COOPERATIVE ASSOCIATION:

A. Receipts from selling tangible personal property to an electric cooperative association which later sells the property to a person engaged in the construction business for incorporation into the construction project are receipts from selling tangible personal property for resale and may be deducted from gross receipts if the electric cooperative association delivers a nontaxable transaction certificate (nttc) to the seller pursuant to Section 7-9-47 NMSA 1978.

B. If the electric co-operative association delivering the nttc does not resell the tangible personal property in the ordinary course of business, the compensating tax is due.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.205.17 NMAC - Rn, 3 NMAC 2.47.17 & A, 5/31/01]

3.2.205.18 PARTS AND SUPPLIES SOLD UNDER SERVICE CONTRACTS:

A. **Receipts from sale of parts to fulfill promisor's obligation under automotive service contract not deductible:** The receipts of a repair facility from the promisor under an automotive service contract, as that term is defined in Subsection C of Section 3.2.1.16 NMAC, for furnishing parts to fulfill the promisor's obligation under the contract are taxable gross receipts of the repair facility. The receipts are not deductible by the repair facility even though the promisor may have furnished the repair facility with a Type 2 (property for resale) nontaxable transaction certificate since the parts were sold by the repair facility to the purchaser of the automotive service contract for a consideration to be received from the promisor who makes the payment to the repair facility to discharge the promisor's obligation to the purchaser to pay for the parts

B. **Supplies billed by automotive dealer on repair orders subject to compensating tax:** New Mexico automotive dealers who issue Type 2 (resale of tangibles) nontaxable transaction certificates to suppliers of shop supplies purchased for use in the dealers' service departments and body shops are liable for compensating tax on those supplies. Dealers are using and are not reselling (i.e., transferring) the shop supplies as required by Section 7-9-47 NMSA 1978 and are, therefore, liable for the compensating tax imposed by Paragraph (3) of Subsection A of Section 7-9-7 NMSA 1978. Separately stating a charge on the customer's billing for shop supplies used by a dealer does not constitute the resale of such supplies.

[6/28/89, 11/26/90, 11/15/96; 3.2.205.18 NMAC - Rn, 3 NMAC 2.47.18 & A, 5/31/01]

3.2.205.19 COMPUTER SOFTWARE:

A. **Packaged software - sale of tangible personal property versus sale of a license:**

(1) When a person sells packaged software with restrictions such that the buyer may not transfer the software to another or may not permit another to use the software, the seller has receipts from the sale of a license.

(2) When a person sells packaged software without restrictions on the buyer's ability to transfer the property to another or to permit another to use the software, the seller has receipts from the sale of tangible personal property even if there may be restrictions on the number of simultaneous users or on the number of computers on which the software may be simultaneously installed.

B. **Packaged software - sale for resale:**

(1) Receipts from the sale of packaged software for resale may be deducted from gross receipts if the seller receives in good faith a Type 2 nontaxable transaction certificate (nttc) from the buyer.

(a) Example 1: X, a software manufacturer, sells its packaged software directly and through distributors. If X receives in good faith a Type 2 nttc from a

distributor, X may deduct receipts from the sale of its software for resale to the distributor.

(b) Example 2: Y, a software manufacturer, has developed an application. Y reached an agreement with M, a manufacturer of a desktop computer, in which M would sell its desktop computer with a copy of Y's software already installed. Copies of diskettes and instruction manuals for Y's software would also be delivered to the buyer. The manufacturer buys the packaged software from Y at a discount. If Y receives in good faith a Type 2 nttc from M, Y may deduct receipts from the sale for resale of its packaged software to the manufacturer. In this case, it does not matter whether the ultimate buyer of the computer with the installed software is restricted from selling the software or authorizing others to use it.

(2) Receipts from the sale of packaged software in combination with a computer for a single price are receipts from the sale of tangible personal property whether or not the packaged software is installed on the computer. Example: Z is in the business of selling computers and software at the distributor level. Z prepares special packages for sale at a single price in which selected models of computer are sold with certain software already installed. Z may accept properly executed Type 2 nontaxable transaction certificates (nttcs) from retailers who intend to resell the package either by itself or in combination with other devices or software. Z may execute Type 2 nttcs to acquire the computers, related hardware and packaged software.

C. **Packaged software - sale for use:**

(1) Except as provided in Paragraph (2) of Subsection C of Section 3.2.205.19 NMAC, receipts from the sale of packaged software which is intended to be used by the purchaser for a purpose other than resale are not deductible under Section 7-9-47 NMSA 1978, even if the purchaser is regularly engaged in the business of developing, manufacturing or selling software.

(a) Example 1: V, a vendor of software, sells to Z, a software development company, a package of CASE tools (programming designed to assist the development of other programs) which Z intends to use in creating new products. Although a sale of tangible personal property has occurred, the software is not intended to be resold. The receipts from this sale are not deductible. Z may not execute a Type 2 nontaxable transaction certificate (nttc) with respect to this transaction. If Z does execute a Type 2 nttc and V can and does accept it in good faith, Z will owe compensating tax on the value of the CASE tools acquired.

(b) Example 2: S, a seller of computer hardware and software, buys packaged software to do S's own bookkeeping. After using the packaged software for a period of time, S sells it. If S executed a Type 2 nttc to acquire the packaged software, S owes compensating tax for using the software in New Mexico. S also owes gross receipts tax on S's receipts from the sale of the packaged software.

(2) If the buyer is a qualified contractor of the federal government and uses packaged software to fulfill an appropriate research and development contract with a signatory federal agency, the buyer may execute, and the seller may accept in good faith, a Type 15 nttc with respect to the packaged software. Example: X, a research and development company, enters into a qualifying research and development contract with a signatory agency of the United States. The contract is to develop a program to test certain devices which the United States is considering purchasing. To create the testing program X buys several pieces of packaged software and develops new programming to interconnect the packaged software into a coherent testing program. X may execute, and the vendors may accept in good faith, Type 15 nttcs for the purchase of the packaged software.

(3) Receipts from the sale of packaged software which is designed to enable the purchaser to provide a service to its own customers are not deductible under Section 7-9-47 NMSA 1978. Example: An accountant opens a tax preparation service. The accountant purchases packaged software applications to assist in the preparation of various federal and state tax forms. Receipts from the sale of the software to the accountant are not deductible. The accountant may not execute nttcs to acquire the software in a nontaxable transaction. If the accountant does execute an nttc with respect to this transaction and the vendor can and does accept it in good faith, the accountant owes compensating tax on the value of the packaged software acquired.

[4/30/97; 3.2.205.19 NMAC - Rn, 3 NMAC 2.47.19 & A, 5/31/01]

3.2.205.20 USE OF TANGIBLE PERSONAL PROPERTY BY HOTELS, MOTELS AND SIMILAR FACILITIES:

A. Hotels, motels, inns, rooming houses and similar facilities are engaged in the business of granting a license to use real and tangible personal property. Tangible personal property provided to a guest in conjunction with the license and intended to be consumed by the guest, such as soap, paper products and single serving packets of coffee, is resold in the ordinary course of business.

B. *Example 1*: M, a motel, buys from Z bathroom tissue and single-serving coffee packets to use in M's motel business. M maintains that it is entitled to execute a Type 2 nontaxable transaction certificate (nttc) in purchasing the tangible personal property. M contends that, because the cost of the tangibles is included in the charge M sets for rooms, M is reselling the products in combination with the license to use the room. M is correct and may execute a Type 2 nttc to purchase these goods.

C. *Example 2*: H, a hotel, offers its guests at no additional charge a continental breakfast with the rental of rooms. H may execute a Type 2 nttc to purchase the food provided at these breakfasts and related non-food tangible personal property, such as paper napkins, provided in conjunction with the food.

D. Tangible personal property, such as sales slips, computer paper or forms, cleaning materials, vacuum cleaners and computers, to be used or consumed by the hotel, motel, inn or similar facility or its staff is not resold in the ordinary course of business. Tangible personal property provided by a hotel, motel, inn or similar facility for the use of guests, such as furniture, tableware, bedding and towels, but intended to be retained by the facility are not resold in the ordinary course of business. Tangible personal property not resold by itself or in conjunction with other tangible personal property or licenses is not deductible under Section 7-9-47 NMSA 1978. A Type 2 nttc may not be executed with respect to such tangible personal property.

E. This version of Section 3.2.205.20 NMAC is retroactively applicable to receipts from transactions on or after 11/1/97.

[10/31/97; 3.2.205.20 NMAC - Rn, 3 NMAC 2.47.20 & A, 10/31/2000]

3.2.205.21 UTILITY SALES BY LANDLORD:

When the lessor of real property conveys water, natural gas or electricity to a lessee as a condition of the lease of the real property, the lessor is using the water, natural gas or electricity to fulfill the conditions of the lease whether or not a separate charge is made to the lessee. The lessor is not reselling the water, natural gas or electricity in the ordinary course of business and may not execute a nontaxable transaction certificate under Section 7-9-47 NMSA 1978 for the purchase of the water, natural gas or electricity. See Subsection E of Section 3.2.211.8 NMAC.

[7/30/99; 3.2.205.21 NMAC - Rn, 3 NMAC 2.47.21 & A, 5/31/01]

PART 206: DEDUCTION - GROSS RECEIPTS TAX - SALE OF A SERVICE FOR RESALE

3.2.206.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96, 3.2.206.1 NMAC - Rn, 3 NMAC 2.48.1, 5/31/01]

3.2.206.2 SCOPE:

This part applies to all persons engaging in business in New Mexico.

[11/15/96, 3.2.206.2 NMAC - Rn, 3 NMAC 2.48.2, 5/31/01]

3.2.206.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96, 3.2.206.3 NMAC - Rn, 3 NMAC 2.48.3, 5/31/01]

3.2.206.4 DURATION:

Permanent.

[11/15/96, 3.2.206.4 NMAC - Rn, 3 NMAC 2.48.4, 5/31/01]

3.2.206.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96, 3.2.206.5 NMAC - Rn, 3 NMAC 2.48.5 & A, 5/31/01]

3.2.206.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96, 3.2.206.6 NMAC - Rn, 3 NMAC 2.48.6, 5/31/01]

3.2.206.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.206.7 NMAC - Rn, 3 NMAC 2.48.7, 5/31/01]

3.2.206.8 RECEIPTS FROM THE NEXT SALE MUST BE TAXABLE:

A. Receipts from selling a service for resale may be deducted by the seller under Section 7-9-48 NMSA 1978 if the buyer has delivered an appropriate nontaxable transaction certificate (nttc) to the seller. If the buyer giving the nttc does not resell the service in a transaction that is taxable, then that person is subject to the compensating tax on the value of the services at the time they were rendered.

B. Example 1: X brings a truck into Y for repair. The trailer hitch has broken off the truck. Since Y does not have a welder, Y takes the truck to Z, who welds the trailer hitch back on to the truck. Y has executed an nttc which it has previously given to Z. Y bills as follows:

Bumper welding (performed by Z)	$ 10.00
Service Charge	2.00
	$ 12.00
Tax (at .05)	.60
TOTAL	$ 12.60

Under these circumstances Z may deduct the $10.00 gross receipts that it derived from selling a welding service for resale because it received an nttc.

C. Example 2: Y takes its service truck to Z to have Z weld a crane strut. Since Y has issued an nttc to Z, Z deducts its receipts from the performance of this service from its gross receipts. Y must pay compensating tax on the welding service performed by Z.

D. Example 3: M, a seller of concrete beams, hires a carrier to transport the beams to a buyer, C, who is engaged in the construction business. C delivers an nttc to M pursuant to the deduction allowable for the sale of tangible personal property to persons engaged in the construction business. As the sale by M to C is not subject to the gross receipts tax, if M delivers an nttc to the carrier, M will be subject to the compensating tax on the value of the transportation service. It is immaterial that the seller separately states the value of the transportation service in the billing to C, the purchaser of the beam.

E. Example 4: E, a seller of paper, hired a common carrier to transport several reams of paper to the buyer, the United States government. As E is not subject to the gross receipts tax on this transaction, if E delivers an nttc to the carrier E will be subject to the compensating tax on the value of the transportation services. It is immaterial that the seller separately states the value of the transportation services in the billing to the United States government.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.206.8 NMAC - Rn, 3 NMAC 2.48.8 & A, 5/31/01]

3.2.206.9 SEPARATELY STATING BY ATTACHMENT TO PRINCIPAL BILLING:

For transactions occurring before July 1, 2000, the requirement of separately stating the value of the service resold is satisfied if an attachment to the principal billing is made showing the amount charged for the service resold.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.9 NMAC - Rn, 3 NMAC 2.48.9 & A, 10/31/2000]

3.2.206.10 INSTALLATION SERVICE:

A. Receipts from selling an installation service for resale may be deducted from gross receipts if the buyer of the service delivers a nontaxable transaction certificate (nttc) to the seller. The sale of the installation service by the buyer must be in the ordinary course of business and be subject to the gross receipts tax or the buyer will be subject to the compensating tax.

B. *Example*: W manufactures computers; however, because of the small size of the company W does not employ the proper personnel for installing the computers. Upon making a sale to S, W hired G to install the computers. The receipts G derived from

installing the computers for W may be deducted from gross receipts pursuant to Section 7-9-48 NMAC 1978 if W delivers an nttc to G. The sale of the installation service by W must be in the ordinary course of business and subject to the gross receipts tax or W will be subject to the compensating tax. Note: If the installation service performed in a particular situation is determined by the department to be incidental to the sale of a tangible, then, even if the value of the installation service is separately stated from the value of the tangible personal property sold on the final billing to the buyer of the tangible personal property, all the receipts of the seller will be treated as receipts from the sale of tangible personal property.

C. This version of 3.2.206.10 NMAC applies to transactions occurring on or after July 1, 2000.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.10 NMAC - Rn, 3 NMAC 2.48.10 & A, 10/31/2000]

3.2.206.11 CERTAIN SERVICES WHICH ARE USED AND NOT RESOLD:

Services performed in New Mexico which are deductible by the buyer under the provisions of the Internal Revenue Code as ordinary and necessary business expenses and services which are to be capitalized under the provisions of the Internal Revenue Code are "used" for purposes of Subsection B of Section 7-9-7 NMSA 1978 and are not purchased for resale pursuant to the provisions of Section 7-9-48 NMSA 1978. If the buyer has issued a nontaxable transaction certificate for the purchase of services which were in fact resold and subsequently obtains other services which are used by the buyer, the buyer is liable pursuant to Subsection B of Section 7-9-7 NMSA 1978 for compensating tax on the value of the services.

[3/11/88, 11/26/90, 11/15/96; 3.2.206.11 NMAC - Rn, 3 NMAC 2.48.11 & A, 5/31/01]

3.2.206.12 NONCONSTRUCTION SERVICES SOLD TO CONSTRUCTION CONTRACTORS:

A. Prior to January 1, 2013, any person engaged solely in the business of construction is not engaged in reselling services other than construction services in the ordinary course of business and may not execute a nontaxable transaction certificate (nttc) to purchase services for resale in connection with the construction business under the provisions of Section 7-9-48 NMSA 1978.

B. On or after January 1, 2013, any person engaged in the construction business who purchases construction-related services as defined in Section 7-9-52 NMSA 1978 and is engaged in reselling those construction-related services may execute an nttc to support the deduction under Section 7-9-52 NMSA 1978.

[3/11/88, 11/26/90, 11/15/96; 3.2.206.12 NMAC - Rn, 3 NMAC 2.48.12 & A; 5/31/01; A, 11/30/05; A, 12/14/12]

3.2.206.13 ADVERTISING AND BROADCAST SERVICES:

A. **Advertising service: radio and television stations.** The receipts of a radio or television broadcasting station from the sale of advertising services to an advertising agency for resale may be deducted from gross receipts if the advertising agency delivers a nontaxable transaction certificate (nttc) to the broadcasting station. The subsequent sale must be in the ordinary course of business and subject to the gross receipts tax or the advertising agency will be subject to the compensating tax on the value of the advertising service at the time it was rendered.

(1) If a radio or television broadcasting station sells advertising services to an advertising agency for resale but refuses to accept delivery of an nttc offered it by the advertising agency, the gross receipts tax consequences are:

(a) the net receipts of the broadcasting station from the transaction are subject to the gross receipts tax; and

(b) the receipts of the advertising agency, which are the full amount paid to the advertising agency by its customer (the advertiser), are subject to the gross receipts tax.

(2) This version of Subsection A of Section 3.2.206.13 NMAC applies to transactions occurring on or after July 1, 2000.

B. **Advertising service: trading stamps.** The sale of trading stamps constitutes the sale of an advertising or promotional service. Receipts from selling an advertising or promotional service for resale may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate (nttc) to the seller. The subsequent sale must be in the ordinary course of business and be subject to the gross receipts tax. This version of Subsection B of Section 3.2.206.13 NMAC applies to transactions occurring on or after July 1, 2000.

C. **Sales of broadcast time for resale.**

(1) A New Mexico radio or television broadcaster may deduct from its gross receipts the receipts derived from the sale of broadcast time to an advertising agency for resale so long as the broadcaster possesses a valid nontaxable transaction certificate (nttc) issued by the advertising agency and the contract under which the sale is made specifically states that the agency is not buying as an agent for its customer and that the agency, and not its customer, is liable for payment to the broadcaster for the purchase of broadcast time. The advertising agency must comply with the requirements of Section 7-9-48 NMSA 1978 by reselling the broadcast time in the normal course of business and by paying gross receipts tax upon the subsequent sale. If the agency fails to comply with these requirements, the agency will be liable for compensating tax on the broadcast time. This version of Paragraph (1) of Subsection C of Section 3.2.206.13 NMAC applies to transactions occurring on or after July 1, 2000.

(2) This deduction is in addition to the deduction available under Section 7-9-55 NMSA 1978. Thus, if the subsequent sale of broadcast time by the agency is made to a national or regional seller or advertiser, receipts from the sale are deductible by both the agency and broadcaster under Section 7-9-55 NMSA 1978, no nttc shall be required and no compensating tax will be owed by the agency.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 3/3/86, 4/2/86, 11/26/90, 11/15/96, 3.2.206.13 NMAC - Rn, 3 NMAC 2.48.13 & A, 10/31/2000]

3.2.206.14 TRANSPORTATION SERVICES:

A. **Transporting property.** Receipts of a carrier from transporting property for the seller of the property who prepays the transportation charges may be deducted from the carrier's gross receipts if the seller executes with the carrier a nontaxable transaction certificate. The sale of the transportation service and property must be in the ordinary course of the seller's business and subject to the gross receipts tax on its subsequent sale. Otherwise, the seller will be liable for compensating tax on such transaction. This version of Subsection A of Section 3.2.206.14 NMAC applies to transactions occurring on or after July 1, 2000.

B. **Transporting property.**

(1) If a seller of tangible personal property employs a contract or common carrier to transport that property and delivers a nontaxable transaction certificate (nttc) to the carrier, and if the receipts from the sale of the property are not subject to the gross receipts tax, the seller will be subject to the compensating tax on the value of the transportation service purchased.

(2) Example: X sells tangible personal property to Y, a governmental entity, and hires a carrier to transport the tangible personal property to Y. X will be subject to compensating tax on the value of the transportation service if X delivers an nttc to the carrier. It is immaterial that X separately states the value of the transportation service in the billing to Y.

C. **Hauling prefabricated buildings.**

(1) The hauler of prefabricated buildings may take a deduction from gross receipts pursuant to Section 7-9-48 NMSA 1978 if:

(a) the prefabricated builder resells the hauling service to customers who contract to purchase the building which has been moved to a permanent site; and

(b) the prefabricated builder executes with the hauler a nontaxable transaction certificate (nttc); and

(c) the subsequent sale is in the ordinary course of the prefabricated builder's business and subject to the gross receipts tax.

(2) This version of Subsection C of Section 3.2.206.14 NMAC applies to transactions occurring on or after July 1, 2000.

D. **Transportation services.**

(1) A person who subcontracts to haul property for a person who holds a certificate of public convenience and necessity issued by the public regulation commission of the state of New Mexico may accept a nontaxable transaction certificate (nttc) for the services. Receipts from hauling such property may be deducted from gross receipts provided the person provides both the transporting equipment and the operator.

(2) If the issuer of the nttc fails to meet the criteria of Section 7-9-48 NMSA 1978, the issuer will become liable for compensating tax on the value of the services at the time they were rendered.

(3) If the subcontractor provides only the transporting equipment, the subcontractor is engaged in the business of leasing property and the receipts are subject to the gross receipts tax. The issuance or receipt of an nttc in this situation would be improper.

[6/18/79, 11/5/81, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.14 NMAC - Rn, 3 NMAC 2.48.14 & A, 10/31/2000; A, 5/31/01]

3.2.206.15 MEDICAL SERVICES:

A. **Medical laboratory services.** Receipts from the sale of medical laboratory services, such as blood test analysis, urine analysis and similar test analysis, to a practitioner of the healing arts may be deducted from gross receipts if the practitioner delivers to the seller a nontaxable transaction certificate and the subsequent sale is in the ordinary course of the practitioner's business and is subject to the gross receipts tax. This version of Subsection A of Section 3.2.206.15 NMAC applies to transactions occurring on or after July 1, 2000.

B. **Anesthetists' services.** The receipts of an anesthetist from performance of service for a surgeon may be deducted from gross receipts if the surgeon resells the service to a patient and delivers a nontaxable transaction certificate (nttc) to the anesthetist. The surgeon delivering the nttc must separately state the value of the service purchased in the charge for the service on its subsequent sale, and the subsequent sale must be in the ordinary course of business and subject to the gross receipts tax. If these conditions are not satisfied, the surgeon will be subject to the compensating tax on the value of the service purchased.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.15 NMAC - Rn, 3 NMAC 2.48.15 & A, 10/31/2000]

3.2.206.16 LINEN SERVICE FOR RESTAURANTS:

The receipts from charges to a restaurant for laundering tablecloths, napkins, uniforms, towels and similar items may not be deducted from gross receipts because these are not services performed for resale.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.16 NMAC - Rn, 3 NMAC 2.48.16, 5/31/01]

3.2.206.17 EQUIPMENT REPAIR SERVICES:

Receipts from the sale of a repair service to a person engaged in the business of repairing equipment may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate (nttc) to the seller. The subsequent sale must be in the ordinary course of business and subject to the gross receipts tax or the buyer will be subject to the compensating tax on the value of the service. This version of 3.2.206.17 NMAC applies to transactions occurring on or after July 1, 2000.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.17 NMAC - Rn, 3 NMAC 2.48.17 & A, 10/31/2000]

3.2.206.18 PHOTO PROCESSING SERVICE:

The receipts of a person engaged in the business of processing photographic material, such as exposed film, are receipts from performing a service and may be deducted from gross receipts if the sale of the service is made to a buyer who delivers a nontaxable transaction certificate (nttc). The subsequent sale must be in the ordinary course of business and be subject to the gross receipts tax or the buyer will be liable for the compensating tax on the value of the service. This version of 3.2.206.18 NMAC applies to transactions occurring on or after July 1, 2000.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.18 NMAC - Rn, 3 NMAC 2.48.18 & A, 10/31/2000]

3.2.206.19 MORTICIANS:

Receipts from selling services such as grave digging and organ playing to morticians for use in their business are receipts from selling a service for resale and may be deducted from gross receipts if the mortician buying the service delivers a nontaxable transaction certificate (nttc) to the seller. The subsequent sale must be in the ordinary course of the mortician's business and subject to the gross receipts tax or the mortician will be liable for the compensating tax on the value of the service. This version of 3.2.206.19 NMAC applies to transactions occurring on or after July 1, 2000.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.19 NMAC - Rn, 3 NMAC 2.48.19 & A, 10/31/2000]

3.2.206.20 TELECOMMUNICATIONS SERVICES:

A. **Cable television hook-up.** Receipts from selling the service of hook-ups to cable television for resale may be deducted from gross receipts if the sale is made to a buyer who delivers a nontaxable transaction certificate (nttc) to the seller. The subsequent sale must be in the ordinary course of business and the receipts subject to the gross receipts tax. This version of Subsection A of Section 3.2.206.20 NMAC applies to transactions occurring on or after July 1, 2000.

B. **Telephone services.**

(1) Receipts of a telephone company from the performance of telephone services for a hotel or motel, to the extent that they are attributable to calls made from the rooms of the hotel's or motel's guests, may be deducted from gross receipts if the hotel or motel delivers a nontaxable transaction certificate (nttc) to the telephone company. The charge must be subject to the gross receipts tax or the hotel or motel will be subject to the compensating tax on the value of the telephone services.

(2) In order to apportion the use of telephone service at a hotel or motel between local calls made from the rooms of the hotel's or motel's guests and other local calls made from the hotel or motel, the department will, on audit of the telephone company claiming the deduction described in the preceding paragraph, allow as a deduction that portion of the receipts of the telephone company which are calculated in the following manner with respect to the month's billing to the hotel or motel:

(a) the telephone company's receipts from charges, indicated on its billing to the hotel or motel, as local service and additional local call and message units, which represent local telephone service are calculated; and

(b) the total calculated in Subparagraph (a) of Paragraph (2) of Subsection B of Section 3.2.206.20 NMAC is multiplied by a fraction, the numerator of which is the number of message units, as the term is used by the telephone company, indicated on its billing to the hotel or motel which represent local telephone calls which were made from the hotel or motel and the denominator of which is the total of message units, as the term is used by the telephone company, indicated on the telephone company's billing to the hotel or motel.

(3) The method set forth in Paragraph (2) of Subsection B of Section 3.2.206.20 NMAC is acceptable to the department as an "apportionment of use". However, other methods which more accurately reflect the apportionment of use may be acceptable to the department.

(4) *Example*: X is engaged in the business of selling alarm systems in New Mexico. As a part of these systems, a telephone line is leased by X from Y, a telephone company. Y bills X for each line on a monthly basis. X bills each customer on a monthly basis for service plus a telephone line charge. Receipts of Y from the performance of the telephone service for X may be deducted from Y's gross receipts if X delivers a type 5 nttc to Y. Receipts of X from its customers must be subject to the gross receipts tax, or X will be liable for the compensating tax on the value of the telephone services at the time they were rendered.

(5) This version of Subsection B of Section 3.2.206.20 NMAC applies to transactions occurring on or after July 1, 2000.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.20 NMAC - Rn, 3 NMAC 2.48.20 & A, 10/31/2000]

3.2.206.21 GARBAGE COLLECTION:

Receipts from selling the service of garbage collection for resale may be deducted from gross receipts if the sale is made to a buyer who delivers a type 5 nontaxable transaction certificate (nttc) to the seller. The subsequent sale must be in the ordinary course of business and subject to the gross receipts tax or governmental gross receipts tax, or the buyer will be liable for the compensating tax on the value of the service at the time it was rendered. If the seller of the service of garbage collection is a political subdivision of the state of New Mexico, its receipts from the sale are exempted from the gross receipts tax but will be subject to the governmental gross receipts tax. This version of Section 3.2.206.21 NMAC applies to transactions occurring on or after July 1, 2000.

[3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.206.21 NMAC - Rn, 3 NMAC 2.48.21 & A, 10/31/2000]

3.2.206.22 RECEIPTS FROM SALE OF SERVICES TO FULFILL PROMISOR'S OBLIGATION UNDER AUTOMOTIVE SERVICE CONTRACT NOT DEDUCTIBLE:

The receipts of a repair facility from the promisor under an automotive service contract, as that term is defined in Subsection C of Section 3.2.1.16 NMAC, for furnishing services to fulfill the promisor's obligation under the contract are taxable gross receipts of the repair facility and are not deductible by the repair facility. Even though the promisor may have furnished the repair facility with a type 5 (service for resale) nontaxable transaction certificate, the receipts are not deductible because the services were sold by the repair facility to the purchaser of the automotive service contract for a consideration to be received from the promisor who makes the payment to the repair facility to discharge the promisor's obligation to the purchaser to pay for the services.

[6/28/89, 11/26/90, 11/15/96; 3.2.206.22 NMAC - Rn, 3 NMAC 2.48.22 & A, 5/31/01]

PART 207: DEDUCTION - GROSS RECEIPTS TAX - SALE OF TANGIBLE PERSONAL PROPERTY FOR LEASING

3.2.207.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.207.1 NMAC - Rn, 3 NMAC 2.49.1, 5/31/01]

3.2.207.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.207.2 NMAC - Rn, 3 NMAC 2.49.2, 5/31/01]

3.2.207.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.207.3 NMAC - Rn, 3 NMAC 2.49.3, 5/31/01]

3.2.207.4 DURATION:

Permanent.

[11/15/96; 3.2.207.4 NMAC - Rn, 3 NMAC 2.49.4, 5/31/01]

3.2.207.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.207.5 NMAC - Rn, 3 NMAC 2.49.5 & A, 5/31/01]

3.2.207.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.207.6 NMAC - Rn, 3 NMAC 2.49.6, 5/31/01]

3.2.207.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.207.7 NMAC - Rn, 3 NMAC 2.49.7, 5/31/01]

3.2.207.8 GENERAL QUALIFICATIONS - EXAMPLES:

A. To qualify to issue a nontaxable transaction certificate (nttc) under the provisions of Section 7-9-49 NMSA 1978, the business issuing the nttc must derive a substantial portion of its income from the sale or lease of the same type of property which is being purchased under the nttc. The property purchased under the nttc must subsequently be sold or leased in the ordinary course of business. If the seller accepts an nttc in good faith and if either of these requirements is not met the value of the tangible property purchased under such nttc will be subject to the compensating tax.

B. Example 1: X derives a substantial portion of its receipts from leasing or selling air compressors. When X buys air compressors from M, the manufacturer, X gives M an nttc. M's receipts from the sales are deductible.

C. Example 2: X, an office machine company, buys a typewriter from the manufacturer, M. X has given M an nttc. X leases the typewriter for six months after which X uses it in its office. M may deduct the receipts from the sale of the typewriter from its gross receipts. X must pay gross receipts tax on its receipts from leasing the typewriter. As a result of converting the typewriter to its own use, X must pay compensating tax on the market value of the typewriter at the time of its conversion to use under Section 7-9-7 NMSA 1978.

D. Example 3: A substantial portion of L's business is from leasing or selling lawnmowers. L has given an nttc to D, the dealer from whom L buys its lawnmowers. L buys five lawnmowers from D to lease to its customers. L sells one of the lawnmowers to Y and leases the others to X. D may deduct receipts from the sale of all five of the lawnmowers to L. L must pay the gross receipts tax on the receipts from leasing to X and the sale to Y.

E. Example 4: C, a flying service, sells new and used airplanes, rents airplanes, provides in-state charter service, and provides flying instruction. C purchases five airplanes from X, a New Mexico airplane manufacturer, for use in its charter service. "Chartering" is here defined as hiring a plane and a pilot to fly the customer, not freight. Receipts from in-state charter flights are not subject to gross receipts tax. A charter is not a lease. The receipts from leasing airplanes and flight instructions are subject to the gross receipts tax. X's receipts from the sale of planes to C are subject to the gross receipts tax. If C bought the planes under nttc it issued X, C would be liable for compensating tax on the value of the charter planes. Later, when C sells these planes, the receipts from the sales of the used planes also are taxable. Sale of used planes is in the normal course of C's business. If C converts a plane it purchased for leasing to charter flights, even if the conversion is for a single flight, compensating tax becomes due on the market value of the plane at the time of conversion.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90,

11/15/96; 3.2.207.8 NMAC - Rn, 3 NMAC 2.49.8 & A, 5/31/01; A, 11/30/05]

3.2.207.9 AUTOMOBILE LEASING:

The receipts from selling tires, engine repair parts, and similar items to a lessor who uses these items in the maintenance of vehicles held for lease or leased may be deducted from gross receipts if the lessor delivers a nontaxable transaction certificate to the seller. Unless the lessor meets the following conditions the lessor will be subject to compensating tax on the value of these items:

A. the parts are used by the lessor on vehicles held for lease, leased or held for sale and the receipts from leasing or selling vehicles are a substantial portion of the lessor's receipts; and

B. the maintenance of the vehicles is performed at no additional cost to the lessee of these vehicles under the lease agreement; and

C. the lessor does not use the vehicles or parts in any manner other than holding them for lease or sale or leasing or selling them either by themselves or in combination with other tangible personal property in the ordinary course of business.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.207.9 NMAC - Rn, 3 NMAC 2.49.9, 5/31/01]

3.2.207.10 SAFE HARBOR LEASE - PURCHASE OF AND/OR SALE OF PROPERTY BY SELLER/LESSEE:

A seller/lessee who enters into a qualified "safe harbor lease" transaction as defined in Section 168 of the Internal Revenue Code and who is in the business of selling or leasing the same type of property sold under the "safe harbor lease" may issue and receive the nontaxable transaction certificate authorized by Section 7-9-49 NMSA 1978.

[2/23/83, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.207.10 NMAC - Rn, 3 NMAC 2.49.10 & A, 5/31/01]

PART 208: DEDUCTION - GROSS RECEIPTS TAX - LEASE FOR SUBSEQUENT LEASE

3.2.208.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.208.1 NMAC - Rn, 3 NMAC 2.50.1, 5/31/01]

3.2.208.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.208.2 NMAC - Rn, 3 NMAC 2.50.2, 5/31/01]

3.2.208.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.208.3 NMAC - Rn, 3 NMAC 2.50.3, 5/31/01]

3.2.208.4 DURATION:

Permanent.

[11/15/96; 3.2.208.4 NMAC - Rn, 3 NMAC 2.50.4, 5/31/01]

3.2.208.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.208.5 NMAC - Rn, 3 NMAC 2.50.5 & A, 5/31/01]

3.2.208.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.208.6 NMAC - Rn, 3 NMAC 2.50.6, 5/31/01]

3.2.208.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.208.7 NMAC - Rn, 3 NMAC 2.50.7, 5/31/01]

3.2.208.8 GENERAL QUALIFICATIONS:

A. To qualify to issue a nontaxable transaction certificate (nttc) under the provisions of Section 7-9-50 NMSA 1978, the business issuing the nttc must subsequently lease the tangible property in the ordinary course of business. If the seller accepts an nttc in good faith and if the tangible property is not subsequently leased in the ordinary course of business, the lessee will owe compensating tax on the total amount paid to the lessor under the terms of the lease.

B. Example: H manufactures fishing tools for use in the oil field. H leases these tools to J, a rental company, which in turn rents the tools to P, a drilling company. If J delivers a nontaxable transaction certificate to H, H may deduct the amount of its rental receipts from its gross receipts.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.208.8 NMAC - Rn, 3 NMAC 2.50.8 & A, 5/31/01]

3.2.208.9 LEASE VS. LICENSE TO USE:

A. Receipts of a person who is a lessor of tangible personal property from leasing tangible personal property to a lessee who grants a license to use the leased items of tangible personal property to a third party may not be deducted from gross receipts pursuant to Section 7-9-50 NMSA 1978. However, the deduction will be allowed if the lessor has accepted a nontaxable transaction certificate (nttc) from the buyer in good faith that the property would be used in a nontaxable manner.

B. If the lessee delivering the nttc does not use the property in a nontaxable manner, compensating tax is due.

C. Example 1: T leases television sets to X, a motel, to place in the rooms of its guests. X delivers an nttc to T pursuant to Section 7-9-50 NMSA 1978. X may not properly deliver an nttc pursuant to Section 7-9-50 NMSA 1978 because it is not subsequently leasing the television sets to its guests in the ordinary course of business; rather, it is granting its guests a license to use the television sets.

D. Example 2: X leases bowling equipment to a local bowling alley which in turn grants its customers a license to use that equipment. The local bowling alley may not deliver an nttc to X pursuant to Section 7-9-50 NMSA 1978 because the lease of the equipment is not for subsequent lease.

E. Example 3: X is in the business of selling and leasing golf carts. Y, a country club, leases a golf cart from X and permits golfers to use it for a consideration. X's receipts from leasing the golf cart may not be deducted from gross receipts pursuant to Section 7-9-50 NMSA 1978 because Y is not subsequently leasing the golf cart to golfers but is merely granting a license to use the golf cart.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.208.9 NMAC - Rn, 3 NMAC 2.50.9 & A, 5/31/01]

3.2.208.10 EMPLOYER/EMPLOYEE VEHICLE LEASE AGREEMENT:

A. When an employee is the owner of a vehicle and enters into a lease agreement with an employer who pays the employee wages which are exempt from gross receipts tax under Section 7-9-17 NMSA 1978, the receipts derived from the lease of the vehicle

to perform the transportation services are not deductible pursuant to Section 7-9-50 NMSA 1978.

B. Example: X, a bona fide employee of Y, a highway escort service, uses X's own vehicle and equipment to perform highway escort services for Y. X owes gross receipts tax on receipts from leasing the vehicles and equipment. Since X is a true employee of Y, X does not owe gross receipts tax on wages received from Y. If X were not a true employee of Y, X would owe gross receipts tax on the total amount received.

[6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.208.10 NMAC - Rn, 3 NMAC 2.50.10 & A, 5/31/01]

PART 209: DEDUCTION - GROSS RECEIPTS TAX - SALE OF CONSTRUCTION MATERIALS

3.2.209.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.209.1 NMAC - Rn, 3 NMAC 2.51.1, 5/31/01]

3.2.209.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.209.2 NMAC - Rn, 3 NMAC 2.51.2, 5/31/01]

3.2.209.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.209.3 NMAC - Rn, 3 NMAC 2.51.3, 5/31/01]

3.2.209.4 DURATION:

Permanent.

[11/15/96; 3.2.209.4 NMAC - Rn, 3 NMAC 2.51.4, 5/31/01]

3.2.209.5 EFFECTIVE DATE:

November 15, 1996, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.209.5 NMAC - Rn, 3 NMAC 2.51.5 & A, 5/31/01]

3.2.209.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.209.6 NMAC - Rn, 3 NMAC 2.51.6, 5/31/01]

3.2.209.7 INGREDIENT OR COMPONENT PART DEFINED:

To be an "ingredient or component part" as used in Section 7-9-51 NMSA 1978 the tangible property must be an intended part of the finished project. The finished project is the end product of construction.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.209.7 NMAC - Rn, 3 NMAC 2.51.7 & A, 5/31/01]

3.2.209.8 ITEMS THAT ARE NOT INGREDIENT OR COMPONENT PARTS - OIL FIELD:

Receipts from the sale of the following items may not be deducted from gross receipts since these items do not become ingredient or component parts of a construction project within the meaning of Section 7-9-51 NMSA 1978:

A. drilling equipment, including derricks, blocks, substructures, draw-works, flooring, rotary tables, engines, mud pumps, pipe racks, tanks, doghouses, hoses, water and fuel lines, water well equipment, blowout preventers and other drilling equipment and tools;

B. drill stems, drill collars, subs and kelly;

C. drilling bits, core bits and barrels;

D. fishing tools;

E. fuels, including natural gas, LPG, diesel and electricity; and

F. drilling fluids, including mud, additives, air and lost circulation materials.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.209.8 NMAC - Rn, 3 NMAC 2.51.8 & A, 5/31/01]

3.2.209.9 ITEMS THAT ARE INGREDIENT OR COMPONENT PARTS - OIL FIELDS:

Receipts from the sale of casing, cement, shoes and float equipment, casing heads and well heads may be deducted from gross receipts if the other requirements of Section 7-

9-51 NMSA 1978 are met and a nontaxable transaction certificate or alternative evidence is provided by a well drilling company performing a turnkey project, as these items become ingredient or component parts of the construction project.

[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.9 NMAC - Rn, 3 NMAC 2.51.9 & A, 5/31/2001; A, 12/27/2018]

3.2.209.10 MATERIALS IN CONCRETE WORK:

A. Receipts from selling materials and special coating used in concrete work may be deducted from gross receipts if the materials sold become an ingredient or component part of a construction project and if the other requirements of Section 7-9-51 NMSA 1978 are met.

B. Concrete curing compounds, hardening agents and liquid curing compounds which remain on or in concrete become ingredient or component parts of construction projects within the meaning of Section 7-9-51 NMSA 1978.

C. Form coatings and form oils used to ease the separation of forms from concrete and snap ties, even though they remain imbedded in concrete, do not become ingredient or component parts of construction projects within the meaning of Section 7-9-51 NMSA 1978.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.209.10 NMAC - Rn, 3 NMAC 2.51.10 & A, 5/31/01]

3.2.209.11 SALE OF WATER:

Receipts from selling water to a construction company may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate or alternative evidence and if the water becomes an ingredient or component part of the finished product such as in concrete or in moistening fill. However, if the water is used as merely a lubricating agent, such as in well drilling, it is not a component part of the finished product and the receipts are not deductible.

[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.11 NMAC - Rn, 3 NMAC 2.51.11, 5/31/2001; A, 12/27/2018]

3.2.209.12 FORMS AND FUEL:

A. Receipts from selling lumber for forms and fuel for trucks to a person engaged in the construction business may not be deducted from gross receipts because neither the lumber nor the fuel actually becomes an ingredient or component part of the finished

product. However, if the form lumber is later used for sheeting in the construction project, the form lumber may be purchased with a nontaxable transaction certificate (nttc) or alternative evidence pursuant to Section 7-9-51 NMSA 1978.

B. The receipts from selling screed pins used in plastering and forms which must, by reason of design, be left in place after concrete has been poured over them may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate (nttc) or alternative evidence.

[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.12 NMAC - Rn, 3 NMAC 2.51.12 & A, 5/31/2001; A, 12/27/2018]

3.2.209.13 WELDING RODS:

Receipts from selling welding electrodes (welding rods), which melt to provide filler or fused metal, to a person engaged in the construction business may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate (nttc) or alternative evidence to the seller and the buyer delivering the nttc uses the welding electrodes in such a way that they become an ingredient or component part of the construction project

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.13 NMAC - Rn, 3 NMAC 2.51.13 & A, 5/31/2001; A, 12/27/2018]

3.2.209.14 PAINT AND PAINTING SUPPLIES:

A. The receipts from the sale of paint, filler, thinner, varnish or similar items to a person engaged in the painting business who delivers a nontaxable transaction certificate (nttc) or alternative evidence to the seller may be deducted from the seller's gross receipts.

B. Receipts from the sale of brushes, sandpaper, scrapers, sand for sandblasting, machinery and similar items used in the painting business to persons engaged in the painting business may not be deducted from gross receipts because such items do not become an ingredient or component part of the construction project.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.14 NMAC - Rn, 3 NMAC 2.51.14 & A, 5/31/2001; A, 12/27/2018]

3.2.209.15 SPRINKLER SYSTEMS:

Receipts from selling pipes, joints, nozzles and similar items of tangible personal property which become ingredient or component parts of a sprinkler system to a person engaged in the business of selling and installing sprinkler systems may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate or alternative evidence.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.15 NMAC - Rn, 3 NMAC 2.51.15, 5/31/2001; A, 12/27/2018]

3.2.209.16 BURNER FUEL:

Receipts from selling burner fuel used to heat aggregates and asphalt to a person engaged in the construction business may not be deducted from gross receipts since burner fuel does not become an ingredient or component part of a construction project within the meaning of Section 7-9-51 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.209.16 NMAC - Rn, 3 NMAC 2.51.16 & A, 5/31/01]

3.2.209.17 SURVEY SUPPLIES:

Receipts from selling survey supplies used to survey a construction project to a person engaged in the construction business may not be deducted from gross receipts because such survey supplies do not become an ingredient or component part of the construction project within the meaning of Section 7-9-51 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.209.17 NMAC - Rn, 3 NMAC 2.51.17 & A, 5/31/01]

3.2.209.18 WINDOWS AND DOORS:

A. Receipts from the sale of screens, screen doors and windows to a person engaged in the construction business may be deducted from the seller's gross receipts if the buyer delivers a nontaxable transaction certificate (nttc) or alternative.

B. Receipts from the sale of aluminum panel, aluminum T bar, aluminum angle, bulk or roll screen stock and jalousie glass to a person who produces screens, screen doors or windows and sells them installed in a construction project may be deducted from the seller's gross receipts pursuant to Section 7-9-51 NMSA 1978 if the buyer delivers an nttc or alternative evidence.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.18 NMAC - Rn, 3 NMAC 2.51.18 & A, 5/31/2001; A, 12/27/2018]

3.2.209.19 ELECTRICITY:

The receipts of an electric utility company from the sale of electricity to a person engaged in the construction business may not be deducted from the utility's gross receipts pursuant to Section 7-9-51 NMSA 1978 because electricity does not become an ingredient or component part of the end product of the construction project.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.209.19 NMAC - Rn, 3 NMAC 2.51.19 & A, 5/31/01]

3.2.209.20 BLUEPRINTS - PHOTOSTATS:

Receipts from the sale of blueprints or photostats to a person engaged in the construction business are subject to the gross receipts tax. These receipts may not be deducted pursuant to Section 7-9-51 NMSA 1978, because they do not become an ingredient or component part of a construction project.

[3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.209.20 NMAC - Rn, 3 NMAC 2.51.20 & A, 5/31/01]

3.2.209.21 COMPENSATING TAX ON MATERIALS:

When a person engaged in the construction business leases or otherwise uses a construction project which was built with construction materials purchased with a nontaxable transaction certificate, the compensating tax is due on the value of the construction materials incorporated into the project. The value to be reported is the actual cost.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.209.21 NMAC - Rn, 3 NMAC 2.51.21, 5/31/01]

3.2.209.22 INGREDIENT AND COMPONENT PARTS OF A CONSTRUCTION PROJECT:

In determining whether tangible personal property will become an ingredient or component part of a construction project, the department will use the following criteria, but not exclusively:

A. Was the person performing the work using the tangible personal property required to be licensed under the Construction Industries Licensing Act, Sections 60-13-1 to 60-13-59 NMSA 1978.

B. Did the work for which the tangible personal property was used require a permit from one or more of the trade boards established by the Construction Industries Licensing Act or from a municipal building or mechanical department.

[6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.22 NMAC - Rn, 3 NMAC 2.51.22 & A, 5/31/2001; A, 12/27/2018]

3.2.209.23 CONSTRUCTION MATERIALS USED IN NONTAXABLE CONSTRUCTION PROJECTS:

A. A seller of construction material may not claim the deduction from gross receipts provided by Section 7-9-51 NMSA 1978, or accept a nontaxable transaction certificate (NTTC) in good faith as required by Section 7-9-43 NMSA 1978, when the seller can reasonably determine that the construction material sold will be incorporated into a construction project which will not be subject to gross receipts tax upon completion because it is located outside New Mexico.

B. A seller can reasonably determine that a project is located outside New Mexico when the seller has documents identifying the location of the project.

C. No construction project located outside New Mexico will be subject to gross receipts tax upon completion.

[1/24/1986, 4/2/1986, 11/26/1990, 11/15/1996, 3.2.209.23 NMAC - Rn & A, 3 NMAC 2.51.23, 10/31/2000; A, 12/27/2018]

3.2.209.24 MATERIALS USED IN NONTAXABLE PROJECTS:

A person who purchases construction materials using a nontaxable transaction certificate and who subsequently uses the construction materials on a project located either outside the state of New Mexico or on a project, other than a project sold to an Indian nation, tribe or pueblo or its member that is located on the tribal territory of that Indian nation, tribe or pueblo, not subject to the gross receipts tax upon completion shall be liable for the compensating tax on the value of the materials used. This version of 3.2.209.24 NMAC applies retroactively to transactions occurring on or after March 7, 2000.

[1/24/86, 4/2/86, 11/26/90, 11/15/96, 3.2.209.24 NMAC - Rn, 3 NMAC 2.51.24 & A, 10/31/2000]

3.2.209.25 CARPETS AND DRAPERIES INSTALLED IN A CONSTRUCTION PROJECT:

When carpets or draperies are to be installed as an ingredient or component part of a construction project a person engaged in the construction business may deliver a nontaxable transaction certificate for the purchase of carpet or draperies, or the installation of carpets or draperies, to the seller and the seller may deduct receipts from the sale pursuant to Section 7-9-51 NMSA 1978.

[3.2.209.25 NMAC - N, 12/14/12]

3.2.209.26 MATERIALS USED IN GOVERNMENT OR NON-PROFIT PROJECTS:

Receipts from the sale to a person engaged in the construction business who delivers a nontaxable transactions certificate or alternative evidence to the seller of construction materials that are tangible personal property, whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property by Section 168 of the Internal Revenue Code of 1986 as that section may be amended or renumbered, may be deducted if the construction material will ultimately be deductible pursuant to Section 7-9-54 or 7-9-60 NMSA 1978 provided that the remaining construction services portion of the project is subject to gross receipts tax.

[3.2.209.26 NMAC - N, 12/27/2018]

PART 210: DEDUCTION - GROSS RECEIPTS TAX - CONSTRUCTION PURPOSES

3.2.210.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.210.1 NMAC - Rn, 3 NMAC 2.52.1, 5/31/01]

3.2.210.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.210.2 NMAC - Rn, 3 NMAC 2.52.2, 5/31/01]

3.2.210.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.210.3 NMAC - Rn, 3 NMAC 2.52.3, 5/31/01]

3.2.210.4 DURATION:

Permanent.

[11/15/96; 3.2.210.4 NMAC - Rn, 3 NMAC 2.52.4, 5/31/01]

3.2.210.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.210.5 NMAC - Rn, 3 NMAC 2.52.5 & A, 5/31/01]

3.2.210.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.210.6 NMAC - Rn, 3 NMAC 2.52.6, 5/31/01]

3.2.210.7 DEFINITIONS:

[RESERVED]

[11/15/96; 3.2.210.7 NMAC - Rn, 3 NMAC 2.52.7, 5/31/01; A, 11/30/05; Repealed, 12/14/12]

3.2.210.8 GENERAL BUSINESS SERVICES ARE NOT CONSTRUCTION SERVICES OR CONSTRUCTION-RELATED SERVICES:

A. General business services, such as accounting, legal services, real estate brokering, telecommunications and plan room services are not construction services within the definition of construction under Section 7-9-3.4 NMSA 1978 nor are they construction-related services as defined in Section 7-9-52 NMSA 1978. Receipts from performing these types of services to a construction contractor are subject to gross receipts tax.

B. Example 1: K is a law firm that contracts with C, a contractor, to provide legal services. K maintains that it is selling a legal service to C that is necessary for the completion of the construction project and that its receipts should not be subject to gross receipts tax. Legal services are not included under the definition of construction under Section 7-9-3.4 NMSA 1978 or under the definition of construction-related services under Section 7-9-52 NMSA 1978. There is no deduction available for K's receipts from providing legal services to C.

C. Example 2: C provides B with telecommunications services through which B can maintain contact with B's construction crew working at a remote site. C's receipts from this service are not deductible under Section 7-9-52 NMSA 1978.

D. Example 3: C is engaged in the construction business and undertakes a project where the builder has no pre-paid client, and the project is speculative. C acquires the land and obtains a construction loan to fund the improvements on the land. The construction loan documents include charges for banking fees that are not pre-paid interest or interest on the loan balance. The banking fees are for a general business service and not considered a construction-related service and therefore not deductible under Section 7-9-52 NMSA 1978.

E. This version of 3.2.210.8 NMAC applies to transactions occurring on or after January 1, 2013.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 10/31/97; 3.2.210.8 NMAC - Rn, 3 NMAC 2.52.8 & A, 5/31/01; A, 12/14/12]

3.2.210.9 WELL CONSTRUCTION SERVICES:

A. Receipts from the sale of the following services in connection with well drilling are receipts from the sale of construction services as defined in Section 7-9-3.4 NMSA 1978, and may be deducted from gross receipts if all other requirements of Section 7-9-52 NMSA 1978, are met:

(1) dirt work and surfacing;

(2) digging cellars and pits;

(3) drilling ratholes;

(4) drilling water wells;

(5) laying water and fuel lines;

(6) directional drilling services;

(7) casing crew services;

(8) cementing services;

(9) drill stem testing; and

(10) fishing jobs.

B. Receipts from the sale of the following services in connection with well drilling are not receipts from the sale of construction services within the meaning of Section 7-9-3.4 NMSA 1978 and may not be deducted from gross receipts:

(1) repairing drilling equipment;

(2) hauling water and mud;

(3) hauling drilling equipment, rigging-up and rigging-down;

(4) field inspecting drill collars and drill stems; and

(5) furnishing compressed air.

C. On or after January 1, 2013, receipts from the sale of the following services in connection with well drilling are receipts from the sale of construction-related services as defined in Section 7-9-52 NMSA 1978 and are deductible under Section 7-9-52 NMSA 1978 if all the requirements of that section are met:

(1) hauling water and drilling mud;

(2) hauling drilling equipment, rigging-up and rigging-down;

(3) field inspecting drill collars and drill stems; and

(4) furnishing compressed air.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.9 NMAC - Rn, 3 NMAC 2.52.9 & A, 5/31/01; A, 12/14/12]

3.2.210.10 HAULING SERVICES:

Receipts from hauling materials, prefabricated buildings and supplies to and from a building site on or after January 1, 2013, for a person engaged in the construction business are construction-related services and are deductible from the hauler's gross receipts pursuant to Section 7-9-52 NMSA 1978 if all requirements of Section 7-9-52 NMSA 1978 are met.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 3/16/79, 6/18/79, 11/8/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.10 NMAC - Rn, 3 NMAC 2.52.10 & A, 5/31/01; A, 11/30/05; A, 12/14/12]

3.2.210.11 [RESERVED]

[3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.11 NMAC - Rn, 3 NMAC 2.52.11, 5/31/01; Repealed, 11/30/05]

3.2.210.12 [RESERVED]

[3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.12 NMAC - Rn, 3 NMAC 2.52.12 & A, 5/31/01; Repealed, 12/14/12]

3.2.210.13 WATER TAPS:

Receipts of a utility from providing a "tap" to a water main and installing a pipe from the water main to a meter which it provides to a person engaged in the construction business are deductible from gross receipts if the person engaged in the construction business delivers a nontaxable transaction certificate pursuant to Section 7-9-52 NMSA 1978.

[3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.13 NMAC - Rn, 3 NMAC 2.52.13 & A, 5/31/01]

3.2.210.14 SALVAGING OF A "PRODUCTION UNIT":

Receipts of a person engaged in the business of servicing "production units" as defined in the Oil and Gas Emergency School Tax Act, Section 7-31-2 NMSA 1978, from performing services in connection with salvaging of materials from a "production unit" are not receipts from the sale of construction services or from construction-related services within the meaning of Section 7-9-52 NMSA 1978 and may not be deducted from gross receipts.

[3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.14 NMAC - Rn, 3 NMAC 2.52.14 & A, 5/31/01; A, 12/14/12]

3.2.210.15 CLEANING THE CONSTRUCTION SITE:

A. Receipts from cleaning a building upon completion of a construction project; from cleaning masonry upon the completion of a construction project; from making an earth fill for drainage purposes; from providing an earth fill of a granular type required by specifications; and from replacing construction rejected by the architects, the engineers or the owners are receipts from performing construction services. Such receipts may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate to the seller.

B. Receipts from cleaning the building at any time other than during or immediately after completion of the construction project or cleaning masonry in a standing building in order to restore its appearance are not deductible under Section 7-9-52 NMSA 1978.

[3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.15 NMAC - Rn, 3 NMAC 2.52.15 & A, 5/31/01; A, 12/14/12]

3.2.210.16 DAMAGE TO A CONSTRUCTION PROJECT BY SUBCONTRACTOR:

A. Charges by a contractor to a subcontractor for damages to a construction site caused by the subcontractor are not gross receipts to the contractor, but constitute a reduction in the amount of consideration paid to the subcontractor for the service performed by the subcontractor.

B. Example: A, a prime contractor, contracts with C, an independent contractor, to repair a part of a construction project damaged by B, a subcontractor on the project. B is responsible to A for the cost of such repair. A also contracts with D, a person engaged in the business of hauling trash, to remove trash and debris left by B after completion of B's portion of the project. B is obligated by the terms of the contract to remove the trash and debris. A charges B for the cost of repair paid to C and for the

cost of hauling paid to D, either by deducting such cost from the amount A will pay B upon completion of B's work or by billing B directly for them.

(1) A's charges to B for the cost of repair is a reduction in the cost of A's subcontract with B. A, therefore, derives no receipts from the charge to B, regardless of whether A subtracts the cost of work done by C from the amount A pays B or whether B pays A the cost of the work performed by C.

(2) A may deliver a nontaxable transaction certificate (nttc) to C, the independent contractor, if the service performed by C is a construction service within the meaning of Section 7-9-52 NMSA 1978.

(3) On or after January 1, 2013, A may deliver an nttc to D for hauling trash, since hauling is a construction-related service within the meaning of Section 7-9-52 NMSA 1978 if all the requirements of that section are met.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.16 NMAC - Rn, 3 NMAC 2.52.16 & A, 5/31/01; A, 12/14/12]

3.2.210.17 MANUFACTURER'S EQUIPMENT INSTALLATION:

If a manufacturer of equipment agrees to install equipment on a construction project in such a manner that the equipment becomes an ingredient or component part of the construction project, then the manufacturer of the equipment is selling a construction service, (installation of the equipment) and is a "person engaged in the construction business". Receipts of the manufacturer for installing the equipment may be deducted from gross receipts if the prime contractor delivers a nontaxable transaction certificate (nttc) to the manufacturer. If the manufacturer hires a person to install the equipment, that person is installing such equipment for "a person engaged in the construction business" and may deduct the receipts from gross receipts if the manufacturer delivers an nttc pursuant to Section 7-9-52 NMSA 1978 to the person installing equipment.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.17 NMAC - Rn, 3 NMAC 2.52.17 & A, 5/31/01]

3.2.210.18 CONSTRUCTION-RELATED SERVICES - LABORATORY WORK AND ENVIRONMENTAL TESTING:

A. Prior to January 1, 2013, receipts of a person engaged in the business of performing laboratory work, such as the design or testing of dirt or concrete work, from the sale of these services to a person engaged in the construction business are not construction services within the meaning of Section 7-9-52 NMSA 1978 and may not be deducted from the seller's gross receipts pursuant to Section 7-9-52 NMSA 1978.

B. Receipts for laboratory work or environmental testing performed on or after January 1, 2013, are receipts from performing construction-related services as defined

in Section 7-9-52 NMSA 1978 and are deductible if the requirements of Section 7-9-52 NMSA 1978 are met.

C. Example: X is engaged in the construction business. In order to comply with the requirements of the federal environmental protection agency, X must obtain the services of Y, a certified lead paint consultant. Y will test for the existence of lead paint in any building being demolished or remodeled by X, prepare a federally required report, suggesting additional best management practices, and send samples to a testing lab. Services provided by Y on or after January 1, 2013, are construction-related services and are deductible under Section 7-9-52 NMSA 1978 as long as all the requirements in the statute are met.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.18 NMAC - Rn, 3 NMAC 2.52.18 & A, 5/31/01; A, 12/14/12]

3.2.210.19 CONSTRUCTION-RELATED SERVICES AND ASSOCIATED PRODUCTS:

A. Receipts from the sale of design services and special inspections that are required to verify specifications in design criteria to a person engaged in the construction business, are construction-related services and deductible under Section 7-9-52 NMSA 1978.

B. Receipts from the sale of building plans, professional stamps, or similar products to a person engaged in the construction business are construction-related services as defined in Section 7-9-52. Receipts from such sales that are contracted for or billed to a construction project may be deducted from the seller’s gross receipts pursuant to Section 7-9-52 NMSA 1978 if the buyer is engaged in the construction business and delivers a nontaxable transaction certificate to the seller.

C. Example 1: C is engaged in the construction business. In order to begin the construction project C obtains the services of A, a design/architectural firm, to draw the plans necessary to obtain the building permit. Under Section 7-9-52 NMSA 1978, the plan preparations are a construction-related service. As long as the construction project is subject to gross receipts tax upon its completion, or located on tribal land, C may execute an nttc to A and A’s receipts will be deductible under Section 7-9-52 NMSA 1978 as construction-related services.

D. Example 2: X is engaged in the construction business and contracts with Y, who is also engaged in the construction business, for the design and construction of the mechanical ducting system on X’s construction project. Building code requires certain portions of the mechanical system to be designed by a mechanical engineer. Y, enters into a contract for the services of E, an engineering firm, to perform the calculations, design a portion of the system, and place an engineer’s "seal" on E’s part of the mechanical ducting design. E is able to accept an nttc from Y as E’s service is a construction-related service as defined in Section 7-9-52 NMSA 1978. X may also

execute an nttc under Section 7-9-52 NMSA 1978 to Y so long as the X's completed project is subject to gross receipts tax.

E. This version of 3.2.210.19 NMAC applies to transactions occurring on or after January 1, 2013.

[3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.19 NMAC - Rn, 3 NMAC 2.52.19 & A, 5/31/01; A, 11/30/05; A, 12/14/12]

3.2.210.20 COMPENSATING TAX ON CONSTRUCTION SERVICES:

When a person engaged in the construction business leases out or otherwise uses a construction project for which construction services or construction-related services were purchased using a nontaxable transaction certificate (nttc), the compensating tax is due if the project is occupied or leased prior to sale. The value of the construction services or construction-related services to be reported is the actual cost of the construction services purchased using nttcs, and the tax is due at the time of occupancy.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.20 NMAC - Rn, 3 NMAC 2.52.20, 5/31/01; A, 12/14/12]

3.2.210.21 MUD ENGINEERING SERVICES:

Gross receipts from providing a mud engineering service at the well site to supervise the mixing of various agents and to make recommendations as to the type of fluids needed for the particular formations encountered in drilling wells are receipts from providing construction-related services as defined in Section 7-9-52 NMSA 1978 and are deductible pursuant to Section 7-9-52 NMSA 1978. Receipts from mud engineering services performed on or after January 1, 2013, may be deductible pursuant to Section 7-9-52 NMSA 1978 if a buyer engaged in the construction business delivers a nontaxable transaction certificate to the seller.

[3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.21 NMAC - Rn, 3 NMAC 2.52.21 & A, 5/31/01; A, 12/14/12]

3.2.210.22 LEASE OF CONSTRUCTION EQUIPMENT:

A. This version of 3.2.210.22 NMAC applies to transactions prior to January 1, 2013. Receipts from the lease of construction equipment on or after January 1, 2013, may be deductible under Section 7-9-52.1 NMSA 1978, if all requirements set out in Section 7-9-52.1 NMSA 1978 and 3.2.249.8 and 9 NMAC are met.

B. Receipts from leasing construction equipment, with or without operators, to a person engaged in the construction business may not be deducted from the lessor's gross receipts pursuant to Section 7-9-52 NMSA 1978. Leasing of construction

equipment is not a construction service as defined in Subsection A of Section 7-9-3.4 NMSA 1978.

C. In contrast, when a person who is regularly engaged in the selling of construction services, such as a subcontractor, uses the subcontractor's own construction equipment to perform construction services for a person engaged in the construction business, the subcontractor may deduct the receipts for the services and equipment under Section 7-9-52 NMSA 1978 if:

(1) the subcontractor is an independent contractor and not an employee of the person engaged in the construction business; and

(2) the subcontractor exercises control over the use of the property in performing the services; the controlling factor is whether the equipment owner has control over the performance of the construction service which involves using the equipment or is simply operating the equipment at the direction of some other person engaged in the construction business.

D. Example 1: A is regularly engaged in the lease and rental of construction equipment. A enters into an agreement to lease a crane with an operator to a contractor engaged in the construction business to be used on a construction project. The contractor will direct all of the activity of the crane and operator on the construction site. A's receipts from the lease of the crane with an operator are not receipts from performing construction services. A cannot deduct such receipts.

E. Example 2: X is a heating and air conditioning subcontractor on a construction project. X owns a crane which X regularly uses to lift equipment onto the roof of buildings on which X works. X's receipts for construction services includes payment for using the crane. X may deduct those receipts under Section 7-9-52 NMSA 1978. If, however, X agrees to lease the crane with an operator to the prime contractor for work unrelated to the subcontract, which work is performed at the direction of the prime contractor, X would not be able to deduct the receipts for the leasing of the crane.

[11/8/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.210.22 NMAC - Rn, 3 NMAC 2.52.22 & A, 5/31/01; A, 11/30/05; A, 12/14/12]

3.2.210.23 CONSTRUCTION STAKING:

Construction staking is a construction service.

[5/15/97; 3.2.210.23 NMAC - Rn, 3 NMAC 2.52.23, 5/31/01]

3.2.210.24 CONSTRUCTION-RELATED INSPECTION SERVICES:

A. The receipts from the sale of inspection services to a person engaged in the construction business may be deducted from the seller’s gross receipts pursuant to

Section 7-9-52 NMSA 1978 when they are directly contracted for or billed to a specific construction project and if all the requirements of Section 7-9-52 NMSA 1978 are met. These inspection services include but are not limited to:

(1) field sampling or testing of construction components in order to comply with building codes; and

(2) stormwater runoff testing and routine inspections for compliance with permits required under the federal Clean Water or Clean Air Acts.

B. Example 1: C is engaged in the construction business. C obtains the services of either H, a certified home energy rating system (HERS) or L, a leadership in energy and environmental design (LEED) consultant to perform inspections and make recommendations for compliance with the state's energy conservation code. The receipts from the services performed by H or L are deductible under Section 7-9-52 NMSA 1978 when they are directly contracted for or billed to a specific construction project and if all the requirements of Section 7-9-52 NMSA 1978 are met.

C. Example 2: X is engaged in the construction business. X obtains the services of Y, an engineering service company to perform the weld inspection and testing required as a "special inspection" under provisions of the state's commercial building code. Y also provides a "special inspection" service that includes inspecting forming and reinforcing rods, and observing concrete being poured. Both of these services are deductible under Section 7-9-52 NMSA 1978 when they are directly contracted for or billed to a specific construction project and if all the requirements of Section 7-9-52 NMSA 1978 are met.

D. Example 3: S is engaged in the construction business. S obtains the services of W, a stormwater professional, to prepare a federally-required SWPPP and monitor the quality of stormwater runoff by writing reports, suggesting additional best management practices, and sending samples to a testing lab. Even though S is not in the business of selling construction-related services, S may issue nttcs to W, and the testing laboratories (if they bill separately) as those are construction-related services deductible under Section 7-9-52 NMSA 1978 when they are directly contracted for or billed to a specific construction project and if all the requirements of Section 7-9-52 NMSA 1978 are met.

E. This version of 3.2.210.23 NMAC applies to transactions occurring on or after January 1, 2013.

[3.2.210.24 NMAC - N, 12/14/12]

3.2.210.25 TRANSACTIONS INVOLVING CONSTRUCTION-RELATED SERVICES:

The following are examples of transactions that involve construction-related services and how the deduction for these services under Section 7-9-52 NMSA 1978 may or may not apply to the specific facts of these transactions.

A. Example 1: X is a general contractor who has been hired to design and build an office building. In addition to the typical construction service subcontractors, X also hires an Y, an engineering firm and Z, an architect, to perform construction-related services that are directly contracted for this particular construction project. If X provides Y and Z with an appropriate nontaxable transaction certificate, Y and Z can take the deduction for construction-related services under Section 7-9-52 NMSA 1978.

B. Example 2: T, a construction contractor, hires S, a security firm, to provide security services at T's ten construction sites. S has experienced some recent employment turnover and does not have enough employees to provide security services for all of T's construction sites. As a result, S is required to subcontract with W, an independent security company for two of the construction sites. T executes a nontaxable transaction certificate (nttc) pursuant to Section 7-9-52 NMSA 1978 to S for the security services for the ten construction sites which allows S to take the construction-related service deduction under Section 7-9-52 NMSA 1978. The receipts from the services provided by W to S are subject to gross receipts tax unless a specific exemption or deduction applies. The deduction under Section 7-9-52 NMSA 1978 does not apply to this transaction, because S is not a person engaged in the construction business and therefore not authorized to execute an nttc under that section. The general service for resale deduction under Section 7-9-48 NMSA 1978 also does not apply because this deduction requires that the resale of the security services by S to T must be subject to gross receipts tax. Since S is taking the deduction under Section 7-9-52 NMSA 1978 this requirement in Section 7-9-48 NMSA 1978 cannot be met. W's receipts from providing security services to S are subject to gross receipts tax.

C. Example 3: Same facts as in Example 2 except S does not enter into a subcontract with W. Instead, T amends the contract with S to provide security services for only eight of the construction sites and T enters into a separate contract with W to provide security services for the remaining two sites. So long as T provides nttcs to S and W, both security providers can take the construction related service deduction under Section 7-9-52 NMSA 1978.

[3.2.210.25 NMAC - N, 12/14/12]

PART 211: DEDUCTION - GROSS RECEIPTS TAX - SALE OR LEASE OF REAL PROPERTY AND LEASE OF MANUFACTURED HOMES

3.2.211.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.2.211.1 NMAC - Rp, 3.2.211.1 NMAC 9/24/2024]

3.2.211.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[3.2.211.2 NMAC - Rp, 3.2.211.2 NMAC 9/24/2024]

3.2.211.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.2.211.3 NMAC - Rp, 3.2.211.3 NMAC 9/24/2024]

3.2.211.4 DURATION:

Permanent.

[3.2.211.4 NMAC - Rp, 3.2.211.4 NMAC 9/24/2024]

3.2.211.5 EFFECTIVE DATE:

September 24, 2024, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.211.5 NMAC - Rp, 3.2.211.5 NMAC 9/24/2024]

3.2.211.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.211.6 NMAC - Rp, 3.2.211.6 NMAC 9/24/2024]

3.2.211.7 DEFINITIONS:

As used in Section 7-9-53 NMSA 1978 and regulations under 3.2.211 NMAC the following terms are defined as such:

A. "Assisted living facility" means a facility that provides dwelling units for residents, and which includes common rooms and other facilities appropriate for the provision of supportive services to residents of the facility, and which makes available to residents supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money, using the

telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing and therapy. Assisted living facilities are distinguished from other long-term care facility types, such as skilled nursing facilities, in that they do not provide round-the-clock supervision by nurses or other medically trained personnel.

B. "Fair rental value" means the amount a willing landlord in the marketplace rents the property for and what a reasonable tenant is willing to pay.

C. "Improvement" means a permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable.

D. "Lease or leasing" as defined in Section 7-9-3 NMSA 1978.

E. "Licensing or license" as defined in Section 7-9-3 NMSA 1978.

F. "Manufactured home" means a moveable or portable housing structure constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy.

G. "Month" is a consecutive 30-day period.

H. "Recreational vehicle" means a vehicle defined as a recreational vehicle in Section 66-1-4.15 NMSA 1978 or as a travel trailer in Section 66-1-4.17 NMSA 1978.

I. "Real property" means an estate or interest in, over or under land and other things or interest, including minerals, water, structures and fixtures that by custom, usage or law pass with a transfer of land even if the estate or interest is not described or mentioned in the contract of sale or instrument of conveyance and, if appropriate to the context, the land in which the estate or interest is claimed pursuant to Section 12-2A-3 NMSA 1978.

J. "Rental" means a lease.

K. "Rooming house" means a dwelling with multiple rooms that are rented out individually with shared spaces such as a kitchen and living area. Examples include a hostel, dormitory, fraternity, or sorority house.

L. "Trailer park" means any facility where a manufactured home or recreational vehicle is or may be parked, which facility is operated by a person:

(1) who offers space for one or more manufactured homes or recreational vehicles, either with or without manufactured homes or recreational vehicles located thereon, for rent or hire;

(2) who provides any of the customary services or facilities for those lodgers, guests, roomers or others who occupy manufactured homes, such as: utilities, garbage service, telephone service, cleaning service, protection service or ground keeping.

[3.2.211.7 NMAC - Rp, 3.2.211.7 NMAC 9/24/2024]

3.2.211.8 RECEIPTS FROM PROVIDING ACCOMMODATIONS:

A. Change of name of facility: The nature of the property determines whether the deduction allowed by Section 7-9-53 NMSA 1978 applies. The operator of a hotel, motel, rooming house, campground, guest ranch, trailer park or other facility which operates in a manner similar to the listed facilities may not, by merely changing the name of the facility, qualify for the deduction granted by Section 7-9-53 NMSA 1978.

B. Receipts from leasing of a space for less than one month:

(1) Receipts of a person in the business of operating a trailer park from the rental of a space for a manufactured home or, a recreational vehicle for a period of under one month are subject to the gross receipts tax.

(2) Receipts of a person in the business of operating a trailer park from the rental of a space for a manufactured home or, a recreational vehicle for a period of over one month, qualify for the deduction granted by Section 7-9-53 NMSA 1978.

(3) Example 1: X owns and operates a trailer park located in the state of New Mexico. Y rents a trailer space for Y's manufactured home from X on April 15 on a month-to-month basis. Y pays one-half month's rent at that time and signs an agreement to pay rent in advance for each subsequent calendar month. Y pays May's rent on April 29. X may deduct all the receipts from the rental of trailer space to Y because the receipts are from the rental of a space for a manufactured home for over one month.

(4) Example 2: X owns and operates a trailer park located in New Mexico. X leases a trailer space to Y for Y's manufactured home for one year, taking a month's rent in advance. During the third week of the lease period and prior to 30 consecutive days of the lease term, Y breaks the lease and moves out. X may still deduct the rent received from Y covering the first month's occupancy if X is entitled to keep the rent attributable to the portion of the month in which there was no occupancy and if X does not rent that space to anyone else prior to the expiration of the first month.

(5) Example 3: X owns and operates a trailer park in New Mexico. Y does not enter into a lease with X but places a manufactured home in the trailer space as a tenant at will. After a period of three weeks X tells Y to move from the trailer park. X may not deduct the receipts derived from the rental of a trailer space to Y because the rental was for a period of less than one month, and X has no legal right to receive additional rent from Y.

C. Municipal lodgers and room tax: Receipts of a hotel, motel, rooming house, campground, guest ranch, trailer park or similar facilities subject to the gross receipts tax do not include amounts paid to a municipality which has enacted by local ordinance a municipal lodgers or room tax pursuant to Sections 3-38-13 through 3-38-24 NMSA 1978.

D. Utility sales by landlord: Receipts of lessors of real property from leasing real property when the leases include separately stated amounts for natural gas, electricity or water conveyed as a condition of the lease of the real property to the lessee are deductible under Section 7-9-53 NMSA 1978. Receipts of trailer parks from space rentals which include separately stated amounts for natural gas, electricity or water sold as a condition of the lease to occupants may be deducted under Section 7-9-53 NMSA 1978 only if the rental is for a period of at least one month.

E. Rooming houses: Receipts by operators of rooming houses from lodgers, guests, roomers or occupants are not receipts from leasing real property and, therefore, are subject to the gross receipts tax. A dormitory, fraternity or sorority house is a rooming house.

[3.2.211.8 NMAC - Rp, 3.2.211.8 NMAC 9/24/2024]

3.2.211.9 AMOUNT ATTRIBUTABLE TO IMPROVEMENTS AND THE COST OF LAND:

A. The proportion of the receipts from the sale of real property which is attributable to improvements constructed on the real property is determined by:

(1) subtracting from the sales price the cost of the land to the seller, or

(2) if there is substantial evidence that the value of the land is not the cost of the land to the seller, by subtracting from the sales price the value of the land as determined by an independent appraisal acceptable to the department, but in no case may the appraised value of the land exceed the difference between the sale price of the real property and the total cost of the improvements constructed on the real property.

B. The cost of the land to the seller is determined by the original cost of the land to the seller plus any amounts attributable to the land being sold which are paid by the seller for offsite improvements such as paving.

C. Example 1: X, a construction company, purchases a lot in 191969 for $1,000. X builds a house on this lot in 1971. X then sells this real property to Y for $20,000. On the basis of an F.H.A. appraisal the value of the land is $5,000; however, the total cost of the improvements constructed on the lot is $18,000. X would be liable for gross receipts tax on $18,000. The F.H.A. appraisal, assuming acceptance by the department, is substantial evidence of an increase in the value of the land, but the

appraisal value of the land cannot exceed the difference between the sale price of the real property and the total cost of the improvements constructed on the real property.

D. Example 2: X, a construction company, purchases a lot. In order to prepare the lot as a building site, X levels and excavates a portion of the real property. The receipts of X from the sale of real property which are attributable to improvements such as leveling and excavating the lot in preparation of a building site may not be deducted from gross receipts pursuant to Section 7-9-53 NMSA 1978.

E. Example 3: X, a construction company, purchases a lot, makes certain improvements, and then sells the lot in the ordinary course of business. The receipts of X from improvements on real property owned and sold by it in the ordinary course of business do not include amounts retained by financial institutions which loaned the purchase price directly to the purchaser as prepaid finance charges or discounts, if these amounts are not received by the real estate vendor. It is immaterial whether or not such amounts are included in the quoted real estate price. The receipts of X do include all amounts actually paid over to it which are attributable to improvements constructed on real property sold by X in the ordinary course of business. The receipts of such a business also include any amounts deducted by title insurance companies to cover title insurance, legal fees, escrow fees, real estate brokerage commissions, real estate taxes, principal and interest on construction loans, liens and the like.

[3.2.211.9 NMAC - Rp, 3.2.211.9 NMAC 9/24/2024]

3.2.211.10 REMODELING OR OTHER IMPROVEMENTS:

A. A buyer who purchases and improves real property, other than the buyer's residence, by either remodeling or constructing additional improvements on the property and who subsequently sells the real property with the improvements is considered to be regularly engaged in the construction business. The receipts attributable to the remodeling or other improvements constructed on the real property are subject to the gross receipts tax. The receipts subject to tax are the sales price less the value of the real property purchased. The value of real property (VRP) purchased is computed through the use of a formula. The formula is the ratio of the cost of the real property (CRP) purchased divided by the cost of the real property (CRP) plus the cost of the remodeling or other improvements (CRI) times the sales price (SP), or:

$$VRP = \frac{(\ CRP\ )}{(CRP + CRI\ )} \times SP$$

B. The value of real property (VRP) is then subtracted from the sales price (SP) and the difference is the amount attributable to the value of remodeling or other improvements (VRI), which amount is subject to the gross receipts tax, or:

SP - VRP = VRI (Taxable receipts)

C. Example: C, a Construction Company, purchases a lot and house for $10,000. C then remodels the interior and exterior of the house at a cost of $15,000 and adds a concrete driveway, patio and walkway at a cost of $5,000. Upon completion of the remodeling and construction of the other improvements, C sells the real property with improvements for $60,000. C should compute its taxable receipts as follows:

(1) Cost of real property (CRP) = $10,000

(2) Cost of remodeling and improvements (CRI) = $15,000 + $5,000 or $20,000

(3) Sales price = $60,000

(4) $$\text{VRP} = \frac{\text{CRP}}{\text{CRP + CRI}} \times \text{SP} = \frac{\$10{,}000}{\$10{,}000 + \$20{,}000} \times \$60{,}000 = \$20{,}000$$

(5) SP - VRP = VRI (taxable receipts) = $60,000 - $20,000 = $40,000 (taxable receipts)

[3.2.211.10 NMAC - Rp, 3.2.211.10 NMAC 9/24/2024]

3.2.211.11 UTILITIES - SALE OF COMPANY FACILITIES:

Receipts of an electric utility company from the sale of company facilities such as transformer installations or pole lines in place are receipts from the sale of real property and may be deducted from gross receipts pursuant to Section 7-9-53 NMSA 1978.

[3.2.211.11 NMAC - Rp, 3.2.211.11 NMAC 9/24/2024]

3.2.211.12 LEASE OF TANGIBLE PERSONAL PROPERTY:

A. Receipts from leasing tangible personal property are not receipts from leasing real property and may not be deducted from taxable gross receipts pursuant to Section 7-9-53 NMSA 1978.

B. Example 1: The receipts from leasing advertising signs which are placed or implanted in real property in the possession of and occupied by the lessee, where the lessor reserves the right to remove the signs, are not receipts from leasing real property and are not deductible from gross receipts pursuant to Section 7-9-53 NMSA 1978. Such advertising signs are tangible personal property and are not real property.

C. Example 2: KR is an automobile manufacturer with dealerships all over the country. Because KR wants its dealerships to be easily recognized it requires them all to display large electric outdoor signs identifying the business as KR dealership. KR leases the signs to the dealerships but reserves the right to remove the signs. KR's receipts from leasing the signs to a New Mexico dealership are subject to the gross

receipts tax. KR may not deduct its receipts from leasing these signs from gross receipts pursuant to Section 7-9-53 NMSA 1978 because KR is not leasing real property.

D. Example 3: Receipts attributable to the use by a lessee of equipment, tools and furniture included with the lease of a gasoline service station are not deductible as receipts from leasing real property pursuant to Section 7-9-53 NMSA 1978. Such receipts are from the leasing of tangible personal property.

[3.2.211.12 NMAC - Rp, 3.2.211.12 NMAC 9/24/2024]

3.2.211.13 [RESERVED]

[3.2.211.13 NMAC - Rp, 3.2.211.13 NMAC 9/24/2024]

3.2.211.14 GENERAL EXAMPLES:

The following examples illustrate the application of Section 7-9-53 NMSA 1978.

A. Example 1: V, a railroad company, rents motel rooms in X's motel on a permanent basis as lodging for its train crews while they wait for a return trip to their home station. The receipts X receives from V are not deductible under Section 7-9-53 NMSA 1978. If, however, V leases the entire motel from X, X's receipts are deductible under Section 7-9-53 NMSA 1978.

B. Example 2: X is engaged in constructing homes on land that X owns and has subdivided. X then sells them to interested individuals. X's sales are sales of real property, but X must pay gross receipts tax on that portion of the receipts that are attributable to the value of the houses and other improvements that X has constructed on the real property.

C. Example 3: X has lived in P, a motel, for fifteen years. X rents a room from the motel for $1200 per year, payable in twelve monthly installments. P contends that the rental is a rental of real property and is deductible for the purposes of computing its tax liability under the gross receipts tax. The receipts which P receives from X are not deductible. Receipts from the rental of motel rooms are not deductible.

[3.2.211.14 NMAC - Rp, 3.2.211.14 NMAC 9/24/2024]

3.2.211.15 [REPEALED]

3.2.211.16 LOCKER ROOMS IN A WAREHOUSE/SELF STORAGE WAREHOUSE UNITS:

A. Receipts from providing individual locker rooms inside a warehouse facility where the tenant must rely on the warehouse owner to gain access to the inside of the

building, are receipts from granting a license to use and are not deductible as the lease of real property.

B. Receipts from individual, self-contained storage warehouse units where the tenant has exclusive possession, use and access to the unit and pays a specified periodic rental for the unit are receipts from leasing real property and, therefore, are deductible under Section 7-9-53 NMSA 1978.

[3.2.211.16 NMAC - Rp, 3.2.211.16 NMAC 9/24/2024]

3.2.211.17 RECEIPTS FROM LICENSE TO USE REAL PROPERTY:

A. Receipts derived from a license to use real property may not be deducted from gross receipts under Section 7-9-53 NMSA 1978, except that receipts derived from selling or leasing the entirety of the hunting rights with respect to a property for a period of one year or more will be considered the sale or lease of real property for the purposes of this deduction. Receipts from selling a hunting package are subject to gross receipts tax to the extent that the individual components of the package are not deductible or exempt from the gross receipts tax pursuant to the Gross Receipts and Compensating Tax Act. A person that sells a hunting package that consists of taxable and nontaxable components must reasonably allocate the receipts based on the value of the individual components. For purposes of this section, a "hunting package" may include the following components:

(1) lodging;

(2) meals;

(3) delivery and transportation services;

(4) guide services;

(5) license to use the property;

(6) carcass of the hunted animal; or

(7) other services or tangible personal property included in the package.

B. Example 1: X owns a ranch in New Mexico and is engaged in the business of ranching. Incidental to X's main business, X permits members of the public to go on X's property to hunt and fish for specified periods. X collects a fee from each person who does so. X's receipts from these fees are subject to the gross receipts tax because X merely granted a license to use. No property is leased or sold. If X sells or leases the entirety of the hunting rights on X's property for one year or more to a single individual or entity, as distinct from permitting several different individuals to hunt for various

periods during a year, that constitutes the sale or lease of real property and receipts therefrom may be deducted under Section 7-9-53 NMSA 1978.

C. Example 2: X owns an unlighted dirt parking lot in Albuquerque. Y enters into an agreement with X whereby Y agrees to pay a monthly fee and X agrees to permit Y to park Y's car in an assigned space for a period of one month. Z brings an automobile to X's parking lot and parks it there for a daily fee. Z does so only once. X's receipts from providing the service of supplying parking spaces or selling a license to use parking spaces to Y and Z are not deductible from gross receipts as a lease of real property pursuant to Section 7-9-53 NMSA 1978.

D. Example 3:

(1) S owns a flying service and related facilities. S enters into several types of agreements with its customers:

(a) an agreement with A on a month-to-month basis, permitting A to store an aircraft in an assigned "stall" in one of several hangars each containing eight to twelve such "stalls", in return for a monthly fee. S specifically limits A's use of the premises to storage of the aircraft in the conduct of A's business in an adjacent airport;

(b) an agreement with B, on a month-to-month basis, permitting B to store an aircraft in an assigned "tie-down" space in a large open-span hangar containing spaces for eight such aircraft, in return for a monthly fee;

(c) an agreement with C, a transient customer, on an overnight or day- to-day basis, permitting C to store an aircraft in a specified "tie-down" space in the open-span hangar described above, in return for a daily fee.

(2) S's receipts from providing the service of supplying hangar space and open storage space for aircraft, or of granting a license to use such space, to A, B and C are subject to the gross receipts tax. S's receipts are not deductible from gross receipts as a lease of real property pursuant to Section 7-9-53 NMSA 1978.

E. Example 4: X owns a ranch in New Mexico and sells guided hunting packages. Included in the price for the hunt X guarantees that the hunter will retrieve an animal, lodging at the ranch, meals, experienced hunting guide, retrieval, caping, delivery to local meat processor and taxidermist. Not included in the price are expenses associated with alcohol consumption, meat processing, taxidermy services or gratuities for guides. X receipts from the sale of this type of hunting package includes receipts from providing services, the sale of tangible personal property (meals), the sale of the carcass (possibly livestock) and from granting a license to use the land within the ranch boundaries. X must determine a reasonable method of allocating their receipts between components that are subject to gross receipts tax and those that are exempt from gross receipts tax (sale of livestock).

[3.2.211.17 NMAC - Rp, 3.2.211.17 NMAC 9/24/2024]

3.2.211.18 ASSISTED LIVING FACILITIES:

A. Receipts of an assisted living facility received from its residents are receipts from the leasing of real property, receipts for providing services, and receipts from selling tangible personal property.

(1) The portion of receipts attributable to the lease of real property, including a proportionate share of the square footage of the common areas, is deductible from taxable gross receipts of an assisted living facility pursuant to Section 7-9-53 NMSA 1978.

(2) The portion of receipts attributable to providing services and tangible personal property provided to residents of an assisted living facility are not deductible pursuant to Section 7-9-53 NMSA 1978.

B. For purposes of apportioning the receipts of an assisted living facility between deductible receipts from leasing real property and non-deductible receipts for providing services and tangible personal property to residents of the assisted living facility, a taxpayer may apportion its receipts using a reasonable accounting method.

(1) The use of fair rental value methodology for purposes of determining the portion of its receipts attributable to leasing real property is presumptively reasonable.

(2) While use of the fair rental value methodology is presumptively reasonable, the conclusions of any report or study or other supporting documentation or calculation of fair rental value may be challenged by the department.

[3.2.211.18 NMAC - N, 9/24/2024]

PART 212: DEDUCTION - GROSS RECEIPTS TAX - SALES TO GOVERNMENTAL AGENCIES

3.2.212.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/1996; 3.2.212.1 NMAC - Rn, 3 NMAC 2.54.1, 5/31/2001]

3.2.212.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/1996; 3.2.212.2 NMAC - Rn, 3 NMAC 2.54.2, 5/31/2001]

3.2.212.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/1996; 3.2.212.3 NMAC - Rn, 3 NMAC 2.54.3, 5/31/2001]

3.2.212.4 DURATION:

Permanent.

[11/15/1996; 3.2.212.4 NMAC - Rn, 3 NMAC 2.54.4, 5/31/2001]

3.2.212.5 EFFECTIVE DATE:

November 15, 1996, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/1996; 3.2.212.5 NMAC - Rn & A, 3 NMAC 2.54.5, 5/31/2001]

3.2.212.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/1996; 3.2.212.6 NMAC - Rn, 3 NMAC 2.54.6, 5/31/2001]

3.2.212.7 DEFINITIONS:

[**RESERVED**]

[11/15/1996; 3.2.212.7 NMAC - Rn, 3 NMAC 2.54.7, 5/31/2001]

3.2.212.8 LEASING OF TANGIBLE PERSONAL PROPERTY TO A GOVERNMENTAL AGENCY:

A. The receipts from the leasing of tangible personal property to a governmental agency are not deductible pursuant to Section 7-9-54 NMSA 1978. Only receipts from selling tangible personal property to a governmental agency are deductible.

B. Example 1: B rents computers to the United States for use in New Mexico. B contends that the gross receipts from these rentals are deductible for the purpose of computing gross receipts tax. The receipts are not deductible. Only receipts from selling tangible personal property to the United States are deductible.

C. Example 2: A county election board made the decision that in the last election they would use Q's electronic voting system. Because the county is small and the

system is very new and expensive, the parties agreed to lease the equipment. All the installation and supplies were provided by Q under the contract. Q deducted the receipts from the transaction. The deduction is not allowable under Section 7-9-54 NMSA 1978 because this is not a sale of tangible personal property to a political subdivision of the state of New Mexico.

[9/29/1967, 12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.212.8 NMAC - Rn & A, 3 NMAC 2.54.8, 5/31/2001]

3.2.212.9 SALE OF SERVICE TO A GOVERNMENTAL AGENCY:

A. Receipts from the sale of a service to a governmental agency are not deductible pursuant to Section 7-9-54 NMSA 1978. Only the receipts from selling tangible personal property to a governmental agency are deductible.

B. Example 1: The city contracts with E, an employment agency, to provide substitutes for vacationing city secretarial employees each summer. E deducts the receipts from the city in computing its gross receipts tax liability. This is a sale of services to a political subdivision of the state of New Mexico and not a sale of tangible personal property. The deduction cannot be allowed.

C. Example 2: B is an attorney who performs legal services in New Mexico for various Indian tribes and Indian pueblos. B is not an enrolled member of any Indian nation, tribe or pueblo. B's receipts from these services are not deductible under Section 7-9-54 NMSA 1978. A deduction from gross receipts under Section 7-9-54 NMSA 1978 is allowed only for receipts from the sale of tangible personal property to the governing bodies of Indian tribes or Indian pueblos for use on Indian reservations or pueblo grants. (If the services are performed on the tribe's territory, however, they may be exempt under Subsection D of Section 3.2.4.9 NMAC).

[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.212.9 NMAC - Rn & A, 3 NMAC 2.54.9, 5/31/2001]

3.2.212.10 CONSTRUCTION PERFORMED FOR A GOVERNMENTAL AGENCY:

A. Except as provided in Subsection B, receipts from performing a construction project for a governmental agency are receipts derived from performing a service and are not deductible pursuant to Section 7-9-54 NMSA 1978. The deduction is not available for construction materials whether the materials are billed separately on the same contract as the construction services or are billed under a separate contract.

B. Receipts from the sale of construction material that is tangible personal property, whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year

property, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, are deductible. The amount of the deduction is the asset basis, as those terms are defined by the Internal Revenue Code of 1986, as that code may be amended or renumbered.

C. Example: A contractor enters a contract with a municipality to construct a building and to furnish and equip it. Construction is a service, and receipts from selling construction, including construction materials except for certain tangible personal property, are not deductible under Section 7-9-54 NMSA 1978. An analysis is performed to distinguish the value of the construction, construction materials and tangible personal property included in the project. The contractor's receipts from the sale of tangible personal property, whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property including the indirect costs related to the asset basis, pursuant to Section 168 of the Internal Revenue Code, as that section may be amended or renumbered, are deductible provided the analysis includes sufficient information to demonstrate that the requirements of Section 7-9-54 NMSA 1978 are met.

[9/29/1967, 12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.212.10 NMAC - Rn & A, 3 NMAC 2.54.10, 5/31/2001; A, 12/27/2018]

3.2.212.11 SALE OF MEALS:

The receipts from selling meals on a contract basis to a governmental agency are receipts from selling tangible personal property. Such receipts may be deducted from gross receipts. Receipts of a private supplier from furnishing meals to persons visiting a governmental agency may not be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978 unless the meal is sold to that governmental agency.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.212.11 NMAC - Rn & A, 3 NMAC 2.54.11, 5/31/2001]

3.2.212.12 LODGING:

Receipts derived from the rental of lodging in hotels, motels, boarding houses, etc. to a governmental agency may not be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978 because the rental of such lodging is not the sale of tangible personal property.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.212.12 NMAC - Rn & A, 3 NMAC 2.54.12, 5/31/2001]

3.2.212.13 PUBLIC HOUSING AUTHORITY:

Receipts from selling tangible personal property, other than non-fissionable metalliferous ore, to a public housing authority may be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978 if the public housing authority is the state of New Mexico or any political subdivision thereof or the United States or any agency or instrumentality thereof.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.212.13 NMAC - Rn & A, 3 NMAC 2.54.13, 5/31/2001]

3.2.212.14 LANDSCAPING:

A. Except when the landscape items are part of a construction project, receipts from selling and installing landscape items such as plants, shrubs, sod, seed, trees, rocks and ornaments are receipts from the sale of tangible personal property. Therefore, the receipts from the sale and installation of these landscape items pursuant to a contract with a governmental agency may be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978. Receipts from selling and installing these landscape items as part of a construction project may not be deducted pursuant to Section 7-9-54 NMSA 1978. This version of Subsection A of Section 3.2.212.14 NMAC applies to transactions occurring on or after March 2, 2018.

B. Receipts from the installation of sprinkler systems are receipts from the performance of a service and are not receipts from selling tangible personal property. Therefore, receipts from the installation of sprinkler systems for a governmental agency may not be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996, 3.2.212.14 NMAC - Rn & A, 3 NMAC 2.54.14, 10/31/2000; A, 12/27/2018]

3.2.212.15 SALE OF DENTURES TO INMATES OF PRISONS:

A. The receipts of a dental laboratory from selling dentures to the New Mexico state penitentiary for use by inmates are receipts from selling tangible personal property to the state of New Mexico and may be deducted from gross receipts where:

(1) a dentist not associated with a dental laboratory examines an inmate, makes the necessary impressions of the mouth and teeth and prescribes the type of denture to be made by the dental laboratory; and

(2) the laboratory makes dentures and delivers them directly to the New Mexico state penitentiary; and

(3) the dental laboratory and the dentist send separate statements to and are paid separately by the New Mexico state penitentiary; and

(4) no contractual relationship exists between the dental laboratory and the dentist.

B. If each of these conditions is present, receipts of the dental laboratory from the sale of dentures to the New Mexico state penitentiary for use by inmates are receipts from selling tangible personal property to the state of New Mexico and may be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.212.15 NMAC - Rn & A, 3 NMAC 2.54.15, 5/31/2001]

3.2.212.16 SCHOOL PICTURES:

Receipts of a photographer from sales of photographs taken by the photographer to school children or parents of school children are subject to gross receipts tax even if a public school makes actual payment to the photographer from a "picture fund" made up of contributions of school children or parents of school children. The receipts from the portion of such sales attributable to any separately stated item of tangible personal property, such as prints, may not be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978 since it is not a sale to a public school. Receipts from the portion of such sales attributable to services are subject to the gross receipts tax and may not be deducted pursuant to Section 7-9-54 NMSA 1978 because it is not a sale of tangible personal property.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.212.16 NMAC - Rn & A, 3 NMAC 2.54.16, 5/31/2001]

3.2.212.17 NON-APPROPRIATED ACTIVITIES OF MILITARY SERVICES:

Receipts from selling tangible personal property, other than non-fissionable metalliferous ore or that which will become an ingredient or component part of a construction project, to ***non-appropriated*** fund activities of military services may be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978 where such ***non-appropriated*** fund activities are declared to be instrumentalities of the United States by military regulations promulgated and signed by the secretary of the Army, the secretary of the Navy or the secretary of the Air Force.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.212.17 NMAC - Rn & A, 3 NMAC 2.54.17, 5/31/2001]

3.2.212.18 SALE OF DRUGS TO WELFARE PATIENTS:

The receipts of a pharmacist from selling drugs to welfare patients may be deducted from gross receipts in a situation in which the health and environment department remits to the pharmacist the wholesale cost of the drug sold and a fixed amount per prescription filled. Such receipts are derived from the sale of tangible personal property

to the state of New Mexico and may be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.212.18 NMAC - Rn & A, 3 NMAC 2.54.18, 5/31/2001]

3.2.212.19 PROOF OF PAYMENT:

A. A seller must be able to prove that payment for the tangible personal property sold was made from the United States, or any agency or instrumentality thereof, or from the state of New Mexico, or any political subdivision thereof, or from the governing body of any Indian nation, tribe or pueblo or the deduction will not be allowed.

B. Proof of payment acceptable to the secretary consists of either a Type 9 nontaxable transaction certificate or other documentation demonstrating payment by a governmental entity. Such other documentation includes:

(1) for sales to any governmental entity (including federal agencies), documents related to the transaction showing the governmental entity's name, such as purchase orders, copies of warrants issued in payment and contracts covering the items purchased;

(2) for sales to federal agencies only, the federal contract number; and

(3) other documents determined by the secretary to constitute proof of payment.

[3/16/1979, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.212.19 NMAC - Rn, 3 NMAC 2.54.19, 5/31/2001]

3.2.212.20 METROPOLITAN REDEVELOPMENT PROJECTS:

A. Receipts from selling tangible personal property which is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code in New Mexico are subject to gross receipts tax.

B. A seller of tangible personal property which is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code may not claim the deduction from gross receipts provided by Section 7-9-54 NMSA 1978 by accepting a nontaxable transaction certificate from the municipality in question nor by proving payment from government funds.

[10/2/1985, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.212.20 NMAC - Rn & A, 3 NMAC 2.54.20, 5/31/2001]

3.2.212.21 GOVERNMENT CREDIT OR PROCUREMENT CARD PURCHASES:

A. Receipts from sales of tangible personal property to an agency of the United States government or the state of New Mexico are deductible from the gross receipts of the seller when paid for by a credit or procurement card issued to the United States government or the state of New Mexico. Through November 29, 1998, credit or procurement cards bearing the legends "U S GOVT TAX EXEMPT' and "I.M.P.A.C." are such credit or procurement cards issued to the United States government. On and after November 30, 1998, credit or procurement cards bearing the legends "United States of America" and "Tax Exempt I.D. 140001849" are such credit or procurement cards issued to the United States government. On or after June 30, 2003, credit or procurement cards bearing the legend "state of New Mexico" and the state seal are such credit or procurement cards issued to the state of New Mexico.

B. Receipts from credit or procurement card sales of construction materials or services or receipts from credit or procurement card payments of leases of tangible property are not deductible. Receipts from credit or procurement card sales to employees or representatives of the federal government or the state of New Mexico using a credit or procurement card other than a card issued to the United States government or the state of New Mexico are not deductible from gross receipts under Section 7-9-54 NMSA 1978.

[10/24/1989, 11/26/1990, 11/15/1996, 3/31/1999; 3.2.212.21 NMAC - Rn & A, 3 NMAC 2.54.21, 5/31/2001; A, 10/15/2003]

3.2.212.22 TANGIBLE PERSONAL PROPERTY IN PROJECTS FINANCED BY INDUSTRIAL REVENUE OR SIMILAR BONDS:

A. For the purposes of this section, a "bond project" is an arrangement entered into under the authority of the Industrial Revenue Bond Act, the County Industrial Revenue Bond Act or similar act in which a private person agrees:

(1) to arrange for the constructing and equipping of a facility for a state or local government by acting as agent for the government in procuring construction services, other services, tangible personal property which becomes an ingredient or component part of a construction project and other tangible personal property necessary for constructing and equipping the facility;

(2) to lease the completed facility from the government; and

(3) to buy the facility upon repayment of the bonds. The government agrees to own the facility, to finance the project in whole or in part through the issuance of bonds, to designate the private person as its agent in procuring the necessary property and services, to lease the facility to the private person and to sell the facility to the private person upon repayment of the bonds.

B. Receipts from the sale of tangible personal property to the private person who is acting as agent for the government with respect to the bond project are deductible

under Section 7-9-54 NMSA 1978 if the tangible personal property is not construction material excluding tangible personal property whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may be amended or renumbered. To be deductible, the cost of the bond project tangible personal property must not increase the basis, as determined under the provisions of Section 1011 of the Internal Revenue Code in effect on the date the bond project commences, of the structure or other facility included in the definition of construction.

C. A bond project commences when the governing body of the state or local government takes official action to enter into the arrangement, but no earlier than the adoption of an inducement resolution.

D. This version of 3.2.212.22 NMAC applies to transactions occurring on or after March 2, 2018.

[2/22/1995, 11/15/1996; 3.2.212.22 NMAC - Rn & A, 3 NMAC 2.54.22, 5/31/2001; A, 12/27/2018]

3.2.212.23 SALE OF A LICENSE TO A GOVERNMENT:

Licenses are intangible property. Receipts from selling licenses are not deductible under Section 7-9-54 NMSA 1978.

[4/30/1997; 3.2.212.23 NMAC - Rn & A, 3 NMAC 2.54.23, 5/31/2001]

3.2.212.24 CUSTOM SOFTWARE:

A. Because it is a service, receipts from developing or selling custom software for governmental entities are not deductible under Section 7-9-54 NMSA 1978.

B. Example 1: X contracts with the United States to develop software to test certain devices which the United States is considering purchasing. X is performing a service under this contract.

C. Example 2: Same facts as in Example 1 except that X is to modify an existing software test program. X is nonetheless performing a service under the contract.

D. Example 3: X enters into a qualifying research and development contract with a signatory agency of the United States. The contract is to develop software to test certain devices which the United States is considering purchasing. X is performing a service under this contract. To create the testing program X buys several pieces of packaged software and develops new programming to interconnect the packaged software into a coherent testing program. X may execute, and the vendors may accept in good faith,

Type 15 non-taxable transaction certificates or alternative evidence as provided by Section 7-9-43 NMSA 1978 for the purchase of the packaged software.

[4/30/1997; 3.2.212.24 NMAC - Rn & A, 3 NMAC 2.54.24, 5/31/2001; A, 12/27/2018]

3.2.212.25 FEDERAL CREDIT UNIONS ARE GOVERNMENTAL INSTRUMENTALITIES BUT STATE CREDIT UNIONS ARE NOT:

A. Federal courts have ruled that credit unions chartered under the Federal Credit Union Act are instrumentalities of the federal government. See *United States v. Maine*, 524 F. Supp. 1056 (D. Me. 1981) and *United States v. Michigan*, 851 F.2d 803 (6th Cir. 1988). Therefore persons who sell tangible personal property to federal credit unions are entitled to the deduction provided by Section 7-9-54 NMSA 1978.

B. Although Section 58-11-61 NMSA 1978 exempts from gross receipts tax the receipts of a credit union organized under or subject to the Credit Union Regulatory Act to the same extent that the receipts of a credit union chartered under federal law are exempt, the receipts of a vendor who sells tangible personal property to credit unions organized under or subject to the Credit Union Regulatory Act are not deductible under Section 7-9-54 NMSA 1978. The gross receipts tax is imposed on the receipts of the vendor; it is not imposed on the credit union. Credit unions organized under or subject to the Credit Union Regulatory Act are not instrumentalities of the federal government and no statute or judicial determination makes them instrumentalities of New Mexico. A vendor's receipts from selling tangible personal property to state-chartered credit unions, however, may be deductible under Section 7-9-61.2 NMSA 1978. This version of Subsection B of Section 3.2.212.25 NMAC applies to transactions occurring on or after July 1, 2000.

C. Section 3.2.212.25 NMAC is applicable to transactions on or after July 1, 1997.

[5/31/97, 3.2.212.25 NMAC - Rn & A, 3 NMAC 2.54.25, 10/31/2000]

3.2.212.26 AMERICAN NATIONAL RED CROSS:

Since the American National Red Cross chartered pursuant to 36 U.S.C. 300101 *et seq.* is an instrumentality of the federal government, persons who sell tangible personal property to the American National Red Cross are entitled to the deduction provided by Section 7-9-54 NMSA 1978.

[5/31/97; 3.2.212.26 NMAC - Rn & A, 3 NMAC 2.54.26, 5/31/2001]

3.2.212.27 SALE OF GASES:

Gases, such as natural gas, nitrogen, carbon dioxide, helium, propane, oxygen, acetylene and nitrous oxide, are tangible personal property. Therefore receipts from

selling gases to a governmental agency may be deducted from gross receipts under Section 7-9-54 NMSA 1978.

[3.2.212.27 NMAC - N, 3/15/10]

PART 213: DEDUCTION - GROSS RECEIPTS TAX - TRANSACTION IN INTERSTATE COMMERCE

3.2.213.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.2.213.1 NMAC, Rp 3.2.213.1 NMAC, 11/29/2022]

3.2.213.2 SCOPE:

This part applies to all persons transmitting messages or conversations by radio, selling radio or television broadcast time, advertising or otherwise engaging in interstate commerce.

[3.2.213.2 NMAC, Rp 3.2.213.2 NMAC, 11/29/2022]

3.2.213.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.2.213.3 NMAC, Rp 3.2.213.3 NMAC, 11/29/2022]

3.2.213.4 DURATION:

Permanent.

[3.2.213.4 NMAC, Rp 3.2.213.4 NMAC, 11/29/2022]

3.2.213.5 EFFECTIVE DATE:

November 29, 2022, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.213.5 NMAC, Rp 3.2.213.5 NMAC, 11/29/2022]

3.2.213.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.213.6 NMAC, Rp 3.2.213.6 NMAC, 11/29/2022]

3.2.213.7 DEFINITIONS:

A. "Regional" defined: As used in Section 7-9-55 NMSA 1978, a "regional" seller or advertiser is a person who sells from locations in more than one state or who purchases advertising services intended to be heard or viewed in more than one state. A person is deemed to sell from locations in more than one state if that person either maintains a physical retail establishment in more than one state, or if that person regularly stores, warehouses, or otherwise maintains stocks of tangible personal property for the fulfillment of purchases in more than one state. A person does not advertise in more than one state if the advertisement is intended to be viewed only in one state, but some incidental views occur outside of that state.

B. "Seller or advertiser" defined: As used in Section 7-9-55 NMSA 1978, "seller or advertiser " means a person whose identity, business, service, product or products are the primary subject of the advertising message.

C. "Principal place of business" defined: As used in Section 7-9-55 NMSA 1978, "principal place of business " means the place in which a business:

(1) earns the largest percentage of its revenues; and

(2) owns the largest percentage of its capital assets; and

(3) employs the largest percentage of its full-time equivalent employees. A business can have only one principal place of business.

[3.2.213.7 NMAC, Rp 3.2.213.7 NMAC, 11/29/2022]

3.2.213.8 ADVERTISING RECEIPTS OF PUBLICATION FROM OUT-OF-STATE CUSTOMERS:

Receipts of a newspaper or magazine which is published within New Mexico and circulated to subscribers within and without New Mexico from the sale of advertising space to advertisers within and without New Mexico are subject to the gross receipts tax. The gross receipts tax levied on advertising receipts does not impose an unconstitutional burden on interstate commerce.

[3.2.213.8 NMAC, Rp 3.2.213.8 NMAC, 11/29/2022]

3.2.213.9 BROADCASTING AND RELATED ADVERTISING:

A. Microwave carriers: The receipts of a microwave carrier from relaying television signals for another party for a fee from a point of origin outside this state to a point of destination within this state may be deducted from gross receipts even though a portion

of those receipts is derived from relaying the signals between towers located within New Mexico.

B. Deduction available to broadcaster and advertising agency: A New Mexico radio or television broadcaster may deduct from its gross receipts the receipts derived from the sale of broadcast time which is sold either directly to a national or regional seller or advertiser not having its principal place of business in or being incorporated under the laws of New Mexico, or to an advertising agency which purchases the broadcast time on behalf of, or for subsequent sale to, such national or regional seller or advertiser. No nontaxable transaction certificate is required. If the advertising agency subsequently sells the broadcast time to a New Mexico seller or advertiser, however, compensating tax will be due on the value of the broadcast time.

C. Sales of broadcast time: Receipts from sales of broadcast time by New Mexico radio and television broadcasters to advertising agencies are subject to gross receipts tax, but may be deductible under Section 7-9-48 NMSA 1978 or Section 7-9-55 NMSA 1978.

D. Cable television systems: Cable television systems are eligible for the deduction provided by Section 7-9-55 NMSA 1978 for receipts from the sale of broadcast time to a national or regional advertiser.

E. Digital advertising services: Providers of digital advertising services are eligible for the deduction provided by Section 7-9-55 NMSA 1978. Receipts of a provider of digital advertising services are deductible when the receipts:

(1) are from a national or regional advertiser not having its principal place of business in New Mexico, or that is not incorporated under the laws of New Mexico, or

(2) are from an advertising agency which purchases the display of advertisements on the platform on behalf of, or for subsequent sale to, a seller defined in Paragraph (1) of Subsection E of 3.2.213.9NMAC. However, the commissions of advertising agencies from performing services in this state may not be deducted.

[3.2.213.9 NMAC, Rp 3.2.213.9 NMAC, 11/29/2022]

3.2.213.10 INTERSTATE TRANSPORTATION:

A. Transporting forest fire fighting materials: The receipts from transporting forest firefighting materials, such as slurry, in airplanes from a point inside New Mexico to a point outside New Mexico are deductible from gross receipts.

B. Star route contractors:

(1) A person holding a contract for the transportation of United States mail as a "star route contractor " from points within New Mexico to other points outside New

Mexico may deduct the portion of gross receipts which were derived from transactions in interstate commerce.

(2) In order to determine the portion of the receipts from the contract which is subject to the gross receipts tax, the total receipts from the contract are to be multiplied by a fraction, the numerator of which is the total number of delivery points in New Mexico and the denominator of which is the total number of delivery points. A delivery point is any point at which mail is required, by contract, to be delivered.

C. Hauling livestock or produce: Receipts from hauling livestock or agricultural products in a single shipment from points within New Mexico to points outside New Mexico, or from points outside New Mexico to points within New Mexico, are deductible from gross receipts as transactions in interstate commerce.

D. Transportation by aircraft:

(1) Receipts from transporting persons by aircraft from one point to another are deductible as receipts from transactions in interstate commerce.

(2) Receipts from transporting property by aircraft in a single flight from points within New Mexico to points outside New Mexico, or from points outside New Mexico to points within New Mexico are deductible from gross receipts as receipts from transactions in interstate commerce.

(3) Receipts from transporting property by aircraft from one point in New Mexico to another point in New Mexico are not deductible as transactions in interstate commerce.

E. Federal preemption - transportation by motor carrier: 49 USC 14505 prohibits New Mexico and its political subdivisions from imposing tax on receipts from transporting passengers by motor carrier in interstate commerce. Such receipts, therefore, are deductible under Section 7-9-55 NMSA 1978.

[3.2.213.10 NMAC, Rp 3.2.213.10 NMAC, 11/29/2022]

3.2.213.11 PRINTED REPORTS:

Receipts from the sale of a printed report of oil and gas leasing activities, which is not a "newspaper " as that term is used in Section 7-9-64 NMSA 1978, to nonresidents of New Mexico where delivery is made out-of-state by the seller's vehicle, U.S. mail or common carrier are receipts from transactions in interstate commerce and such receipts may be deducted from the gross receipts of the seller.

[3.2.213.11 NMAC, Rp 3.2.213.11 NMAC, 11/29/2022]

3.2.213.12 TRANSACTIONS NOT QUALIFIED AS INTERSTATE COMMERCE:

A. Receipts of New Mexico sellers from sales of property to New Mexico residents who request that delivery be made out of state are not receipts from transactions in interstate commerce and are not deductible under Section 7-9-55 NMSA 1978.

B. Receipts of New Mexico sellers from sales of property to nonresidents of New Mexico who accept delivery of the property in New Mexico or where transfer of title or risk of loss passes to the nonresident buyer in New Mexico are not receipts from transactions in interstate commerce and are not deductible under Section 7-9-55 NMSA 1978.

[3.2.213.12 NMAC, Rp 3.2.213.12 NMAC, 11/29/2022]

3.2.213.13 RECEIPTS OF A DIGITAL PLATFORM THAT DISPLAYS DIGITAL ADVERTING:

A. Receipts of a provider of a digital platform that displays digital adverting services, whose digital platform may be accessed or viewed within New Mexico, from the sale of advertising services to advertisers within and without New Mexico are subject to the gross receipts tax.

B. "Device" means any medium through which a digital platform may be accessed or viewed, including stationary or portable computing devices, tablets, phones, and smart devices, or similar equipment capable of accessing the internet and displaying a digital platform.

C. "Digital advertising services" means advertisement services on digital platforms, including advertisements in the form of banner advertising, search engine advertising, interstitial advertising, and other comparable advertising services.

D. "Digital platform" means any type of website, including part of a website, or applications, that a user is able to access or view.

E. "User" means any person who accesses or views a digital platform with a device.

[3.2.213.13 NMAC - N, 12/19/2023]

PART 214: DEDUCTION - GROSS RECEIPTS TAX - INTRASTATE TRANSPORTATION AND SERVICES IN INTERSTATE COMMERCE

3.2.214.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.214.1 NMAC - Rn, 3 NMAC 2.56.1, 5/31/01]

3.2.214.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.214.2 NMAC - Rn, 3 NMAC 2.56.2, 5/31/01]

3.2.214.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.214.3 NMAC - Rn, 3 NMAC 2.56.3, 5/31/01]

3.2.214.4 DURATION:

Permanent.

[11/15/96; 3.2.214.4 NMAC - Rn, 3 NMAC 2.56.4, 5/31/01]

3.2.214.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.214.5 NMAC - Rn, 3 NMAC 2.56.5 & A, 5/31/01]

3.2.214.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.214.6 NMAC - Rn, 3 NMAC 2.56.6, 5/31/01]

3.2.214.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.214.7 NMAC - Rn, 3 NMAC 2.56.7, 5/31/01]

3.2.214.8 GENERAL EXAMPLES:

A. The deduction provided by Subsections A and B of Section 7-9-56 NMSA 1978 apply to the receipts of persons who are not a party to a single contract for the transportation of property or persons in interstate commerce but who are selling such services to the person who is obligated to furnish the transportation in interstate commerce under the terms of the contract.

B. Example 1: X, a pipe supply house in Durango, Colorado, sells C in Las Cruces, New Mexico, a truckload of pipe. T, a truck line service, regularly transports property from Durango to Albuquerque. B, another truck line service, has New Mexico authority to transport property from Albuquerque to Las Cruces. X ships the pipe under a through bill of lading to Las Cruces with T. T carries the pipe to Albuquerque. At Albuquerque B attaches a tractor to T's trailer and carries the pipe on to Las Cruces. B can deduct the receipts which B receives from hauling the pipe from a point in New Mexico to another point in New Mexico. The pipe is being shipped in interstate commerce under a single contract. T can deduct its receipts from this transaction under the provisions of Section 7-9-56 NMSA 1978.

C. Example 2: H, an employee of a national chain store, is transferred by the company from Los Angeles to Albuquerque. H contracts with B, a moving company, to move H's household goods from Los Angeles to B's warehouse in Albuquerque. H also contracts with B's Albuquerque agent for interim storage and drayage of the goods pending H's location of housing in Albuquerque. The receipts of B's agents from performing the second contract are subject to the gross receipts tax.

D. Example 3: Y orders materials from an out-of-state supplier and the materials are shipped to Albuquerque under a single contract. The materials are stored in Albuquerque and then Y hires X, a local hauler, to take the materials from the place of storage to the job site. X claims receipts from performing this service are deductible under Section 7-9-56 NMSA 1978. X's receipts are not deductible. X's hauling was not under the single contract or tariff for the interstate shipment. The single contract has previously been completed.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 4/30/99; 3.2.214.8 NMAC - Rn, 3 NMAC 2.56.8 & A, 5/31/01]

3.2.214.9 COMMISSIONS OF NEW MEXICO AGENTS:

A. Commissions to a person in New Mexico for originating interstate transportation of persons are not deductible pursuant to either Section 7-9-56 NMSA 1978 or Section 7-9-66 NMSA 1978. Such commissions are a fee for service rendered in New Mexico.

B. Example: A, an airline company, secures passage on an interstate flight of another airline for one of its passengers because all of its flights to that particular destination are full. A receives a commission from the other airline for originating the transportation for that airline. The commission A receives is subject to the gross receipts tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.214.9 NMAC - Rn, 3 NMAC 2.56.9 & A, 5/31/01]

3.2.214.10 REPAIR OF DAMAGED HOUSEHOLD EFFECTS:

When damage occurs to personal effects during transit by an interstate carrier and the carrier is required to hire a repair facility to restore the damaged articles, receipts of the repair facility are not deductible pursuant to Section 7-9-56 NMSA 1978. Such receipts are not from transporting property in interstate commerce or performing accessorial services under a single contract. The interstate carrier cannot issue a nontaxable transaction certificate pursuant to Section 7-9-48 NMSA 1978 since it is not reselling but is consuming the repair service.

[3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.214.10 NMAC - Rn, 3 NMAC 2.56.10 & A, 5/31/01]

3.2.214.11 PUBLIC DISTRIBUTION WAREHOUSE:

A. A "public distribution warehouse center" is a person who is engaged in the business of storing and distributing the property of others and who performs the following package of services for at least the majority of its clients:

(1) stores tangible personal property owned by the client; and

(2) upon order of the client,

(a) withdraws the tangible personal property from storage;

(b) re-packages or otherwise prepares the tangible personal property for delivery; and

(c) delivers the tangible personal property to customers of the client from the client's stored property, regardless of whether delivery is accomplished through the person's own employees and vehicles or through those of a third party.

B. Section 3.2.214.11 NMAC is retroactively applicable to transactions occurring on or after July 1, 1994.

[2/22/95, 11/15/96; 3.2.214.11 NMAC - Rn, 3 NMAC 2.56.11 & A, 5/31/01]

PART 215: DEDUCTION - GROSS RECEIPTS TAX - SALE OF CERTAIN SERVICES TO AN OUT-OF-STATE BUYER

3.2.215.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1150 South St. Francis Drive, P.O. Box 630, Santa Fe NM 97504-0630.

[3.2.215.1 NMAC - Rp, 3.2.215.1 NMAC 10/13/2021]

3.2.215.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[3.2.215.2 NMAC - Rp, 3.2.215.2 NMAC 10/13/2021]

3.2.215.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.2.215.3 NMAC - Rp, 3.2.215.3 NMAC 10/13/2021]

3.2.215.4 DURATION:

Permanent.

[3.2.215.4 NMAC - Rp, 3.2.215.4 NMAC 10/13/2021]

3.2.215.5 EFFECTIVE DATE:

October 13, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.215.5 NMAC - Rp, 3.2.215.5 NMAC 10/13/2021]

3.2.215.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.215.6 NMAC - Rp, 3.2.215.6 NMAC 10/13/2021]

3.2.215.7 DEFINITIONS:

[**RESERVED**]

[3.2.215.7 NMAC - Rp, 3.2.215.7 NMAC 10/13/2021]

3.2.215.8 [RESERVED]

[3.2.215.8 NMAC - Rp, 3.2.215.8 NMAC 10/13/2021]

3.2.215.9 SERVICES PERFORMED ON FEDERAL AREAS:

Federal areas located within the boundaries of New Mexico are not outside New Mexico for purposes of Section 7-9-57 NMSA 1978.

[3.2.215.9 NMAC - Rp, 3.2.215.9 NMAC 10/13/2021]

3.2.215.10 OTHER EVIDENCE:

A. As used in Section 7-9-57 NMSA 1978, "other evidence acceptable to the secretary" includes invoices, contracts, photostatic copies of checks and letters which show that the sale is to an out-of-state buyer and which indicate that the initial use of the product of the service did not occur in New Mexico.

B. Example 1: E drafts a manuscript about deer hunting in New Mexico and sends the manuscript to a sports magazine publisher in New York. The publisher accepts by letter the story for publication and encloses a check. E may deduct this payment from gross receipts if E preserves the letter or a photostatic copy of the check.

C. Example 2:

(1) W is a writer who performs some writing services in New Mexico. W's manuscripts and all rights thereto are sold by W's literary agent in New York City, exclusively to publishers, motion picture companies and other media located outside New Mexico. None of the rights to W's manuscripts or other literary works are sold to publishers, editors or media within the state of New Mexico. Funds are remitted to the literary agent in New York by the out-of-state purchaser of the rights to W's works. The agent then pays W. W's receipts may be deducted from gross receipts if:

(a) The buyers of W's works deliver nontaxable transaction certificates to W; or

(b) W's agent certifies in writing that all of W's work is published or otherwise initially used outside New Mexico; or

(c) W's agent accounts to W for each sale on a document or documents clearly indicating that the sales are to out-of-state buyers and that the initial use of the product of the service did not occur in New Mexico and W preserves the agent's detailed accounting.

(2) If the buyers rewrite, publish or otherwise initially use W's writing services inside New Mexico, the compensating tax imposed by Subsection B of Section 7-9-7 NMSA 1978 is due from the buyer on the value of the services at the time they were rendered.

[3.2.215.10 NMAC - Rp, 3.2.215.10 NMAC 10/13/2021]

3.2.215.11 [RESERVED]

[3.2.215.11 NMAC - Rp, 3.2.215.11 NMAC 10/13/2021]

3.2.215.12 [RESERVED]

[3.2.215.12 NMAC - Rp, 3.2.215.12 NMAC 10/13/2021]

PART 216: DEDUCTION - GROSS RECEIPTS TAX - FEED - FERTILIZERS

3.2.216.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.216.1 NMAC - Rn, 3 NMAC 2.58.1, 6/14/01]

3.2.216.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.216.2 NMAC - Rn, 3 NMAC 2.58.2, 6/14/01]

3.2.216.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.216.3 NMAC - Rn, 3 NMAC 2.58.3, 6/14/01]

3.2.216.4 DURATION:

Permanent.

[11/15/96; 3.2.216.4 NMAC - Rn, 3 NMAC 2.58.4, 6/14/01]

3.2.216.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.216.5 NMAC - Rn, 3 NMAC 2.58.5 & A, 6/14/01]

3.2.216.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.216.6 NMAC - Rn, 3 NMAC 2.58.6, 6/14/01]

3.2.216.7 DEFINITIONS:

A. **"Farming" defined:**

(1) A person regularly engaged in the business of "farming" is a person who regularly engages in the business of:

(a) cultivating a tract of land of over one acre with the purpose of producing a plant which is grown primarily for sale or use in the ordinary course of business as fiber or as food for human or animal consumption;

(b) growing plants in a greenhouse or by hydroponics primarily for sale or use in the ordinary course of business as fiber or as food for human or animal consumption; or

(c) cultivating an orchard on a tract of land of over one acre with the purpose of producing nuts, fruit or other products for sale or use in the ordinary course of business for human or animal consumption.

(2) A person whose farming operation has been determined by the internal revenue service to be a hobby for federal income tax purposes is not regularly engaged in the business of farming.

B. **"Ranching" defined:**

(1) A person regularly engaged in "ranching" is a person who regularly engages in the business of:

(a) grazing or rearing livestock, such as horses, cattle, sheep or goats, on a tract of land of over one acre either with the purpose of deriving receipts from selling the livestock or livestock products such as meat, wool, mohair and dairy products;

(b) feeding, pasturing, penning or handling of livestock;

(c) raising fish for human consumption; or

(d) raising poultry.

(2) A person whose ranching operation has been determined by the internal revenue service to be a hobby for federal income tax purposes is not regularly engaged in the business of ranching.

C. **"Feed for livestock" defined:** "Feed for livestock" includes livestock feed supplements in a liquid state, which contain proteins, phosphorus, molasses, trace minerals, vitamins or other additives.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.216.7 NMAC - Rn, 3 NMAC 2.58.7, 6/14/01]

3.2.216.8 WRITTEN STATEMENT OF FARMING OR RANCHING:

A. Receipts from selling certain items to persons who state in writing that they are regularly engaged in the business of farming or ranching may be deducted from the seller's gross receipts pursuant to Section 7-9-58 NMSA 1978 if the statement:

(1) contains a declaration that the purchaser-signer is regularly engaged in the business of ranching or farming; and

(2) is personally signed by the purchaser or the purchaser's agent who makes the statement; and

(3) is accepted in good faith by the seller.

B. The following sentence is an example of a statement that will be accepted by the department as conclusive evidence that receipts from selling enumerated items to persons signing the statement may be deducted from the seller's gross receipts pursuant to Section 7-9-58 NMSA 1978 if the seller accepted such a statement in good faith. "I swear or affirm that I am regularly engaged in the business of farming or ranching. This declaration is made for the purpose of allowing receipts from selling feed for livestock, fish raised for human consumption, poultry or for animals raised for their hides or pelts, seeds, roots, bulbs, plants, soil conditioners, fertilizers, insecticides, insects used to control populations of other insects, fungicides or weedicides or water for irrigation purposes to be deducted from the gross receipts of the seller pursuant to Section 7-9-58 NMSA 1978."

C. The following statement signed by the purchaser or authorized agent is insufficient as a statement in writing that a person is regularly engaged in the business of farming or ranching as required by Section 7-9-58 NMSA 1978. "I hereby certify the product or products purchased are for agricultural use only."

D. Receipts from selling any of the items mentioned in Section 7-9-58 NMSA 1978 may not be deducted from gross receipts unless the sale is made to a person who makes a written statement which is in compliance with Section 3.2.216.8 NMAC.

E. For the purposes of Section 7-9-58 NMSA 1978 it is sufficient if the seller receives one written statement from each purchaser, provided the seller maintains that statement on file.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.216.8 NMAC - Rn, 3 NMAC 2.58.8 & A, 6/14/01]

3.2.216.9 GOOD FAITH ACCEPTANCE OF BUYER'S STATEMENT:

A. When a seller accepts in good faith a person's written statement that the person is regularly engaged in the business of farming or ranching, the written statement shall be conclusive evidence that the proceeds from the transaction with the person having made this statement are deductible from the seller's gross receipts.

B. Example 1: X owns a water company that furnishes water to Y for use in irrigating Y's cotton crop. Y gives X the proper written statement that Y is regularly engaged in the business of farming. X may deduct the gross receipts received from the sale of the water.

C. Example 2: Z also buys water from X, a water company. Z is not engaged in the business of farming or ranching but nevertheless gives X a written statement in proper form that X is engaged in the business of farming. X accepts the statement in good faith. X may deduct the gross receipts received from the sale of the water but Z is liable for the compensating tax and may be liable for making false statements.

D. Example 3: C buys one hundred gallons of chemicals from E for $15.00. The chemicals are used to delint cotton in C's cotton gin. E maintains that E can deduct the $15.00 from gross receipts since the chemical helps the seed to germinate and therefore must be a fertilizer. E may not take the deduction.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.216.9 NMAC - Rn, 3 NMAC 2.58.9, 6/14/01]

3.2.216.10 FEED FOR HORSES:

For the period July 1, 1991 through June 30, 1992 only, the receipts from selling feed for those horses not included within the definition of livestock pursuant to Section 7-9-3.1 NMSA 1978 are not deductible under the provisions of Section 7-9-58 NMSA 1978 in effect for that period.

[10/18/77, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 3/19/92, 12/23/92, 11/15/96; 3.2.216.10 NMAC - Rn, 3 NMAC 2.58.10 & A, 6/14/01]

PART 217: DEDUCTION - GROSS RECEIPTS TAX - WAREHOUSING, THRESHING, HARVESTING, GROWING, CULTIVATING AND PROCESSING AGRICULTURAL PRODUCTS

3.2.217.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.217.1 NMAC - Rn, 3 NMAC 2.59.1, 6/14/01]

3.2.217.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.217.2 NMAC - Rn, 3 NMAC 2.59.2, 6/14/01]

3.2.217.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.217.3 NMAC - Rn, 3 NMAC 2.59.3, 6/14/01]

3.2.217.4 DURATION:

Permanent.

[11/15/96; 3.2.217.4 NMAC - Rn, 3 NMAC 2.59.4, 6/14/01]

3.2.217.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.217.5 NMAC - Rn, 3 NMAC 2.59.5 & A, 6/14/01]

3.2.217.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.217.6 NMAC - Rn, 3 NMAC 2.59.6, 6/14/01]

3.2.217.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.217.7 NMAC - Rn, 3 NMAC 2.59.7, 6/14/01]

3.2.217.8 FERTILIZERS AND INSECTICIDES:

Receipts from the application of fertilizer and insecticide by the use of custom application rigs are the receipts from "growing" agricultural products and are deductible from gross receipts pursuant to Section 7-9-59 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.217.8 NMAC - Rn, 3 NMAC 2.59.8 & A, 6/14/01]

3.2.217.9 STORAGE, GRADING AND PACKING APPLES:

The receipts of a marketing association or corporation, whether or not organized for profit, from storing, grading or packing apples for apple growers are receipts from warehousing and processing agricultural products and may be deducted from gross

receipts pursuant to Section 7-9-59 NMSA 1978. This deduction applies to the total receipts from the grading and packing contract even though the cost of the cartons used in the packing is included in the charge for service.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.217.9 NMAC - Rn, 3 NMAC 2.59.9 & A, 6/14/01]

3.2.217.10 GINNING OF COTTON:

The receipts of a cotton gin from the ginning of cotton, including the charge for bagging and ties used in the ginning, may be deducted from gross receipts pursuant to Section 7-9-59 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.217.10 NMAC - Rn, 3 NMAC 2.59.10 & A, 6/14/01]

3.2.217.11 HAULING OF AGRICULTURAL PRODUCTS:

A. The receipts from hauling agricultural products from point to point in New Mexico or from loading or unloading agricultural products in New Mexico are subject to the gross receipts tax. These receipts are derived from performing services in New Mexico and are not derived from warehousing, threshing or cleaning agricultural products within the meaning of Section 7-9-59 NMSA 1978.

B. Receipts from hauling agricultural products from point to point, however, does not include receipts from hauling which is an integral part of the harvesting process nor does it include transportation of milk from the place of production to a place of processing. Such receipts are deductible under Section 7-9-59 NMSA 1978.

C. *Example 1:* H is a commercial harvester of grain who owns combines and trucks. For consideration, H will contract with a farmer to harvest the farmer's grain. As part of the contract, H delivers the harvested grain from the farmer's land to an elevator owned by a third party. H's receipts from harvesting the farmer's grain is deductible under Section 7-9-59 NMSA 1978 but H's receipts from hauling the harvested grain to the elevator are not deductible.

D. *Example 2:* X is engaged in the business of transporting for farmers alfalfa hay from the field where the alfalfa is raised to the farmer's own storage facility. The distance from the field to the farmer's storage facility may be three or four miles. X's hauling is part of the harvesting process and X's receipts are deductible under Section 7-9-59 NMSA 1978.

E. *Example 3:* Y is engaged in the business of hauling potatoes from farms to the plant of a potato chip maker. Y picks up harvested potatoes from farmers' storage facilities and delivers them to the potato chip maker's receiving facility. Y's receipts from this activity are not deductible under Section 7-9-59 NMSA 1978.

F. *Example 4:* V, a labor contractor, negotiates an agreement with a farmer for the harvesting of onions. After the agreement is made V hires people to harvest the onions. Harvesting begins with pulling the onions out of the ground by hand and clipping off the roots and tops. The onions are put into buckets which are dumped into burlap sacks when full. The process continues with arranging the burlap sacks into straight rows in the field. The sacks are then loaded by a conveyor onto a truck, emptied, and the sacks tossed back to the ground. The onions are then delivered to the processing shed by the truck. V's receipts from these activities are deductible under Section 7-9-59 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 3.2.217.11 NMAC - Rn, 3 NMAC 2.59.11 & A, 10/31/2000]

3.2.217.12 SHEARING SHEEP:

Receipts from shearing sheep may be deducted from gross receipts pursuant to Section 7-9-59 NMSA 1978 because they are receipts from harvesting agricultural products.

[1/9/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 12/23/92, 11/15/96; 3.2.217.12 NMAC - Rn, 3 NMAC 2.59.12 & A, 6/14/01]

PART 218: DEDUCTION - GROSS RECEIPTS TAX - SALES TO CERTAIN ORGANIZATIONS

3.2.218.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.218.1 NMAC - Rn, 3 NMAC 2.60.1, 6/14/01]

3.2.218.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.218.2 NMAC - Rn, 3 NMAC 2.60.2, 6/14/01]

3.2.218.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.218.3 NMAC - Rn, 3 NMAC 2.60.3, 6/14/01]

3.2.218.4 DURATION:

Permanent.

[11/15/96; 3.2.218.4 NMAC - Rn, 3 NMAC 2.60.4, 6/14/01]

3.2.218.5 EFFECTIVE DATE:

November 15, 1996, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.218.5 NMAC - Rn, 3 NMAC 2.60.5 & A, 6/14/01]

3.2.218.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.218.6 NMAC - Rn, 3 NMAC 2.60.6, 6/14/01]

3.2.218.7 DEFINITIONS:

[**RESERVED**]

[11/15/96; 3.2.218.7 NMAC - Rn, 3 NMAC 2.60.7, 6/14/01]

3.2.218.8 SALE TO A 501(c)(3) ORGANIZATION:

Receipts from selling tangible personal property to organizations which demonstrate to the department that they have been granted an exemption from federal income tax as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1954, Section 501(c)(3) of the United States Internal Revenue Code of 1986 or Section 101(6) of the United States Internal Revenue Code of 1939 may be deducted from the seller's gross receipts if the buyer delivers a nontaxable transaction certificate (nttc) to the seller and if the tangible personal property sold is employed by the 501(c)(3) organization in its ordinary functions. Receipts from the sale of tangible personal property to a 501(c)(3) or 101(6) organization which are employed in the conduct of an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1986, as amended or renumbered, or Section 422(b) of the United States Internal Revenue Code of 1939, may not be deducted pursuant to Section 7-9-60 NMSA 1978. If the 501(c)(3) organization delivering the nttc employs the property purchased in the conduct of an unrelated trade or business, the compensating tax is due.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.218.8 NMAC - Rn, 3 NMAC 2.60.8 & A, 6/14/2001]

3.2.218.9 SERVICES, LEASES, CONSTRUCTION SERVICES:

A. Receipts from services performed for and from leases entered into with 501(c)(3) organizations are not deductible pursuant to Section 7-9-60 NMSA 1978.

B. Except as provided in Subsection C, receipts from selling construction, including construction material to a 501(c)(3) organization, are receipts derived from performing a service and are not eligible for the deduction pursuant to Section 7-9-60 NMSA 1978.

C. Receipts from selling construction material that is tangible personal property, whether removable on non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, may be deducted from gross receipts when the sale is made to a 501(c)(3) organization.

[3/16/1979, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.218.9 NMAC - Rn, 3 NMAC 2.60.9 & A, 6/14/2001; A, 12/27/2018]

3.2.218.10 CUSTOM SOFTWARE:

Because it is a service, receipts from developing or selling custom software for 501(c)(3) organizations are not deductible under Section 7-9-60 NMSA 1978.

[4/30/97; 3.2.218.10 NMAC - Rn, 3 NMAC 2.60.10 & A, 6/14/01]

3.2.218.11 SALE OF MEALS:

Meals are tangible personal property. Therefore receipts from selling meals to a 501(c)(3) organization are receipts from selling tangible personal property. Such receipts may be deducted from gross receipts under Section 7 9 60 NMSA 1978 if the organization delivers a properly executed Type 9 non-taxable transaction certificate or alternative evidence to the seller. Sales of meals directly to members of a 501(c)(3) organization may not be deducted under Section 7 9 60 NMSA 1978 even if the meals are served at a function of the organization. The 501(c)(3) organization is an entity distinct from its members.

[10/29/1999; 3.2.218.11 NMAC - Rn, 3 NMAC 2.60.11 & A, 6/14/2001, 12/27/2018]

3.2.218.12 LODGING:

Receipts derived from the rental of lodging in hotels, motels, boarding houses or similar facilities to a Section 501(c)(3) organization may not be deducted from gross receipts pursuant to Section 7-9-60 NMSA 1978 because the rental of such lodging is not the sale of tangible personal property.

[1/15/00; 3.2.218.12 NMAC - Rn, 3 NMAC 2.60.12 & A, 6/14/01]

3.2.218.13 SALE OF GASES:

Gases, such as natural gas, nitrogen, carbon dioxide, helium, oxygen, propane, acetylene and nitrous oxide, are tangible personal property. Therefore receipts from selling gases to a 501(c)(3) organization may be deducted from gross receipts under Section 7 9 60 NMSA 1978 if the organization delivers a properly executed non-taxable transaction certificate or alternative evidence to the seller.

[3.2.218.13 NMAC - N, 3/15/2010; A, 12/27/2018]

3.2.218.14 SINGLE MEMBER LIMITED LIABILITY COMPANY WHOSE SOLE MEMBER IS A 501(c)(3) ORGANIZATION:

A. A single member limited liability company (llc) whose sole member is a 501(c)(3) organization will be treated like a 501(c)(3) organization and receive the same treatment for purposes of Section 7-9-60 NMSA 1978 so long as the llc is recognized by the internal revenue service as a disregarded entity for federal income tax purposes.

B. Receipts from the sale of tangible personal property to an llc described in Subsection A above when the property is employed in the conduct of an unrelated trade or business as defined in Section 513 of the Internal Revenue Code of 1986, as amended or renumbered, are not deductible pursuant to Subsection A of Section 7-9-60 NMSA 1978. If the llc, or its 501(c)(3) single member, delivering the non-taxable transaction certificate or alternative evidence employs the tangible personal property in the conduct of an unrelated trade or business, the llc, or its 501(c)(3) single member, is liable for the seller's gross receipts tax plus penalty and interest pursuant to Section 7-9-43 NMSA 1978.

[3.2.218.14 NMAC - N, 1/15/2015; A, 12/27/2018]

PART 219: DEDUCTION - GROSS RECEIPTS TAX - CERTAIN LOAN CHARGES

3.2.219.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.219.1 NMAC - Rn, 3 NMAC 2.61.1.1, 6/14/01]

3.2.219.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.219.2 NMAC - Rn, 3 NMAC 2.61.1.2, 6/14/01]

3.2.219.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.219.3 NMAC - Rn, 3 NMAC 2.61.1.3, 6/14/01]

3.2.219.4 DURATION:

Permanent.

[11/15/96; 3.2.219.4 NMAC - Rn, 3 NMAC 2.61.1.4, 6/14/01]

3.2.219.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.219.5 NMAC - Rn, 3 NMAC 2.61.1.5 & A, 6/14/01]

3.2.219.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.219.6 NMAC - Rn, 3 NMAC 2.61.1.6, 6/14/01]

3.2.219.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.219.7 NMAC - Rn, 3 NMAC 2.61.1.7, 6/14/01]

3.2.219.8 ESCROW FEES - INSTALLMENT CONTRACTS:

The receipts of an escrow agent from charges made for handling installment purchase agreements (such as real estate contracts) are not receipts from handling loan payments and are not deductible from gross receipts under the provisions of Section 7-9-61.1 NMSA 1978.

[10/24/89, 11/26/90, 9/20/93, 11/15/96; 3.2.219.8 NMAC - Rn, 3 NMAC 2.61.1.8 & A, 6/14/01]

3.2.219.9 CERTAIN CHARGES ARE DEDUCTIBLE:

A. A charge by a bank or other financial institution with respect to an honored commitment (using funds other than the depositor's to cover an overdraft) are charges

made in connection with the origination, making or assumption of a loan and are deductible under Section 7-9-61.1 NMSA 1978.

B. An overdraft protection fee charged by a bank or other financial institution is equivalent to a fee for maintaining a line of credit. The overdraft protection fee is a charge made in connection with the origination, making or assumption of a loan and is deductible under Section 7-9-61.1 NMSA 1978.

[9/20/93, 11/15/96; 3.2.219.9 NMAC - Rn, 3 NMAC 2.61.1.9 & A, 6/14/01]

3.2.219.10 CERTAIN CHARGES ARE NOT DEDUCTIBLE:

A. Fees charged by a bank or other financial institution from transfering funds from one account of a depositor to another of that same depositor are not charges made in connection with the origination, making or assumption of a loan, even if the transfer is made to cover an overdraft in one of the accounts. Such charges are not deductible under Section 7-9-61.1 NMSA 1978.

B. If a bank or other financial institution does not honor a check or other instrument when presented because insufficient funds are in the account or accounts, any fees charged relating to the dishonoring are not deductible under Section 7-9-61.1 NMSA 1978.

[9/20/93, 11/15/96; 3.2.219.10 NMAC - Rn, 3 NMAC 2.61.1.10 & A, 6/14/01]

PART 220: DEDUCTION - GROSS RECEIPTS TAX - AGRICULTURAL IMPLEMENTS - AIRCRAFT VEHICLES THAT ARE NOT REQUIRED TO BE REGISTERED

3.2.220.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.220.1 NMAC - Rn, 3 NMAC 2.62.1, 6/14/01]

3.2.220.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.220.2 NMAC - Rn, 3 NMAC 2.62.2, 6/14/01]

3.2.220.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.220.3 NMAC - Rn, 3 NMAC 2.62.3, 6/14/01]

3.2.220.4 DURATION:

Permanent.

[11/15/96; 3.2.220.4 NMAC - Rn, 3 NMAC 2.62.4, 6/14/01]

3.2.220.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.220.5 NMAC - Rn, 3 NMAC 2.62.5 & A, 6/14/01]

3.2.220.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.220.6 NMAC - Rn, 3 NMAC 2.62.6, 6/14/01]

3.2.220.7 DEFINITIONS:

[Reserved.]

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 7/31/98; Rp, 1/29/99; 3.2.220.7 NMAC - Rn, 3 NMAC 2.62.7, 6/14/01]

3.2.220.8 TRADE-IN ALLOWANCES:

A. The deduction provided by Section 7-9-62 NMSA 1978 applies to the net receipts from the sale after any trade-in allowance for the same type of equipment has been applied.

B. Example: A is engaged in the business of selling heavy equipment. A sells B a D-11 tractor for $50,000. A allows B $5,000 on a used tractor which B trades in. A must compute the tax liability as follows:

$50,000

5,000 (trade-in under Section 7-9-71 NMSA 1978)

$45,000

22,500 (50% deduction)

$22,500

x .05 (rate of tax)

$ 1,125 tax due

Therefore A owes a tax of $1,125.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.220.8 NMAC - Rn, 3 NMAC 2.62.8 & A, 6/14/01]

3.2.220.9 PROPORTIONING PUMPS:

Proportioning pumps used to distribute metered amounts of fertilizer, herbicides, pesticides, fumigants and the like to crop land by mixing those substances with irrigation water are agricultural implements as that term is used in Section 7-9-62 NMSA 1978. Accordingly, fifty percent of the receipts from selling these pumps may be deducted from gross receipts.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.220.9 NMAC - Rn, 3 NMAC 2.62.9 & A, 6/14/01]

3.2.220.10 [RESERVED]

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 7/31/98; Rp 1/29/99; 3.2.220.10 NMAC - Rn, 3 NMAC 2.62.10, 6/14/01]

3.2.220.11 FEED STORAGE:

: Metal bins and similar devices designed to store feed on a farm or ranch, which, in addition to storing, measure and control the flow of livestock, are agricultural implements. Therefore, 50% of the receipts derived from selling those articles may be deducted from gross receipts pursuant to Section 7-9-62 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.220.11 NMAC - Rn, 3 NMAC 2.62.11 & A, 6/14/01; A, 10/31/05]

3.2.220.12 FUEL FOR IRRIGATION PUMPS:

Receipts derived from the sale of butane, propane, natural gas, electricity, or other fuel which is used in the operation of irrigation pumps are not receipts from the sale of agricultural implements and, therefore, are not subject to the 50% deduction from gross receipts provided by Section 7-9-62 NMAC 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.220.12 NMAC - Rn, 3 NMAC 2.62.12 & A, 6/14/01]

3.2.220.13 [RESERVED]

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.220.13 NMAC - Rn, 3 NMAC 2.62.13 & A, 6/14/01; Repealed, 10/31/07]

3.2.220.14 MOTORIZED GOLF CARTS:

Fifty percent of the receipts from selling motorized golf carts may be deducted from gross receipts because motorized golf carts are vehicles that are not required to be registered under the Motor Vehicle Code, Chapter 66.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.220.14 NMAC - Rn, 3 NMAC 2.62.14 & A, 6/14/01]

3.2.220.15 BALING WIRE:

Baling wire is not an agricultural implement within the meaning of Section 7-9-62 NMSA 1978, and therefore, the seller of baling wire to a farmer may not take the fifty percent deduction allowed under Section 7-9-62 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.220.15 NMAC - Rn, 3 NMAC 2.62.15 & A, 6/14/01]

3.2.220.16 MINING EQUIPMENT:

Mining equipment must be a "vehicle" as that term is defined in the Motor Vehicle Code in order to qualify for the deduction provided in Section 7-9-62 NMSA 1978 and Section 7-9-77 NMSA 1978. A "motor vehicle" as defined in the Motor Vehicle Code is a vehicle which is self-propelled. Mining equipment that receives its power from a trailing cable which conveys electricity to it from an outside source is not self-propelled.

[3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.220.16 NMAC - Rn, 3 NMAC 2.62.16 & A, 6/14/01]

3.2.220.17 WRITTEN STATEMENT OF FARMING OR RANCHING:

A. The written statement required by Section 7-9-62 NMSA 1978 for receipts from the sale of agricultural implements on or after July 1, 1998 shall be in the form set out in Subsection B of Section 3.2.216.8 NMAC and must be signed personally by the purchaser or the purchaser’s agent. The written statement must be accepted in good faith by the seller in order for the seller to take the deduction authorized by Section 7-9-62 NMSA 1978 with respect to transactions occurring on or after July 1, 1998. The good faith acceptance requirement applies to each transaction intended to be covered by the written statement.

B. Receipts from the sale of agricultural implements on or after July 1, 1998 may not be deducted under Section 7-9-62 NMSA 1978 unless the sale is made to a person who makes a written statement in compliance with Section 7-9-62 NMSA 1978.

C. For the purposes of Section 7-9-62 NMSA 1978, it is sufficient if the seller receives one written statement from each purchaser, provided the seller maintains that statement on file.

D. When a seller accepts in good faith a person's written statement that the person is regularly engaged in the business of farming or ranching, the written statement shall be conclusive evidence that the receipts from the transaction with the person having made the statement are deductible from the seller's gross receipts under Section 7-9-62 NMSA 1978.

[7/31/98; 3.2.220.17 NMAC - Rn, 3 NMAC 2.62.17 & A, 6/14/01]

PART 221: DEDUCTION - GROSS RECEIPTS TAX - PUBLICATION SALES

3.2.221.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.221.1 NMAC - Rn, 3 NMAC 2.63.1, 6/14/01]

3.2.221.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.221.2 NMAC - Rn, 3 NMAC 2.63.2, 6/14/01]

3.2.221.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.221.3 NMAC - Rn, 3 NMAC 2.63.3, 6/14/01]

3.2.221.4 DURATION:

Permanent.

[11/15/96; 3.2.221.4 NMAC - Rn, 3 NMAC 2.63.4, 6/14/01]

3.2.221.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.221.5 NMAC - Rn, 3 NMAC 2.63.5 & A, 6/14/01]

3.2.221.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.221.6 NMAC - Rn, 3 NMAC 2.63.6, 6/14/01]

3.2.221.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.221.7 NMAC - Rn, 3 NMAC 2.63.7, 6/14/01]

3.2.221.8 COLUMNISTS, CARTOONISTS AND WIRE SERVICES:

A. The receipts of columnists, cartoonists and wire services from performing services in New Mexico are gross receipts and are not receipts from publishing as that term is used in Section 7-9-63 NMSA 1978.

B. The gross receipts of columnists, cartoonists and wire services from performing services in New Mexico are not deductible under the provisions of Section 7-9-63 NMSA 1978.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.221.8 NMAC - Rn, 3 NMAC 2.63.8 & A, 6/14/01]

3.2.221.9 GENERAL EXAMPLES:

A. A person engaged in the business of publishing magazines or newspapers in New Mexico can deduct the receipts from selling the published product to others for subsequent resale under Section 7-9-63 NMSA 1978. The publisher is not required to obtain a nontaxable transaction certificate from the purchaser for purposes of Section 7-9-63 NMSA 1978. The receipts of the publisher from the sale of advertising space and the receipts from selling magazines at retail are not deductible from the publisher's gross receipts.

B. *Example 1:* M is in the business of publishing a magazine. It compiles the stories and pictures. It then takes this material to E who prints the magazines and sells them to M for resale. E is classified as a manufacturer. As such, E may give nontaxable transaction certificates (nttcs) to vendors of paper and ink. E can then accept nttcs from the publisher for the sale of the magazine for resale. M is the publisher of the magazine

and is liable for gross receipts tax. If M sells the magazine to news shops or other outlets for resale, M includes in gross receipts only those amounts that M receives from the sale of advertising space. If M also sells the magazine at retail to consumers, however, M would be liable for the gross receipts tax on the receipts derived from the sale of the magazine other than for resale as well as on receipts from the sale of advertising space.

C. *Example 2*: X, a newspaper, sells space in its newspaper for obituaries. It claims a deduction for these sales under Section 7-9-63 NMSA 1978. These receipts are not deductible because they are receipts from selling advertising space. However, if the space is sold to a person, such as a funeral home, who resells the space and gives X an nttc, X's receipts from the sale to such a person are deductible. This version of Subsection C of Section 3.2.221.9 NMAC applies to transactions occurring on or after July 1, 2000.

[9/12/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 10/21/86, 11/26/90, 11/15/96, 3.2.221.9 NMAC - Rn, 3 NMAC 2.63.9 & A, 10/31/2000]

PART 222: DEDUCTION - GROSS RECEIPTS TAX - NEWSPAPERS SALES

3.2.222.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[10/15/96; 3.2.222.1 NMAC - Rn, 3 NMAC 2.64.1, 6/14/01]

3.2.222.2 SCOPE:

This part applies to all persons who sell newspapers.

[10/15/96; 3.2.222.2 NMAC - Rn, 3 NMAC 2.64.2, 6/14/01]

3.2.222.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[10/15/96; 3.2.222.3 NMAC - Rn, 3 NMAC 2.64.3, 6/14/01]

3.2.222.4 DURATION:

Permanent.

[10/15/96; 3.2.222.4 NMAC - Rn, 3 NMAC 2.64.4, 6/14/01]

3.2.222.5 EFFECTIVE DATE:

10/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[10/15/96; 3.2.222.5 NMAC - Rn, 3 NMAC 2.64.5 & A, 6/14/01]

3.2.222.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[10/15/96; 3.2.222.6 NMAC - Rn, 3 NMAC 2.64.6, 6/14/01]

3.2.222.7 DEFINITIONS:

[Reserved.]

[10/15/96; 3.2.222.7 NMAC - Rn, 3 NMAC 2.64.7, 6/14/01]

3.2.222.8 "NEWSPAPER" DEFINED:

A. As used in Sections 7-9-63 and 7-9-64 NMSA 1978, the term "newspaper" is limited to those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly or other short intervals for the dissemination of news. The term does not include handbills, circulars, flyers or the like, unless printed and distributed as a part of a publication which otherwise constitutes a newspaper within the meaning of this subsection. Advertising is not considered to be news. Newspapers are not bound or stapled; magazines are.

B. Example: N is a newspaper publishing company. N also prints advertising circulars for various businesses. These circulars are delivered to the businesses which ordered them. The business then arranges for dissemination of the circulars in ways other than as inserts to N's newspaper. N's receipts from printing these circulars are not deductible under Section 7-9-64 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 5/7/93, 10/15/96; 3.2.222.8 NMAC - Rn, 3 NMAC 2.64.8 & A, 6/14/01]

3.2.222.9 CREDIT BUREAU PUBLICATION:

A. Receipts from selling the publication of a credit bureau which provides information to subscribers concerning such matters as the filing of suits, mortgages and deeds and other information of interest to merchants and others who extend credit, whether sold as part of a credit service agreement or sold separately to subscribers not using a credit service, are subject to the gross receipts tax.

B. Such a publication is not a newspaper within the meaning of either Section 7-9-63 NMSA 1978 or 7-9-64 NMSA 1978. The receipts from selling such a publication are not entitled to the deduction from gross receipts provided by Section 7-9-64 NMSA 1978.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/15/96; 3.2.222.9 NMAC - Rn, 3 NMAC 2.64.9 & A, 6/14/01]

3.2.222.10 RACING FORMS:

Racing forms are not "newspapers" within the meaning of either Section 7-9-63 NMSA 1978 or 7-9-64 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/15/96; 3.2.222.10 NMAC - Rn, 3 NMAC 2.64.10 & A, 6/14/01]

3.2.222.11 REPORT OF RECREATIONAL CONDITIONS:

A daily publication reporting solely recreational conditions, such as the hunting or fishing conditions of a particular recreational area, is not a "newspaper" within the meaning of either Section 7-9-63 NMSA 1978 or 7-9-64 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/15/96; 3.2.222.11 NMAC - Rn, 3 NMAC 2.64.11 & A, 6/14/01]

3.2.222.12 SALE OF NEWSPAPER BY PRINTER:

The receipts of a printer who manufactures newspapers for a publisher may take the deduction provided in Section 7-9-64 NMSA 1978 without regard to whether the newspapers are resold or distributed free of charge by the publisher. No nontaxable transaction certificate needs be delivered to the printer but the printer must retain sufficient documentation to show that the product manufactured was a newspaper.

[10/15/96; 3.2.222.12 NMAC - Rn, 3 NMAC 2.64.12 & A, 6/14/01]

PART 223: DEDUCTION - GROSS RECEIPTS TAX - CHEMICALS AND REAGENTS

3.2.223.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.223.1 NMAC - Rn, 3 NMAC 2.65.1, 6/14/01]

3.2.223.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.223.2 NMAC - Rn, 3 NMAC 2.65.2, 6/14/01]

3.2.223.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.223.3 NMAC - Rn, 3 NMAC 2.65.3, 6/14/01]

3.2.223.4 DURATION:

Permanent.

[11/15/96; 3.2.223.4 NMAC - Rn, 3 NMAC 2.65.4, 6/14/01]

3.2.223.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.223.5 NMAC - Rn, 3 NMAC 2.65.5 & A, 6/14/01]

3.2.223.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.223.6 NMAC - Rn, 3 NMAC 2.65.6, 6/14/01]

3.2.223.7 DEFINITIONS:

A. **"Lots" defined:**

(1) As used in Section 7-9-65 NMSA 1978 the term "lots" means a parcel or single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(2) Example: H sells P fifteen tons of hydrochloric acid on March 1, 1978. On April 15, 1978, H sells P another ten tons of chemicals. P does not use the chemicals for exempt purposes. H wants to deduct the gross receipts from these sales since the total amount of chemicals sold exceeded eighteen tons. In this case one lot amounted to fifteen tons, the other to ten tons. The sales may not be added for the purpose of this deduction. The deduction will be disallowed.

B. **"Chemical" defined:** As used in Section 7-9-65 NMSA 1978 the term "chemical" means a substance used for producing a chemical reaction.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 10/23/85, 4/2/86, 11/26/90, 11/15/96; 3.2.223.7 NMAC - Rn, 3 NMAC 2.65.7 & A, 6/14/01]

3.2.223.8 WELL-DRILLING MUD:

Mud used in the drilling of wells is not a chemical or reagent.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.223.8 NMAC - Rn, 3 NMAC 2.65.8, 6/14/01]

3.2.223.9 NATURAL GAS WELLS: SALT WATER DISPOSAL WELLS AND INJECTION WELLS:

A. For purposes of Section 7-9-65 NMSA 1978, natural gas wells are oil wells, since they produce condensate or oil as a by-product. Receipts from the sale of chemicals or reagents for use in acidizing such wells may be deducted from the seller's gross receipts.

B. For purposes of deductions under Section 7-9-65 NMSA 1978, salt water disposal wells and injection wells are not oil wells. Receipts from the sale of chemicals or reagents, in lots of less than eighteen tons, for use in acidizing such wells may not be deducted from the seller's gross receipts.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.223.9 NMAC - Rn, 3 NMAC 2.65.9 & A, 6/14/01]

3.2.223.10 TREATMENT FOR INHIBITING CORROSION:

Receipts from selling chemicals or reagents used in treating oil wells for purposes of inhibiting or removing scale or corrosion, removing paraffin deposits and breaking down the oil-water-sludge demolition into separate components are not receipts from selling chemicals or reagents for use in acidizing the wells pursuant to Section 7-9-65 NMSA 1978. However, receipts from selling these chemicals or reagents in lots in excess of eighteen tons may be deducted from gross receipts pursuant to Section 7-9-65 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.223.10 NMAC - Rn, 3 NMAC 2.65.10 & A, 6/14/01]

3.2.223.11 GENERAL EXAMPLE:

Y Company sells salt to the X Mining Company which uses the salt as a reagent in processing ores in a well, smelter or refinery. Y may deduct the receipts from this sale, whether or not the salt was sold to X in lots in excess of eighteen tons.

[3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.223.11 NMAC - Rn, 3 NMAC 2.65.11, 6/14/01]

PART 224: [RESERVED]

PART 225: DEDUCTION - GROSS RECEIPTS TAX - COMMISSIONS

3.2.225.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.225.1 NMAC - Rn, 3 NMAC 2.66.1.1, 6/14/01]

3.2.225.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.225.2 NMAC - Rn, 3 NMAC 2.66.1.2, 6/14/01]

3.2.225.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.225.3 NMAC - Rn, 3 NMAC 2.66.1.3, 6/14/01]

3.2.225.4 DURATION:

Permanent.

[11/15/96; 3.2.225.4 NMAC - Rn, 3 NMAC 2.66.1.4, 6/14/01]

3.2.225.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.225.5 NMAC - Rn, 3 NMAC 2.66.1.5 & A, 6/14/01]

3.2.225.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.225.6 NMAC - Rn, 3 NMAC 2.66.1.6, 6/14/01]

3.2.225.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.225.7 NMAC - Rn, 3 NMAC 2.66.1.7, 6/14/01]

3.2.225.8 COMMISSIONS ON SALES OF REAL PROPERTY, INTANGIBLE PROPERTY OR PRIVILEGES:

A. Receipts derived from commissions on sales of real property or intangible property such as negotiable instruments and stocks and bonds or privileges, such as licenses and tickets, are not deductible under Section 7-9-66 NMSA 1978.

B. Where a real estate brokerage commission is apportioned by prior agreement (written or oral) among the brokers who listed the property, the broker who sold the property and the sales personnel of each, gross receipts from the commission are to be allocated as provided in the agreement and are to be taxed in accordance with this allocation, provided that the real estate brokers are to withhold and pay over the gross receipts tax applicable to that portion of the commission allocated to sales personnel of that broker.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 3/8/91, 11/15/96; 3.2.225.8 NMAC - Rn, 3 NMAC 2.66.1.8 & A, 6/14/01]

3.2.225.9 COMMISSIONS PAID TO NONEMPLOYEE AGENTS:

A. Receipts from commissions for services rendered in New Mexico paid to nonemployee agents of freight companies, bus transportation firms and the like are subject to the gross receipts tax.

B. The indicia outlined in Section 3.2.105.7 NMAC will be considered in determining whether a person is an employee or nonemployee agent.

C. The gross receipts of nonemployee agents include only the total commissions or fees received.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 3/8/91, 11/15/96; 3.2.225.9 NMAC - Rn, 3 NMAC 2.66.1.9 & A, 6/14/01]

3.2.225.10 STOCKBROKERS:

A. The receipts of New Mexico stockbrokers or mutual fund salespeople, who are independent contractors, from commissions from the sale of stocks, bonds, or mutual fund shares are subject to the gross receipts tax.

B. Receipts of out-of-state correspondents of New Mexico stockbrokers or out-of-state mutual fund sales companies from performance of service outside New Mexico are not subject to the gross receipts tax.

C. Receipts of New Mexico stockbrokers or mutual fund salespeople, who are independent contractors from commissions on the sale of stocks, bonds or mutual fund shares do not include amounts which are paid over to their out-of-state correspondents or their out-of-state mutual fund sales companies for the correspondent's or companies' service performed outside New Mexico.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.225.10 NMAC - Rn, 3 NMAC 2.66.1.10, 6/14/01]

3.2.225.11 AUCTIONEERS:

The receipts of an auctioneer selling property, on a commission or a fee basis, are subject to the gross receipts tax to the extent that the deduction provided by Section 7-9-66 NMSA 1978 does not apply. The receipts of a person selling property through an auctioneer who sells property on a commission or fee basis are subject to the gross receipts tax. However, the person's receipts from such a sale are exempted from the gross receipts tax if the sale is isolated or occasional and the other is neither regularly engaged nor holding out as engaged in the business of selling or leasing the same or similar property.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.225.11 NMAC - Rn, 3 NMAC 2.66.1.11 & A, 6/14/01]

3.2.225.12 SALES "NOT SUBJECT" TO GROSS RECEIPTS TAX:

Receipts derived from commissions on sales of tangible personal property, the receipts from which sales are either exempted from the gross receipts tax or deductible from gross receipts, may be deducted from gross receipts.

[3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.225.12 NMAC - Rn, 3 NMAC 2.66.1.12, 6/14/01]

PART 226: DEDUCTION - GROSS RECEIPTS TAX - CERTAIN REAL ESTATE TRANSACTIONS

3.2.226.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.226.1 NMAC - Rn, 3 NMAC 2.66.2.1, 6/14/01]

3.2.226.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.226.2 NMAC - Rn, 3 NMAC 2.66.2.2, 6/14/01]

3.2.226.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.226.3 NMAC - Rn, 3 NMAC 2.66.2.3, 6/14/01]

3.2.226.4 DURATION:

Permanent.

[11/15/96; 3.2.226.4 NMAC - Rn, 3 NMAC 2.66.2.4, 6/14/01]

3.2.226.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.226.5 NMAC - Rn, 3 NMAC 2.66.2.5 & A, 6/14/01]

3.2.226.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.226.6 NMAC - Rn, 3 NMAC 2.66.2.6, 6/14/01]

3.2.226.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.226.7 NMAC - Rn, 3 NMAC 2.66.2.7, 6/14/01]

3.2.226.8 CALCULATING THE DEDUCTIBLE PORTION OF A REAL ESTATE COMMISSION:

A. The portion of a real estate commission which is deductible is calculated using the following formula: Deductible commission equals total real estate commission times a fraction, the numerator of which is the taxable receipts from the sale of the property and the denominator of which is the total receipts from the sale of the property, or

$$\text{Total commission} \times \frac{\text{taxable receipts from sale}}{\text{total receipts from sale}} = \text{deductible commission}$$

B. "Taxable receipts from the sale" means that portion of the receipts from the sale of real property which is attributable to improvements constructed on the real property by the seller in the ordinary course of the seller's construction business.

C. Example: A real estate broker receives a $6,000 commission on a $100,000 sale of property by a construction contractor. Of the $100,000, $70,000 is the value of improvements constructed by the seller, for which the seller is subject to gross receipts tax. $30,000 is the value of the underlying land, which the seller (contractor) can deduct from gross receipts pursuant to Section 7-9-53 NMSA 1978. The real estate broker must report $6,000 as gross receipts. The real estate broker may calculate the deductible portion using the formula given in Subsection A of Section 3.2.226.8 NMAC:

$$\$6{,}000 \times \frac{\$\ 70{,}000}{\$100{,}000} = \$4{,}200$$

Thus, the real estate broker deducts $4,200 and pays tax on the remaining $1,800.

[3/13/85, 4/2/86, 11/26/90, 11/15/96; 3.2.226.8 NMAC - Rn, 3 NMAC 2.66.2.8 & A, 6/14/01]

3.2.226.9 REAL ESTATE COMMISSION ON SALES NOT SUBJECT TO GROSS RECEIPTS TAX ARE FULLY TAXABLE:

A. No portion of a real estate commission is deductible if the total receipts from the sale of the real property are either deductible or exempt from gross receipts tax.

B. Example 1: A real estate broker receives a $6,000 commission on the sale of a home by the owner. The receipts of the homeowner from the sale are exempt as receipts from an isolated or occasional sale pursuant to Section 7-9-28 NMSA 1978. The real estate broker must pay tax on the entire $6,000 commission.

C. Example 2: A real estate broker receives a $6,000 commission on the sale of a piece of raw land by a developer. Receipts from the sale of the land are deductible from gross receipts as receipts from the sale of real property pursuant to Section 7-9-53 NMSA 1978. The real estate broker must pay tax on the entire $6,000 commission.

[3/13/85, 4/2/86, 11/26/90, 11/15/96; 3.2.226.9 NMAC - Rn, 3 NMAC 2.66.2.9 & A, 6/14/01]

PART 227: DEDUCTION - GROSS RECEIPTS TAX - REFUNDS - UNCOLLECTIBLE DEBTS

3.2.227.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.227.1 NMAC - Rn, 3 NMAC 2.67.1, 6/14/01]

3.2.227.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.227.2 NMAC - Rn, 3 NMAC 2.67.2, 6/14/01]

3.2.227.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.227.3 NMAC - Rn, 3 NMAC 2.67.3, 6/14/01]

3.2.227.4 DURATION:

Permanent.

[11/15/96; 3.2.227.4 NMAC - Rn, 3 NMAC 2.67.4, 6/14/01]

3.2.227.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.227.5 NMAC - Rn, 3 NMAC 2.67.5 & A, 6/14/01]

3.2.227.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.227.6 NMAC - Rn, 3 NMAC 2.67.6, 6/14/01]

3.2.227.7 DEFINITIONS:

[Reserved.]

[11/15/96, 3.2.227.7 NMAC - Rn, 3 NMAC 2.67.7, 6/14/01]

3.2.227.8 TRADING STAMPS:

A. Trading stamps are not allowances within the meaning of Section 7-9-67 NMSA 1978. Trading stamps represent promotional services and may not be deducted from gross receipts or governmental gross receipts pursuant to Section 7-9-67 NMSA 1978.

B. Example: B is in the business of selling groceries. When one of B's customers purchases groceries, B will give the customer trading stamps. B wishes to deduct the cost of the trading stamps, saying that they are an allowance. Trading stamps are not allowances, but represent promotional service. No deduction is allowed.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/28/94, 11/15/96; 3.2.227.8 NMAC - Rn, 3 NMAC 2.67.8 & A, 6/14/01]

3.2.227.9 REFUNDABLE DEPOSITS:

A. Receipts from selling soft drinks include amounts received in the form of refundable deposits on bottles, cartons and cases.

B. The amount of deposits refunded to purchasers of soft drinks may be deducted from gross receipts or governmental gross receipts under Section 7-9-67 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/28/94, 11/15/96; 3.2.227.9 NMAC - Rn, 3 NMAC 2.67.9 & A, 6/14/01]

3.2.227.10 GENERAL EXAMPLES:

A. The deduction for refunds and allowances made to buyers is applicable to taxpayers reporting gross receipts or governmental gross receipts on either a cash or an accrual basis, but the deduction for uncollectible accounts is available only to taxpayers who report gross receipts or governmental gross receipts on an accrual basis. The transaction or transactions which gave rise to either the refund or allowance or to the amount written off the books as an uncollectible account must have originally been subject to the gross receipts tax or governmental gross receipts tax.

B. Example 1: C operates an appliance store. C sells D an air conditioner for $200. D returns the air conditioner and C credits D's account with $150. C may deduct $150 from gross receipts. However, C must include the remaining $50 in gross receipts.

C. Example 2: A buys goods for $100. A sells them for $25. A wishes to deduct the loss from gross receipts. The loss may not be deducted. A must pay tax on the $25 or the fair market value of the item sold, whichever is greater.

D. Example 3: X is an accrual basis taxpayer. Y buys a suit from X but does not pay for it. X reports the receipts from the sale on X's return. X then discovers that X cannot collect the sales price of the suit. X may take the deduction upon proper proof of the bad debt. This rule, however, would not apply if X had never reported the receipts from the sale.

E. Example 4: U is a university bookstore which reports governmental gross receipts on an accrual basis. U sells books and other materials to a student on account, reporting governmental gross receipts in the month of sale. The student subsequently leaves the university without fully settling the account. Because the receipts from the sale had already been reported, U may take the deduction upon proper proof of the bad debt.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/28/94, 11/15/96; 3.2.227.10 NMAC - Rn, 3 NMAC 2.67.10, 6/14/01]

3.2.227.11 SALE OF REPOSSESSED PROPERTY:

A person reporting gross receipts or governmental gross receipts on an accrual basis is entitled to deduct amounts written off the books as an uncollectible debt for the amount credited to the buyer from whom the property was repossessed. Receipts from a subsequent sale of the same property are subject to the gross receipts tax or governmental gross receipts.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/28/94, 11/15/96; 3.2.227.11 NMAC - Rn, 3 NMAC 2.67.11, 6/14/01]

3.2.227.12 RETURNED CHECKS AND CREDIT CARD REVERSALS:

A. When a check is received, deposited, dishonored and returned, and not subsequently honored within the same reporting period, the taxpayer has no gross receipts with respect to the check. If the check is received within one reporting period, gross receipts are reported with respect to that check for that period and the check is dishonored, returned and not subsequently honored in a subsequent reporting period, the taxpayer may claim a deduction under Section 7-9-67 NMSA 1978 for the amount of the returned check for the period in which the check was dishonored.

B. When a credit card charge is reversed within the same reporting period, the taxpayer has no gross receipts with respect to the charge. If the credit card charge is made within one reporting period, gross receipts are reported with respect to that charge for the period and the charge is reversed in a subsequent reporting period, the taxpayer may claim a deduction under Section 7-9-67 NMSA 1978 for the amount of the reversed credit card charge for the period in which the reversal occurred.

[10/15/98; 3.2.227.12 NMAC - Rn, 3 NMAC 2.67.12 & A, 6/14/01]

PART 228: DEDUCTION - GROSS RECEIPTS TAX - WARRANTY OBLIGATIONS

3.2.228.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.228.1 NMAC - Rn, 3 NMAC 2.68.1, 6/14/01]

3.2.228.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.228.2 NMAC - Rn, 3 NMAC 2.68.2, 6/14/01]

3.2.228.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.228.3 NMAC - Rn, 3 NMAC 2.68.3, 6/14/01]

3.2.228.4 DURATION:

Permanent.

[11/15/96; 3.2.228.4 NMAC - Rn, 3 NMAC 2.68.4, 6/14/01]

3.2.228.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.228.5 NMAC - Rn, 3 NMAC 2.68.5 & A, 6/14/01]

3.2.228.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.228.6 NMAC - Rn, 3 NMAC 2.68.6, 6/14/01]

3.2.228.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.228.7 NMAC - Rn, 3 NMAC 2.68.7, 6/14/01]

3.2.228.8 WARRANTY SUBCONTRACTOR:

If a dealer subcontracts with another person (subcontractor) to fulfill the dealer's warranty obligation of the manufacturer of the property, the receipts of the subcontractor may not be deducted pursuant to Section 7-9-68 NMSA 1978. The subcontractor is not the dealer of record.

[3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.228.8 NMAC - Rn, 3 NMAC 2.68.8 & A, 6/14/01]

3.2.228.9 WARRANTY OBLIGATIONS - GENERAL EXAMPLES:

A. A person authorized by the manufacturer to repair tangible personal property under the warranty of the manufacturer is a "dealer" for the purposes of Section 7-9-68 NMSA 1978. The person therefore may deduct receipts received directly from the manufacturer for parts and labor necessary to fulfill the manufacturer's warranty obligation. Receipts of the dealer which are received from any person other than the manufacturer may not be deducted under the provisions of Section 7-9-68 NMSA 1978.

B. Example 1: X, a washing machine company, offers a five-year warranty against defective parts (only) in all washing machines it manufactures and sells. C, who bought a washing machine manufactured by X, engages D, a dealer for X, to replace a defective part within the warranty period. D undertakes the repair and bills X for the parts used and C for the labor involved. X pays D for the parts and C pays D for the labor. D may deduct the receipts from X under Section 7-9-68 NMSA 1978 but D may not deduct under Section 7-9-68 NMSA 1978 the receipts derived from C for the labor charges not covered under the manufacturer's warranty.

C. Example 2: Y, a manufacturer of televisions, authorizes R, a television repair service, to repair televisions manufactured by Y under Y's warranty. R receives payment from Y to cover both parts and labor necessary to repair televisions manufactured by Y which are covered by Y's warranty. R may deduct the receipts from Y for fulfilling Y's warranty obligation.

[5/25/89, 11/26/90, 11/15/96; 3.2.228.9 NMAC - Rn, 3 NMAC 2.68.9 & A, 6/14/01]

3.2.228.10 SERVICE CONTRACT AND MANUFACTURER'S WARRANTY DISTINGUISHED:

A manufacturer's warranty may be distinguished from an automotive service contract, as that term is defined in Subsection C of Section 3.2.1.16 NMAC, on which the manufacturer is the promisor by the characterization used by the manufacturer so long as no separate charge is made to the ultimate customer for a manufacturer's undertaking characterized as a warranty.

[6/20/89, 11/26/90, 11/15/96; 3.2.228.10 NMAC - Rn, 3 NMAC 2.68.10 & A, 6/14/01]

3.2.228.11 RECEIPTS FROM CO-PAYMENTS/DEDUCTIBLES UNDER WARRANTIES:

The dealer's receipts from the "co-payment" or "deductible" amount paid to the dealer by the purchaser as required by some manufacturers' warranties are gross receipts and not deductible from gross receipts under Section 7-9-68 NMSA 1978 since the receipts from the purchaser are not receipts from furnishing goods or services to fulfill the manufacturer's obligation. The manufacturer's obligation under such a warranty is limited to the charge for the goods and services minus the required co-payment or deductible.

[6/20/89, 11/26/90, 11/15/96; 3.2.228.11 NMAC - Rn, 3 NMAC 2.68.11 & A, 6/14/01]

PART 229: DEDUCTION - GROSS RECEIPTS TAX - ADMINISTRATIVE AND ACCOUNTING SERVICES

3.2.229.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1150 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3/15/96; 3.2.229.1 NMAC - Rn & A, 3 NMAC 2.69.1, 6/14/01]

3.2.229.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[3/15/96, 11/15/96; 3.2.229.2 NMAC - Rn, 3 NMAC 2.69.2, 6/14/01]

3.2.229.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3/15/96; 3.2.229.3 NMAC - Rn, 3 NMAC 2.69.3, 6/14/01]

3.2.229.4 DURATION:

Permanent.

[3/15/96; 3.2.229.4 NMAC - Rn, 3 NMAC 2.69.4, 6/14/01]

3.2.229.5 EFFECTIVE DATE:

3/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3/15/96, 11/15/96; 3.2.229.5 NMAC - Rn, 3 NMAC 2.69.5 & A, 6/14/01]

3.2.229.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3/15/96; 3.2.229.6 NMAC - Rn, 3 NMAC 2.69.6, 6/14/01]

3.2.229.7 DEFINITIONS:

[Reserved.]

[3/15/96; 3.2.229.7 NMAC - Rn, 3 NMAC 2.69.7, 6/14/01]

3.2.229.8 GENERAL EXAMPLES:

A. The deduction provided by this section contains several restrictions, among them are these:

(1) receipts must be from activities performed on a nonprofit or cost basis;

(2) excluded are receipts from sharing equipment or facilities other than office equipment or offices; and

(3) excluded are receipts from transactions with entities other than affiliated corporations as defined in this section.

B. Example 1: D is a wholly owned subsidiary of C. C does the machine accounting for D for the actual cost of the accounting work plus ten percent. C may not deduct the receipts which it receives from D. The deduction is only for receipts from accounting services rendered on a nonprofit or cost basis.

C. Example 2: D, a wholly owned subsidiary of C, leases construction equipment to C on a cost basis. D cannot deduct the gross receipts which it received from this transaction. This transaction does not involve the performance of accounting, managerial or administrative services or the joint use or sharing of office machines and facilities upon a nonprofit or cost basis.

D. Example 3: B and C are subsidiaries of A. A owns 80% of the voting stock of B and 40% of the voting stock of C. B performs administrative and accounting services for A and C on a cost basis. B may deduct the receipts derived from performing the

administrative and accounting services for A. B may not deduct the gross receipts which it receives from C because C is not an affiliated corporation as defined by this section.

E. This version of Section 3.2.229.8 NMAC is retroactively applicable to taxable events occurring on or after July 1, 1993.

[12/5/69 ... 3/15/96; 3.2.229.8 NMAC - Rn, 3 NMAC 2.69.8 & A, 6/14/01]

PART 230: DEDUCTION - GROSS RECEIPTS TAX - RENTAL OR LEASE OF VEHICLES USED IN INTERSTATE COMMERCE

3.2.230.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.230.1 NMAC - Rn, 3 NMAC 2.70.1, 6/14/01]

3.2.230.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.230.2 NMAC - Rn, 3 NMAC 2.70.2, 6/14/01]

3.2.230.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.230.3 NMAC - Rn, 3 NMAC 2.70.3, 6/14/01]

3.2.230.4 DURATION:

Permanent.

[11/15/96; 3.2.230.4 NMAC - Rn, 3 NMAC 2.70.4, 6/14/01]

3.2.230.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.230.5 NMAC - Rn, 3 NMAC 2.70.5 & A, 6/14/01]

3.2.230.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.230.6 NMAC - Rn, 3 NMAC 2.70.6, 6/14/01]

3.2.230.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.230.7 NMAC - Rn, 3 NMAC 2.70.7, 6/14/01]

3.2.230.8 WHEN FEDERAL AUTHORITY REQUIRED:

A. If a federal agency must grant authority for a person to engage lawfully in interstate transportation of persons or property, any person claiming a deduction under Section 7-9-70 NMSA 1978 must have rented or leased the vehicle to a person who holds federal authority for the transportation of passengers or property for hire in interstate commerce and who uses the vehicle for such purposes. The deduction under Section 7-9-70 NMSA 1978 is available to the lessor, not the lessee.

B. [Repealed.]

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 4/30/99; 3.2.230.8 NMAC - Rn, 3 NMAC 2.70.8 & A, 6/14/01]

PART 231: DEDUCTION - GROSS RECEIPTS TAX - TRADE-IN ALLOWANCE

3.2.231.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.231.1 NMAC - Rn, 3 NMAC 2.71.1, 6/14/01]

3.2.231.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.231.2 NMAC - Rn, 3 NMAC 2.71.2, 6/14/01]

3.2.231.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.231.3 NMAC - Rn, 3 NMAC 2.71.3, 6/14/01]

3.2.231.4 DURATION:

Permanent.

[11/15/96; 3.2.231.4 NMAC - Rn, 3 NMAC 2.71.4, 6/14/01]

3.2.231.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.231.5 NMAC - Rn, 3 NMAC 2.71.5 & A, 6/14/01]

3.2.231.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.231.6 NMAC - Rn, 3 NMAC 2.71.6, 6/14/01]

3.2.231.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.231.7 NMAC - Rn, 3 NMAC 2.71.7, 6/14/01]

3.2.231.8 TRADE-IN MUST BE OF LIKE PROPERTY:

A. A trade-in of tangible personal property, as used in Section 7-9-71 NMSA 1978, must be of the same type as the tangible personal property being sold.

B. Example 1: X, an appliance company, sells a refrigerator to Y and takes a radio as a trade-in. X cannot deduct that portion of its gross receipts on this transaction that is represented by the trade-in because a radio is not the same type of tangible personal property as a refrigerator.

C. Example 2: S, a construction equipment dealer, sells Y, a construction company, a crusher and takes a tractor as a trade-in. S cannot deduct that portion of its gross receipts on this transaction that is represented by the trade-in because a tractor is not the same type of tangible personal property as a crusher.

D. Example 3: A manufactured home is not the same type of tangible personal property as a "travel trailer" as defined in Section 66-1-4.17 NMSA 1978, for purposes of the trade-in allowance provided under Section 7-9-71 NMSA 1978.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86,

11/26/90, 3/19/92, 11/15/96; 3.2.231.8 NMAC - Rn, 3 NMAC 2.71.8 & A, 6/14/01]

3.2.231.9 MUSICAL INSTRUMENTS:

That portion of the receipts of a music dealer which represents a trade-in of a musical instrument may be deducted from gross receipts only if the trade-in was accepted on the sale of another musical instrument of the same type as the instrument accepted for trade-in. Similarly, that portion of receipts of a music dealer which represents a trade-in of equipment for amplifying musical sound used in conjunction with musical instruments may be deducted from gross receipts only if the trade-in was accepted on the sale of other equipment for amplifying musical sound used in conjunction with musical instruments.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.231.9 NMAC - Rn, 3 NMAC 2.71.9, 6/14/01]

PART 232: DEDUCTION - GROSS RECEIPTS TAX - SALE OF PROSTHETIC DEVICES

3.2.232.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.232.1 NMAC - Rn, 3 NMAC 2.73.1.1, 6/14/01]

3.2.232.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.232.2 NMAC - Rn, 3 NMAC 2.73.1.2, 6/14/01]

3.2.232.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.232.3 NMAC - Rn, 3 NMAC 2.73.1.3, 6/14/01]

3.2.232.4 DURATION:

Permanent.

[11/15/96; 3.2.232.4 NMAC - Rn, 3 NMAC 2.73.1.4, 6/14/01]

3.2.232.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.232.5 NMAC - Rn, 3 NMAC 2.73.1.5 & A, 6/14/01]

3.2.232.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.232.6 NMAC - Rn, 3 NMAC 2.73.1.6, 6/14/01]

3.2.232.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.232.7 NMAC - Rn, 3 NMAC 2.73.1.7, 6/14/01]

3.2.232.8 EYE WEAR:

The receipts from selling contact lenses, eye glasses, eye glass frames and lens glass to ophthalmologists and optometrists may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate to the seller. Contact lenses, eye glasses, eye glass frames and lens glasses are "prosthetic devices" within the meaning of Section 7-9-73 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.232.8 NMAC - Rn, 3 NMAC 2.73.1.8 & A, 6/14/01]

3.2.232.9 DENTAL SUPPLIES:

The receipts from selling items of tangible personal property used in making dentures, as well as receipts from selling supplies, including gold, silver, cement used in fillings, amalgam, anesthetics, orthodontia platinum wire, facings, backings and similar items to dentists for use in their practices may not be deducted from gross receipts pursuant to Section 7-9-73 NMSA 1978. Such items sold are not "prosthetic devices" within the meaning of Section 7-9-73 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.232.9 NMAC - Rn, 3 NMAC 2.73.1.9 & A, 6/14/01]

PART 233: DEDUCTION - GROSS RECEIPTS TAX GENERAL HOSPITALS [RESERVED]

PART 234: DEDUCTION - GROSS RECEIPTS TAX - SALE OF PRESCRIPTION DRUGS

3.2.234.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[10/29/99; 3.2.234.1 NMAC - Rn, 3 NMAC 2.73.3.1, 6/14/01]

3.2.234.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[10/29/99; 3.2.234.2 NMAC - Rn, 3 NMAC 2.73.3.2, 6/14/01]

3.2.234.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[10/29/99; 3.2.234.3 NMAC - Rn, 3 NMAC 2.73.3.3, 6/14/01]

3.2.234.4 DURATION:

Permanent.

[10/29/99; 3.2.234.4 NMAC - Rn, 3 NMAC 2.73.3.4, 6/14/01]

3.2.234.5 EFFECTIVE DATE:

10/29/99, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[10/29/99; 3.2.234.5 NMAC - Rn, 3 NMAC 2.73.3.5 & A, 6/14/01]

3.2.234.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[10/29/99; 3.2.234.6 NMAC - Rn, 3 NMAC 2.73.3.6, 6/14/01]

3.2.234.7 DEFINITIONS:

[Reserved.]

[10/29/99; 3.2.234.7 NMAC - Rn, 3 NMAC 2.73.3.7, 6/14/01]

3.2.234.8 PACKAGING AND STORAGE CONTAINERS:

A. "INJECTIBLES": Injectibles are a combination of tangible personal property sold as a unit for a single price in which a prescription drug is pre-loaded by the manufacturer into a device, such as a syringe, to administer the prescription drug. Receipts from selling the device, such as a syringe, by itself are not deductible under Section 7-9-73.2 NMSA 1978. When sold as part of an injectible, however, the device will be considered simply an elaborate form of packaging incidental to the sale of the prescription drug. Receipts from selling injectibles may be deducted from gross receipts under Section 7-9-73.2 NMSA 1978.

B. The receipts of an oxygen service provider from the lease of oxygen canisters, cylinders or similar storage containers to recipients of oxygen services are deductible pursuant to Section 7-9-73.2 NMSA 1978 if the oxygen service provider sells the entire package, including the lease of the containers, as part of the oxygen service they provide.

C. Receipts from the sale or lease of machines or equipment that produce oxygen or filter the air are not receipts from the sale of oxygen or from providing oxygen services and therefore not deductible under Section 7-9-73.2 NMSA 1978.

[10/29/99; 3.2.234.8 NMAC - Rn, 3 NMAC 2.73.3.8 & A, 6/14/01; A, 5/15/08]

3.2.234.9 VACCINES:

Vaccines required to be administered by a person licensed by the state to do so are prescription drugs.

[3.2.234.9 NMAC - N, 10/31/00]

3.2.234.10 ITEMS THAT ARE NOT PRESCRIPTION DRUGS:

Tangible personal property that may be sold or dispensed for human consumption or administered to a human without a prescription of a person, such as a medical doctor, licensed to prescribe the property’s use or to administer it are not "prescription drugs". Items that do not require a prescription, such as medical equipment, vitamins and aspirin are not "prescription drugs" even if prescribed by a licensed medical doctor. Tangible personal property sold or dispensed for non-human consumption or administered to a non-human are not "prescription drugs".

[3.2.234.10 NMAC - N, 10/31/00; A, 5/15/08; A, 9/30/10]

PART 235: DEDUCTION - GROSS RECEIPTS TAX - SALE OF CERTAIN SERVICES PERFORMED DIRECTLY ON PRODUCT MANUFACTURED

3.2.235.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.235.1 NMAC - Rn, 3 NMAC 2.75.1, 6/14/01]

3.2.235.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.235.2 NMAC - Rn, 3 NMAC 2.75.2, 6/14/01]

3.2.235.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.235.3 NMAC - Rn, 3 NMAC 2.75.3, 6/14/01]

3.2.235.4 DURATION:

Permanent.

[11/15/96; 3.2.235.4 NMAC - Rn, 3 NMAC 2.75.4, 6/14/01]

3.2.235.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.235.5 NMAC - Rn, 3 NMAC 2.75.5 & A, 6/14/01]

3.2.235.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.235.6 NMAC - Rn, 3 NMAC 2.75.6, 6/14/01]

3.2.235.7 DEFINITIONS:

A "manufacturing service" is the service of combining or processing components or materials owned by another.

[11/15/96, 12/15/99; 3.2.235.7 NMAC - Rn, 3 NMAC 2.75.7, 6/14/01]

3.2.235.8 PLATING:

A. Receipts from the sale of the service of plating are deductible from gross receipts if the sale is made to a person engaged in the business of manufacturing and the buyer delivers a nontaxable transaction certificate (nttc).

B. The buyer delivering the nttc must have the service performed directly upon tangible personal property which the buyer is in the business of manufacturing or upon ingredients or component parts thereof, or the buyer will be liable for the compensating tax on the value of the plating service at the time it was rendered.

[11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.235.8 NMAC - Rn, 3 NMAC 2.75.8, 6/14/01]

3.2.235.9 HAULING FOR MANUFACTURER:

Hauling components or materials for a person engaged in the manufacturing business is not a manufacturing service within the meaning of Section 7-9-75 NMSA 1978. The hauler is neither combining nor processing these items; therefore, the manufacturer may not issue to the hauler a nontaxable transaction certificate and the hauler may not deduct the receipts pursuant to Section 7-9-75 NMSA 1978. The hauler's receipts are fully subject to the gross receipts tax.

[3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.235.9 NMAC - Rn, 3 NMAC 2.75.9 & A, 6/14/01]

3.2.235.10 RECEIPTS FROM MANUFACTURER FOR "GET READY":

Amounts paid to, or credited against the account of, an automotive dealer by a manufacturer to compensate the dealer for inspection and other "get ready" operations performed on new vehicles manufactured by that manufacturer may be deducted from gross receipts if the dealer has in possession a Type 13 (manufacturing services) nontaxable transaction certificate (nttc) issued by the manufacturer of the vehicles since the dealer is performing services directly on the property which the manufacturer is in the business of manufacturing. A reduction in the dealer's invoice price for a new vehicle to compensate the dealer for "get ready" operations on that vehicle involves a receipt by the dealer, but a deduction of that amount may be claimed by the dealer who has a Type 13 nttc issued by the manufacturer.

[6/20/89, 11/26/90, 11/15/96; 3.2.235.10 NMAC - Rn, 3 NMAC 2.75.10, 6/14/01]

3.2.235.11 RECEIPTS FROM NON-MANUFACTURERS FOR "GET READY":

Amounts paid to a New Mexico automotive dealer by another dealer for inspection and other "get ready" operations performed on new vehicles being sold by the other dealer may not be deducted under a Type 13 nontaxable transaction certificate issued by the other dealer since the New Mexico dealer is not performing the services for the manufacturer.

[6/20/89, 11/26/90, 11/15/96; 3.2.235.11 NMAC - Rn, 3 NMAC 2.75.11, 6/14/01]

3.2.235.12 INSTALLING COMPUTER PROGRAMMING AS A COMPONENT PART:

A. Receipts from performing the service of installing computer programming on a computer chip or other device for a manufacturer may be deducted under Section 7-9-75 NMSA 1978 when the chips are supplied by the manufacturer and the programmed chip or device is designed to control the operation of machinery or equipment.

B. Example 1: M, a manufacturer of widgets, contracts with X to install control logic (developed by M) on computer chips which are to be incorporated into M's widgets. The chips are designed to control certain operations of the widget. X's receipts from performing this service are deductible under Section 7-9-75 NMSA 1978 regardless of whether or not the programming is designed to allow the ultimate purchaser of the widgets to alter some or all of the programming parameters.

C. Example 2: M, a manufacturer of computer chips, accepts an order from B to make and sell specialty chips. The order requires that certain software be included on the chips. M contracts with X to install the programming on the chips. M ships the chips to X, who in turn ships the chips to B after installing the programming. X may deduct its receipts from installing the programming on the chips under Section 7-9-75 NMSA 1978.

D. Example 3: S, retailer of computers and packaged programming, hires X to install packaged programming on the computers S sells. X may not deduct its receipts from installing the programming for S under Section 7-9-75 NMSA 1978 because S is not a manufacturer. Other deductions, such as that under Section 7-9-48 NMSA 1978, however, may be available.

[4/30/97; 3.2.235.12 NMAC - Rn, 3 NMAC 2.75.12 & A, 6/14/01]

PART 236: [RESERVED]

PART 237: DEDUCTION - COMPENSATING TAX

3.2.237.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.237.1 NMAC - Rn, 3 NMAC 2.77.1, 6/14/01]

3.2.237.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.237.2 NMAC - Rn, 3 NMAC 2.77.2, 6/14/01]

3.2.237.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.237.3 NMAC - Rn, 3 NMAC 2.77.3, 6/14/01]

3.2.237.4 DURATION:

Permanent.

[11/15/96; 3.2.237.4 NMAC - Rn, 3 NMAC 2.77.4, 6/14/01]

3.2.237.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.237.5 NMAC - Rn, 3 NMAC 2.77.5 & A, 6/14/01]

3.2.237.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.237.6 NMAC - Rn, 3 NMAC 2.77.6, 6/14/01]

3.2.237.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.237.7 NMAC - Rn, 3 NMAC 2.77.7, 6/14/01]

3.2.237.8 GENERAL EXAMPLE:

A. The following example illustrates the application of Section 7-9-77 NMSA 1978.

B. Example: Y charters an airplane from X, an out-of-state airplane dealer. The charter is for one month. After one week Y decides to buy the airplane. X allows Y a "trade-in" for the remaining three weeks of Y's charter. Y cannot deduct the value of this "trade-in" from the value of the airplane in computing the compensating tax due. The "trade-in" was not tangible personal property.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.237.8 NMAC - Rn, 3 NMAC 2.77.8 & A, 6/14/01]

3.2.237.9 TRANSPORTATION OR FREIGHT CHARGES:

As transportation costs paid by the seller to the carrier are an element of the sales price of the property, when equipment not required to be registered under the Motor Vehicle Code is purchased outside New Mexico and is brought into New Mexico for use, the value of the equipment as well as the freight costs are subject to the 50% deduction in computing the compensating tax due.

[3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.237.9 NMAC - Rn, 3 NMAC 2.77.9, 6/14/01]

PART 238: DEDUCTION - COMPENSATING TAX - USE OF TANGIBLE PERSONAL PROPERTY FOR LEASING

3.2.238.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.238.1 NMAC - Rn, 3 NMAC 2.78.1, 6/14/01]

3.2.238.2 SCOPE:

This part applies to each person engaging in the business of leasing tangible personal property in New Mexico.

[11/15/96; 3.2.238.2 NMAC - Rn, 3 NMAC 2.78.2, 6/14/01]

3.2.238.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.238.3 NMAC - Rn, 3 NMAC 2.78.3, 6/14/01]

3.2.238.4 DURATION:

Permanent.

[11/15/96; 3.2.238.4 NMAC - Rn, 3 NMAC 2.78.4, 6/14/01]

3.2.238.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.238.5 NMAC - Rn, 3 NMAC 2.78.5 & A, 6/14/01]

3.2.238.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.238.6 NMAC - Rn, 3 NMAC 2.78.6, 6/14/01]

3.2.238.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.238.7 NMAC - Rn, 3 NMAC 2.78.7, 6/14/01]

3.2.238.8 AUTOMOBILE LEASING:

The value of tires, engine repair parts and similar items used by a lessor in the maintenance of vehicles held for lease or already leased may be deducted in computing compensating tax if the following three conditions are met:

A. the parts are used by the lessor on vehicles held for lease or already leased and the receipts from leasing or selling vehicles are a substantial portion of the receipts;

B. the maintenance of the vehicles is performed at no additional cost to the lessee under the lease agreement; and

C. the lessor does not use the vehicles or parts in any manner other than holding them for lease or sale or leasing or selling them either by themselves or in combination with other tangible personal property in the ordinary course of business.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.238.8 NMAC - Rn, 3 NMAC 2.78.8, 6/14/01]

3.2.238.9 GENERAL EXAMPLES:

The following examples illustrate the application of Section 7-9-78 NMSA 1978:

A. Example 1: E, a New Mexico corporation, is solely engaged in the business of leasing electric typewriters to business establishments in New Mexico. E purchases a typewriter in Texas to hold for lease in the ordinary course of its business. E does not use the typewriter in any other manner. E may deduct the value of the typewriter in computing its compensating tax due.

B. Example 2: E, a Colorado company, buys stoves from Z, a Colorado company. E initially uses the stoves in its business in Colorado but later converts their use solely to leasing. E then brings the stoves into New Mexico for purposes of leasing. E is not liable for the compensating tax if the stoves are leased to restaurants. If E brings the

stoves into New Mexico to be furnished as part of a leased dwelling house of which E is the lessor, E is liable for the compensating tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.238.9 NMAC - Rn, 3 NMAC 2.78.9 & A, 6/14/01]

PART 239: DEDUCTION - GROSS RECEIPTS TAX - FUNDRAISING

3.2.239.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.239.1 NMAC - Rn, 3 NMAC 2.85.1, 6/14/01]

3.2.239.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.239.2 NMAC - Rn, 3 NMAC 2.85.2, 6/14/01]

3.2.239.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.239.3 NMAC - Rn, 3 NMAC 2.85.3, 6/14/01]

3.2.239.4 DURATION:

Permanent.

[11/15/96; 3.2.239.4 NMAC - Rn, 3 NMAC 2.85.4, 6/14/01]

3.2.239.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.239.5 NMAC - Rn, 3 NMAC 2.85.5 & A, 6/14/01]

3.2.239.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.239.6 NMAC - Rn, 3 NMAC 2.85.6, 6/14/01]

3.2.239.7 "FUNDRAISING EVENT" DEFINED:

A. For the purposes of Section 7-9-85 NMSA 1978 and subject to the limitation set forth in Part 3.2.239 NMAC, a "fundraising event" is an activity undertaken by an organization for the purpose of acquiring funds that will be used in the conduct of the organization's exempt activities. A fundraising event must be open to the public and not limited to members of the organization.

B. Example 1: A fraternal society operating under the lodge system, exempt from Federal income tax under Section 501(c)(10) of the Internal Revenue Code, conducts two fundraising events each calendar year to obtain the money necessary to purchase eyeglasses for underprivileged children. Each spring, they sell brooms to the general public. Each fall, they sell the services of their members to any person who wants assistance with house painting, gutter cleaning and similar household maintenance tasks. Both of these activities result in the organization receiving gross receipts and both qualify as fundraising events.

C. The solicitation of donations in itself, not connected with the sale or transfer of property or the performance of any service, is not a fundraising event and is not subject to the provisions of Section 7-9-85 NMSA 1978. Any event in which both the receipt of donations and the sale of tangible personal property or the performance of any service occur is a fundraising event.

D. Example 2: U, itself a 501(c)(3) organization, holds an annual fundraising drive for itself and thirty other 501(c) entities. U solicits the general population for donations but does not sell or transfer property to, nor perform services for, contributors. Each entity receives a fixed proportion of undesignated donations plus any donations designated for the entity. Ten of the entities are organizations qualifying for the deduction under Section 7-9-85 NMSA 1978. Because the fundraising activity consists solely of soliciting donations, none of the entities involved has conducted a fundraising event under Section 7-9-85 NMSA 1978.

[3/16/95, 11/15/96; 3.2.239.7 NMAC - Rn, 3 NMAC 2.85.7 & A, 6/14/01]

3.2.239.8 CERTAIN ORGANIZATIONS NOT ELIGIBLE FOR DEDUCTION - "ORGANIZATION" DEFINED:

A. No organization described in Section 501(c)(3) of the Internal Revenue Code may claim the deduction provided by Section 7-9-85 NMSA 1978 but the receipts of 501(c)(3) organizations, except for unrelated business income, are exempt from gross receipts tax under Section 7-9-29 NMSA 1978.

B. As used in Part 3.2.239 NMAC, "organization" means:

(1) any organization described in Section 501(c) of the Internal Revenue Code, other than organizations described in Section 501(c)(3); and

(2) any officially recognized chapter, lodge or similar affiliate of an organization described in Paragraph (1) of Subsection B of Section 3.2.239.8 NMAC of this section.

[3/16/95, 11/15/96; 3.2.239.8 NMAC - Rn, 3 NMAC 2.85.8 & A, 6/14/01]

3.2.239.9 RECEIPTS NOT ELIGIBLE FOR DEDUCTION:

The deduction provided by Section 7-9-85 NMSA 1978 does not apply to the receipts from more than two (2) fundraising events during any calendar year.

[3/16/95, 11/15/96; 3.2.239.9 NMAC - Rn, 3 NMAC 2.85.9 & A, 6/14/01; A, 4/30/07]

3.2.239.10 WHO CONDUCTS FUNDRAISING EVENT:

A. When several organizations jointly conduct a fundraising event, each participating organization receiving gross receipts from the event has conducted a fundraising event.

B. Example 1: A 501(c)(8) state organization and each of its four New Mexico lodges together conduct a fundraising event, with the proceeds shared by the state organization and the lodges. The state organization and each of its lodges have conducted a fundraising event.

C. The participation of members of one organization, even as an official activity of the organization, in a fundraising event of another is not a fundraising event of the members' organization if:

(1) the members' organization receives no revenues from the event; and

(2) the members' organization is not a chapter, lodge or other affiliate of any organization receiving revenues from the event.

D. Example 2: A television auction is broadcast to benefit M, a 501(c) organization. The members of several unaffiliated 501(c) organizations staff telephones, track bids, help display or demonstrate auctioned items and otherwise assist in the conduct of the auction. They are identified on the air as members of their respective organizations. None of the organizations other than M receives any revenues from the event. Only M has conducted a fundraising event.

E. Example 3: Same facts as in Example 1 except that the state organization retains all proceeds from the event. Regardless of the fact that the lodges receive no direct benefit from the fundraising event, each of the lodges as well as the state organization has conducted a fundraising event.

[3/16/95, 11/15/96; 3.2.239.10 NMAC - Rn, 3 NMAC 2.85.10, 6/14/01]

3.2.239.11 PERIOD FOR FUNDRAISING EVENT LIMITED:

A. A fundraising event must be of limited duration. A recurring, regularly scheduled activity, or any portion of a regularly scheduled activity, is not a fundraising event and the receipts are not deductible under Section 7-9-85 NMSA 1978. A fundraising event must have a specific commencement date and a specific ending date. The period of time between the commencement and ending dates may not exceed ten (10) consecutive calendar days except:

(1) fundraising events conducted in association with and coterminous with the annual state fair may be conducted for the period in which the state fair is held;

(2) planning, contracting, advertising and other organizational or administrative activities may take place at any time before the specific commencement date;

(3) ticket sales to a fundraising event may precede the specific commencement date by up to sixty (60) days before the specific commencement date but the department, upon written application from the organization showing good cause, may permit a longer period; and

(4) final accounting and similar administrative tasks may be conducted after the specific ending date.

B. Example 1: The local garden club, exempt from federal income tax under Section 501(c)(5) of the Internal Revenue Code, raises money for the club's selected charity by selling flower bulbs donated by club members on two consecutive weekends in the spring. Because two consecutive Saturday/Sunday periods fall within ten consecutive calendar days, the bulb sale is a single fundraising event and the receipts may be deducted under Section 7-9-85 NMSA 1978.

C. Example 2: The local post of a national veteran's organization, exempt from Federal income taxation under Section 501(c)(19) of the Internal Revenue Code, raises money for the post's exempt activities by selling pies at the local county fair. The fair runs for two weeks, beginning on a Wednesday. The local post, however, sells pies only from the first Friday through the second Sunday during the fair. Because this period does not exceed ten consecutive calendar days, the pie sale is a single fundraising event and the receipts may be deducted under Section 7-9-85 NMSA 1978.

D. Example 3: A local social welfare organization, exempt from federal income tax under Section 501(c)(4) of the Internal Revenue Code, conducts a car wash on donated property every Saturday, weather permitting, as a way to raise funds for the organization's exempt activities. Because the car wash is a regularly scheduled, recurring event, it is not a fundraising event and the receipts from the car wash may not be deducted under Section 7-9-85 NMSA 1978.

E. If the fundraising event involves the solicitation of orders for the subsequent delivery of tangible personal property or the subsequent performance of personal services, the period of time in which orders are solicited will be considered the fundraising event. Delivery of the ordered tangible personal property or performance of the ordered personal service may occur after the specific ending date of the fundraising event.

F. Example 4: The local chapter of a national sorority, exempt from federal income tax under Section 501(c)(7) of the Internal Revenue Code, sells calendars and appointment books to raise money to benefit a selected charity. Members of the sorority solicit orders for the calendars and appointment books during October, so the items can be delivered in time for use as holiday gifts. If the order solicitation period in October is limited to no more than ten consecutive calendar days, the activity is a single fundraising event and the receipts may be deducted under Section 7-9-85 NMSA 1978 even though the calendars and appointment books will not be delivered until December.

[3/16/95, 11/15/96; 3.2.239.11 NMAC - Rn, 3 NMAC 2.85.11 & A, 6/14/01]

3.2.239.12 IDENTIFICATION OF FUNDRAISING EVENTS:

A. Each organization may deduct under Section 7-9-85 NMSA 1978 the receipts of two fundraising events conducted during a calendar year. If an organization conducts more than two fundraising events during a calendar year, the first two fundraising events will be presumed to be those qualifying for the deduction provided by Section 7-9-85 NMSA 1978 unless the organization has identified in writing in advance the two fundraising events for which the organization intends to claim the deduction prior to conducting any fundraising event during the calendar year.

B. Example 1: A civic league, exempt from federal income tax under Section 501(c)(4) of the Internal Revenue Code, sponsors the following activities each calendar year:

(1) a button sale on the second Sunday of February;

(2) an indoor track meet on the first Saturday of March;

(3) a fireworks display on the Saturday closest to July 4; and

(4) an art fair on the last weekend in September.

C. Each of these activities qualifies as a fundraising event. However, only the receipts from the button sale and the indoor track meet may be deducted under Section 7-9-85 NMSA 1978. The civic league must pay gross receipts tax on the receipts from the fireworks display and the art fair.

D. Example 2: The same facts as Example 1, except that the civic league adopts a resolution in January identifying the track meet and the fireworks display as the two fundraising events for which the civic league intends to claim the deduction provided in Section 7-9-85 NMSA 1978. The receipts from the track meet and the fireworks display may be deducted under Section 7-9-85 NMSA 1978. The civic league must pay gross receipts tax on the receipts from the button sale and the art fair.

E. Example 3: The same facts as Example 1, except that the civic league adopts a resolution at their meeting on the last Thursday of February identifying the track meet and the fireworks display as the two fundraising events for which the civic league intends to claim the deduction provided in Section 7-9-85 NMSA 1978. Because the resolution was not adopted prior to the first fundraising event sponsored by the civic league, the receipts from the button sale and the track meet may be deducted under Section 7-9-85 NMSA 1978. The civic league must pay gross receipts tax on the receipts from the fireworks display and the art fair.

F. The requirement for written advance identification can be satisfied by adopting a resolution to be retained in the permanent records of the organization or reflecting the decision in the minutes or other permanent records of the organization. The written identification must include, at a minimum:

(1) a general description of the event;

(2) a statement about how the proceeds of the event will be used;

(3) the specific commencement and ending dates for the event; and

(4) if any activity will precede or follow the event, an explanation of that activity.

G. The written advance identification must be retained by the organization and provided to the department on request.

[3/16/95, 11/15/96; 3.2.239.12 NMAC - Rn, 3 NMAC 2.85.12 & A, 6/14/01]

PART 240: DEDUCTION - GROSS RECEIPTS TAX - RECEIPTS OF SALE OF FOOD AT RETAIL FOOD STORE

3.2.240.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.2.240.1 NMAC - N, 1/31/05]

3.2.240.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[3.2.240.2 NMAC - N, 1/31/05]

3.2.240.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.2.240.3 NMAC - N, 1/31/05]

3.2.240.4 DURATION:

Permanent.

[3.2.240.4 NMAC - N, 1/31/05]

3.2.240.5 EFFECTIVE DATE:

1/31/05, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.240.5 NMAC - N, 1/31/05]

3.2.240.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.240.6 NMAC - N, 1/31/05]

3.2.240.7 DEFINITIONS:

"FOOD", "RETAIL FOOD STORE" AND "HOME CONSUMPTION": For purposes of Section 7-9-92 NMSA 1978, the definitions of "food", "food retail store" and "home consumption" are the definitions set forth in the federal Food Stamp Act of 1964, codified at 7 USC 2011 *et seq.*, as amended or renumbered and any regulations, rules and administrative materials promulgated thereunder, as they may be amended or renumbered.

[3.2.240.7 NMAC - N, 1/31/05]

3.2.240.8 WHO IS A RETAIL FOOD STORE:

A. A taxpayer that is authorized to accept food stamps under the federal Food Stamp Act is presumed to be a retail food store for the purpose of Section 7-9-92 NMSA 1978 for tax periods during which the taxpayer is authorized to accept food stamps. A

taxpayer that meets the definition of "retail food store" but does not participate in the federal food stamp program may qualify as a retail food store for the purpose of Section 7-9-92 NMSA 1978 if the secretary certifies that the taxpayer is a retail food store. A taxpayer seeking certification as a "retail food store" shall apply for certification in the manner and on forms as the secretary shall prescribe.

B. A taxpayer who is not authorized under the federal Food Stamp Act to accept food stamps, and who has not been certified as a food retail store by the secretary, is presumed not to be a food retail store.

[3.2.240.8 NMAC - N, 1/31/05]

3.2.240.9 EQUIVALENCE OF FOOD SALES FOR FOOD STAMP AND SECTION 7-9-92 NMSA 1978 PURPOSES:

Receipts from the sale of food for which a taxpayer could have accepted food stamps are receipts from the sale of food for purposes of Section 7-9-92 NMSA 1978.

[3.2.240.9 NMAC - N, 1/31/05]

3.2.240.10 RECEIPTS EXEMPT OR DEDUCTIBLE UNDER OTHER SECTIONS:

Taxpayers may not deduct under Section 7-9-92 NMSA receipts that may be exempted or deducted under other sections of the Gross Receipts and Compensating Tax Act, including:

A. receipts of a government exempted from the gross receipts tax by Section 7-9-13 NMSA 1978;

B. receipts subject to the stadium surcharge but exempted from the gross receipts tax by Section 7-9-13.3 NMSA 1978;

C. receipts of a nonprofit entity from running facilities accommodating retired elderly persons exempted from the gross receipts tax by Section 7-9-16 NMSA 1978;

D. receipts from selling livestock and receipts of growers, producers, trappers and nonprofit marketing associations from selling livestock, live poultry, unprocessed agricultural products, pelts and hides exempted from the gross receipts tax by Section 7-9-18 NMSA 1978;

E. receipts from the lawful acceptance of food stamps exempted from the gross receipts tax by Section 7-9-18.1 NMSA 1978;

F. receipts of 501(c)(3) and 501(c)(6) organizations exempted by Section 7-9-29 NMSA 1978;

G. receipts of nonprofit organizations from registration fees exempted by Section 7-9-39 NMSA;

H. receipts from selling food to manufacturers that may be deducted under Section 7-9-46 NMSA 1978;

I. receipts from selling food for re-sale that may be deducted under Section 7-9-47 NMSA 1978;

J. receipts from selling food to governments that may be deducted under Section 7-9-54 NMSA 1978;

K. receipts from selling food in interstate commerce that may be deducted under Section 7-9-55 NMSA 1978;

L. receipts from selling food to 501(c)(3) organizations that may be deducted under Section 7-9-60 NMSA 1978;

M. receipts from selling food to credit unions that may be deducted under Section 7-9-61.2 NMSA 1978; and

N. receipts from selling food to an accredited foreign mission or accredited member of a foreign mission that may be deducted under Section 7-9-89 NMSA 1978.

[3.2.240.10 NMAC - N, 1/31/05]

PART 241: DEDUCTION - GROSS RECEIPTS TAX - RECEIPTS OF HEALTH CARE PRACTITIONERS

3.2.241.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.2.241.1 NMAC - N, 4/29/05]

3.2.241.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[3.2.241.2 NMAC - N, 4/29/05]

3.2.241.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.2.241.3 NMAC - N, 4/29/05]

3.2.241.4 DURATION:

Permanent.

[3.2.241.4 NMAC - N, 4/29/05]

3.2.241.5 EFFECTIVE DATE:

4/29/05, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.241.5 NMAC - N, 4/29/05]

3.2.241.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.241.6 NMAC - N, 4/29/05]

3.2.241.7 DEFINITIONS: "SCOPE OF PRACTICE" DEFINED:

As used in Section 7-9-93 NMSA 1978, the term "scope of practice" means the health care activities authorized to be conducted by, or at the direction of, the health care practitioner under a license granted to the health care practitioner by the appropriate body under any of the acts specified under Paragraph (3) of Subsection B of Section 7-9-93 NMSA 1978.

[3.2.241.7 NMAC - N, 4/29/05]

3.2.241.8 RECEIPTS DEDUCTIBLE UNDER OTHER SECTIONS:

Health care practitioners may not deduct under Section 7-9-93 NMSA 1978 receipts that are deductible under others sections of the Gross Receipts and Compensating Tax Act. Receipts deductible under other sections include:

A. receipts from the United States or an agent thereof under Part B of medicare (Title 18 of the federal Social Security Act); these receipts are deductible under Section 7-9-77.1 NMSA 1978;

B. receipts from a third party administrator of the federal TRICARE program; these receipts are deductible under Section 7-9-77.1 NMSA 1978; and

C. receipts from health care services sold to a hospital or other person for re-sale with respect to which the practitioner has accepted a Type 5 nontaxable transaction certificate executed by the buyer; these receipts are deductible under Section 7-9-48 NMSA 1978.

[3.2.241.8 NMAC - N, 4/29/05]

3.2.241.9 RECEIPTS FROM THIRD PARTY CLAIMS ADMINISTRATORS:

Payments by a third party claims administrator to a health care practitioner for health care services rendered by the practitioner within the scope of his or her practice and pursuant to a contract with a managed care company or a health insurer that are otherwise deductible under Section 7-9-93 NMSA 1978 may be deducted from gross receipts. A third party claims administrator is an entity that processes health care claims and performs related business functions for a health plan.

[3.2.241.9 NMAC - N, 4/29/05; 3.2.241.9 NMAC - N, 5/31/06]

3.2.241.10 RECEIPTS OF HEALTH CARE PRACTITIONERS FROM MANAGED HEALTH CARE PROVIDERS AND HEALTH CARE INSURERS PURSUANT TO CONTRACT WITH INDEPENDENT PRACTICE ASSOCIATIONS:

A. For purposes of Section 7-9-93 NMSA 1978, an "independent practice association" means an entity which acts as an administrative intermediary between health care practitioners and other managed health care providers or health care insurers. Independent practice associations generally contract with health care practitioners, other managed health care providers and health care insurers. In order for receipts of a health care practitioner to be deductible under Section 7-9-93 NMSA 1978, each health care practitioner contracted with the independent practice association must be qualified to receive reimbursement from each managed health care provider and health care insurer contracted with the independent practice association subject to limitations and a fee schedule established by the independent practice association and agreed to by both parties through their individual contracts with the independent practice association. Thus, a single contract between a health care practitioner and an independent practice association eliminates the need for the individual contracts between the health care practitioner and the independent practice association’s other managed health care providers and health care insurers. Receipts from payments by other managed health care providers and health care insurers to health care practitioners pursuant to the parties’ contracts with an independent practice association and that are otherwise deductible under Section 7-9-93 NMSA 1978 are deductible. Receipts from payments by independent practice associations to health care practitioners are deductible under Section 7-9-93 NMSA 1978.

B. Example: A health care practitioner contracts with an independent practice association. The health care practitioner bills and receives payment through the independent practice association from a health care insurer that is also contracted with

the independent practice association. The health care insurer is registered in New Mexico. Even though the health care practitioner does not have a direct contract with the health care insurer, he or she may deduct payments he or she receives for services that are otherwise deductible under Section 7-9-93 NMSA 1978 because he or she has contracted with the independent practice association.

C. Example: A health care practitioner contracts with an independent practice association. The health care practitioner bills the managed health care provider or health care insurer that the independent practice association has contracted with. The managed care provider or health care insurer makes payment to the independent practice association according to its contract with the independent practice association. The independent practice association then makes payment to the health care practitioner according to its contract with the health care practitioner. The receipts of the health care practitioner are deductible pursuant to Section 7-9-93 NMSA 1978.

[3.2.241.10 NMAC - N, 4/29/05; A, 5/31/06; 3.2.241.10 NMAC - N, 10/16/06]

3.2.241.11 RECEIPTS FOR ADMINISTRATIVE SERVICES NOT DEDUCTIBLE:

Receipts of a third party for administering a health insurance or medical plan are not deductible under Section 7-9-93 NMSA 1978.

[3.2.241.11 NMAC - N, 4/29/05; 3.2.241.11 NMAC - Rn, 3.2.241.16 NMAC, 5/31/06]

3.2.241.12 RECEIPTS NOT DEDUCTIBLE UNDER SECTION 7-9-93 NMSA 1978:

Receipts of a health care practitioner other than from payments by a managed health care provider or health care insurer for commercial contract services or medicare part C services provided by the health care practitioner are not deductible under Section 7-9-93 NMSA 1978. Receipts of health care practitioners not deductible under Section 7-9-93 NMSA 1978 include:

A. receipts from any payment, such as a co-payment, that is the responsibility of the patient under the managed health care plan or health insurance;

B. receipts on a fee-for-service basis; "fee-for-service" means a traditional method of paying for health care services under which health care practitioners are paid for each service rendered, as opposed to paying in accordance with a schedule of fees in a contract the health care provider has entered into with a third party;

C. receipts from providing services to medicaid patients; and

D. receipts from selling tangible personal property such as nonprescription medicine that is not incidental to the provision of a deductible service.

[3.2.241.12 NMAC - N, 4/29/05; 3.2.241.12 NMAC - Rn, 3.2.241.9 NMAC, 5/31/06]

3.2.241.13 RECEIPTS OF CORPORATE PRACTICE:

A corporation, unincorporated business association, or other legal entity may deduct under Section 7-9-93 NMSA 1978 its receipts from managed health care providers or health care insurers for commercial contract services or medicare part C services provided on its behalf by health care practitioners who own or are employed by the corporation, unincorporated business association or other legal entity that is not:

A. an organization described by Subsection A of Section 7-9-29 NMSA 1978; or

B. an HMO, hospital, hospice, nursing home, an entity that is solely an outpatient facility or intermediate care facility licensed under the Public Health Act.

[3.2.241.13 NMAC - N, 4/29/05; 3.2.241.13 NMAC - Rn & A, 3.2.241.10 NMAC, 5/31/06]

3.2.241.14 VALID CERTIFICATE OF COMPLIANCE REQUIRED:

A person is not a "health care insurer" as defined by Section 7-9-93 NMSA 1978 if the person does not have a valid certificate of compliance issued by the public regulation commission under the New Mexico insurance code to act as an insurer, health maintenance organization, nonprofit health care plan or prepaid dental plan. Receipts of health care practitioners from persons without such a valid certificate of compliance are not deductible under Section 7-9-93 NMSA 1978.

[3.2.241.14 NMAC - N, 4/29/05; 3.2.241.14 NMAC - Rn, 3.2.241.11 NMAC, 5/31/06]

3.2.241.15 SELF-INSURERS MAY BE "MANAGED HEALTH CARE PROVIDERS":

If a person provides for the delivery of comprehensive basic health care services and medically necessary services to the person’s employees enrolled in a self-insurance plan through contracting with selected or participating health care practitioners, that person is a "managed health care provider". Example: New Mexico state government’s self-insured plan under the Group Benefits Act.

[3.2.241.15 NMAC - N, 4/29/05; 3.2.241.15 NMAC - Rn, 3.2.241.12 NMAC, 5/31/06]

3.2.241.16 PAYMENTS FROM WORKERS COMPENSATION:

Receipts of a health care practitioner from the state of New Mexico pursuant to the Workers Compensation Act are not receipts from a managed health care provider or health care insurer and are not deductible under Section 7-9-93 NMSA 1978.

[3.2.241.16 NMAC - N, 4/29/05; 3.2.241.16 NMAC - Rn, 3.2.241.13 NMAC, 5/31/06]

3.2.241.17 RECEIPTS OF HEALTH CARE FACILITIES NOT DEDUCTIBLE:

An organization, whether or not owned exclusively by health care practitioners, licensed as a hospital, hospice, nursing home, an entity that is solely an outpatient facility or intermediate care facility under the Public Health Act is not a "health care practitioner" as defined by Section 7-9-93 NMSA 1978. Receipts of such an organization are not deductible under Section 7-9-93 NMSA 1978.

[3.2.241.17 NMAC - Rn & A, 3.2.241.14 NMAC, 5/31/06]

3.2.241.18 RECEIPTS FROM "MEDIGAP" INSURANCE POLICIES NOT DEDUCTIBLE:

Payments from an insurer in accordance with a medigap policy are not deductible under Section 7-9-93 NMSA 1978. Medigap policies are not paying for "commercial contract services" as defined by Section 7-9-93 NMSA 1978. For purposes of the deduction under Section 7-9-93 NMSA 1978, a medigap policy meets the statutory definition of a "medicare supplemental policy" contained in 42 U.S.C. 1395ss(g)(1). It is a health insurance policy or other health benefit plan offered by a private entity to those persons entitled to medicare benefits and is specifically designed to supplement medicare benefits. Medigap policies do not include limited benefit coverage available to medicare beneficiaries such as "specified disease" or "hospital indemnity" coverage.

[3.2.241.18 NMAC - Rn & A, 3.2.241.15 NMAC, 5/31/06]

PART 242: DEDUCTION - GROSS RECEIPTS TAX - RECEIPTS OF RETAILERS FROM SALES OF CERTAIN TANGIBLE PERSONAL PROPERTY

3.2.242.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.2.242.1 NMAC - N, 8/15/05]

3.2.242.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[3.2.242.2 NMAC - N, 8/15/05]

3.2.242.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.2.242.3 NMAC - N, 8/15/05]

3.2.242.4 DURATION:

Permanent.

[3.2.242.4 NMAC - N, 8/15/05]

3.2.242.5 EFFECTIVE DATE:

8/15/05, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.242.5 NMAC - N, 8/15/05]

3.2.242.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.242.6 NMAC - N, 8/15/05]

3.2.242.7 DEFINITIONS:

A. As used in Section 7-9-95 NMSA 1978 "standard classroom" means a classroom that:

(1) is located in a school;

(2) is configured for a general education curriculum; and

(3) does not contain specialized equipment such as scientific laboratory equipment or musical instruments.

B. As used in Section 7-9-95 NMSA 1978 "school supplies normally used by students in a standard classroom for educational purposes" means implements and materials used by typical students of a general education curriculum. These include notebooks, paper, writing instruments, crayons, art supplies, paper clips, staples, staplers, scissors, and rulers valued at under $30 per unit, book bags, backpacks, maps and globes valued at under $100 per unit, and handheld calculators valued under $200. The items that qualify as school supplies for the deduction under Section 7-9-95 NMSA 1978 do not have to be used for school; they only have to be items normally used by students in a standard classroom setting.

[3.2.242.7 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.8 ITEMS NORMALLY SOLD AS A UNIT:

Articles normally sold as a unit must be sold that way during the time period specified in Section 7-9-95 NMSA 1978 to qualify for the deduction. They cannot be priced separately and sold as individual items to qualify for the deduction. For example, shoes normally sold in a pair for $180 cannot be sold singly for $90 each to qualify for the deduction.

[3.2.242.8 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.9 PURCHASES USING A RAIN CHECK:

A "rain check" is an assurance to a customer that an item on sale that is sold out or out of stock may be purchased later at the sale price. Receipts from qualified purchases of tangible personal property made with a rain check during the time period specified in Section 7-9-95 NMSA 1978 are deductible. Purchases made after this time period with a rain check regardless of when the rain check was issued are not deductible.

[3.2.242.9 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.10 LAYAWAY SALES:

A retailer performs a service when holding merchandise on a layaway plan at the request of the customer.

A. The initiation of a layaway plan does not constitute a sale even if the customer makes a deposit to the retailer. A sale of the merchandise under the layaway plan occurs only when the final payment is made and the merchandise is delivered to the customer.

B. If the final payment on a layaway plan and delivery of merchandise occur at a time other than during the time period specified in Section 7-9-95 NMSA 1978, the receipts from the sale are not deductible under Section 7-9-95 NMSA 1978.

C. If the final payment on a layaway plan and delivery of merchandise occur during the time period specified in Section 7-9-95 NMSA 1978, the receipts are deductible under Section 7-9-95 NMSA 1978 if the other requirements of the section are met.

[3.2.242.10 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.11 EXCHANGES AND REFUNDS:

A. The exchange after the time period specified in Section 7-9-95 NMSA 1978 of tangible personal property that was purchased during the time period specified in Section 7-9-95 NMSA 1978 remains deductible if there is no additional charge for the exchange.

B. If an item of tangible personal property purchased during the time period specified in Section 7-9-95 NMSA 1978 and deductible under Section 7-9-95 NMSA 1978 is exchanged at a later time for an item of different value, the receipts from the subsequent sale are subject to gross receipts tax.

[3.2.242.11 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.12 INTERNET, MAIL ORDER AND TELEPHONE SALES:

Qualified items sold to purchasers with a New Mexico billing address by mail, telephone, email and internet shall qualify for deduction under Section 7-9-95 NMSA 1978 if:

A. the item is both delivered to and paid for by the customer during the time period specified in Section 7-9-95 NMSA 1978; or

B. the customer orders and pays for the item and the retailer accepts the order during the time period specified in Section 7-9-95 NMSA 1978 for immediate shipment, even if delivery of the item is made after the exemption period.

[3.2.242.12 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.13 DOCUMENTING DEDUCTIBLE SALES:

Retailers claiming the deduction under Section 7-9-95 NMSA 1978 are required to maintain in their records the type of item sold, the date sold and the sales price of deductible merchandise sold during the time period specified in Section 7-9-95 NMSA 1978.

[3.2.242.13 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.14 ITEMS THAT DO NOT QUALIFY FOR THE DEDUCTION UNDER Section 7-9-95 NMSA 1978:

In addition to those items specifically excluded in the statute, the following are ineligible for the deduction:

A. e-readers that only have the ability to access the internet but that have no other computing functions such as word processing, spreadsheet capabilities, etc.;

B. personal digital assistants (PDAs), MP3 players, cassette players and recorders, cameras, books, magazines and other periodicals;

C. all computer and computer-related equipment not specifically deductible under Section 7-9-95 NMSA 1978 unless bundled with and included in the price of items that qualify for the deduction under Section 7-9-95 NMSA 1978;

D. all computer software unless bundled with and included in the price of items that qualify for the deduction under Section 7-9-95 NMSA 1978;

E. all games including video games, board games, computer games, and handheld gaming devices;

F. musical instruments;

G. materials and equipment used for making, repairing or altering clothing such as cloth, thread, yarn, needles, buttons, zippers, and patterns;

H. athletic and protective gloves, pads, supporters, and helmets;

I. swimwear, cover-ups, and caps;

J. specialized footwear not readily adaptable for wearing on the street, such as ski boots, riding boots, waders, bowling shoes and shoes with cleats or spikes; and

K. briefcases and luggage; prerecorded CDs, DVDs, and cassette tapes.

[3.2.242.14 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.15 RECEIPTS THAT ARE NOT DEDUCTIBLE:

Receipts from the following transactions are not deductible under Section 7-9-95 NMSA 1978:

A. Receipts from performing services on tangible personal property that are deductible under Section 7-9-95 NMSA 1978, such as the alteration or repair of clothing.

B. Receipts from leasing or renting tangible personal property. In order for the deduction under Section 7-9-95 NMSA 1978 to apply the qualified items must be sold at retail.

[3.2.242.15 NMAC - N, 8/15/05; A, 7/31/12]

3.2.242.16 ITEMS CONSIDERED TO BE COMPUTERS FOR PURPOSES OF THE DEDUCTION UNDER SECTION 7-9-95 NMSA 1978:

In addition to those computers that are specifically authorized in the statute, the following items are considered to be computers and qualify for the deduction as long as the cost of the item does not exceed the one thousand dollars ($1,000) threshold set in statute:

A. e-readers that have computing functions such as word processing, spreadsheet capabilities, etc.; and

B. tablet computers.

[3.2.242.16 NMAC - N, 7/31/12]

PART 243-246: [RESERVED]

PART 247: DEDUCTION - GROSS RECEIPTS TAX - SOLAR ENERGY SYSTEMS

3.2.247.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.2.247.1 NMAC - N, 3/14/08]

3.2.247.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[3.2.247.2 NMAC - N, 3/14/08]

3.2.247.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.2.247.3 NMAC - N, 3/14/08]

3.2.247.4 DURATION:

Permanent.

[3.2.247.4 NMAC - N, 3/14/08]

3.2.247.5 EFFECTIVE DATE:

3/14/08, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.247.5 NMAC - N, 3/14/08]

3.2.247.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.247.6 NMAC - N, 3/14/08]

3.2.247.7 DEFINITIONS:

The terms and phrases defined in 3.2.247.7 NMAC apply to the implementation of the deduction pursuant to Section 7-9-112 NMSA 1978.

A. **Equipment:** "Equipment" means an essential machine, mechanism, or a component or fitting thereof, used directly and exclusively in the installation or operation of a solar energy system. Equipment is included in the solar energy system when the cost can be included in the basis of the solar energy system as established under the applicable provisions of the Internal Revenue Code of 1986.

B. **Trombe wall:** A "trombe wall" is a sun-facing wall built from material that can act as a thermal mass, such as stone, concrete, adobe or water tanks, combined with an air space and glass to form a solar thermal collector.

C. **Solar panel:** A "solar panel" is a solar thermal collector, such as a solar hot water or air panel used to heat water, air or otherwise collect solar thermal energy. "Solar panel' may also refer to a photovoltaic system.

D. **Solar thermal collector:** A "solar thermal collector" means an energy system that collects or absorbs solar energy for conversion into heat for the purposes of space heating, space cooling or water heating.

E. **Solar thermal energy:** "Solar thermal energy" is a technology for harnessing solar power for practical applications from solar heating to electrical power generation.

F. **Photovoltaic system:** A "photovoltaic system" means an energy system that collects or absorbs sunlight for conversion into electricity.

G. **Installation of a solar energy system:** The "installation of a solar energy system" includes replacement of some part of the system, or a similar change to the system that would qualify as an adjustment to basis for federal income tax purposes. Labor for maintenance or service of a solar energy system does not qualify for the deduction in the absence of an installation of some part of the system. Labor to perform post-installation adjustments to the solar energy system qualifies for the deduction when the adjustments are performed to optimize the operation of the solar energy system as part of the initial installation and are performed within one year of the initial installation.

H. **Solar energy system:** A "solar energy system" as defined in Subsection B of Section 7-9-112 NMSA 1978, includes components or systems for collecting and storing energy, but does not include components or systems related to the use of the energy.

Examples of use would include the pipes carrying heated water to a faucet or the electrical wire carrying electricity to an outlet.

[3.2.247.7 NMAC - N, 3/14/08]

3.2.247.8 WRITTEN STATEMENT:

A. Receipts from selling equipment or installation services to persons who state in writing that they are purchasing the equipment or installation services for the exclusive use in installation and operation of a solar energy system pursuant Section 7-9-112 NMSA 1978, may be deducted from the seller's gross receipts pursuant to Section 7-9-112 NMSA 1978 if the statement:

(1) contains a declaration that the purchaser-signer will be using the equipment or component part in a qualified solar energy system pursuant to Section 7-9-112 NMSA 1978;

(2) that the equipment purchased or installed is an essential machine, mechanism, or a component or fitting thereof, used directly and exclusively in the installation or operation of a solar energy system;

(3) that the equipment or component part can be included in the basis of the qualified solar energy system as established under the applicable provisions of the Internal Revenue Code of 1986;

(4) is personally signed by the purchaser or the purchaser's agent who makes the statement, and

(5) is accepted in good faith by the seller.

B. Receipts from selling or installing solar energy systems pursuant to Section 7-9-112 NMSA 1978 may not be deducted from gross receipts unless the sale is made to a person who makes a written statement which is in compliance with 3.2.247.8 NMAC, or can provide evidence acceptable to the department that the service or equipment is purchased solely for use in a qualified solar energy system.

C. For the purposes of Section 7-9-112 NMSA 1978 it is sufficient if the seller receives one written statement from each purchaser. The one written statement may cover multiple purchases of equipment or installation services used solely in a qualified solar energy system provided the seller maintains that statement on file.

[3.2.247.8 NMAC - N, 3/14/08]

3.2.247.9 GOOD FAITH ACCEPTANCE OF BUYER'S WRITTEN STATEMENT:

A. When a seller accepts in good faith a person's written statement that the person is purchasing the service or equipment for the sole use of the sale and installation of a solar energy system pursuant to Section 7-9-112 NMSA 1978, the written statement shall be conclusive evidence that the proceeds from the transaction with the person having made this statement are deductible from the seller's gross receipts.

B. Example 1: X is installing a non-vented trombe wall in his home. Y sells adobe blocks to X for the trombe wall. X gives Y the proper written statement that the block is for the sole use of installing a solar energy system. X may deduct the gross receipts received from the sale of the adobe blocks.

C. Example 2: Same facts as example 1, but some of the adobe blocks being purchased from Y are to be used for the construction of a block wall around the perimeter of X's property. X is not using the adobe blocks solely to construct a non-vented trombe wall in his home. X gives Y the proper written statement that the block is for the sole use of installing a solar energy system. Y accepts the statement in good faith and may deduct the gross receipts received from the sale of the block. Because X is not using the block for the sole use of installing a solar energy system, X will be liable for the compensating tax on the value of the block and may be liable for making false statements.

D. Example 3: C buys a tractor from E, to haul materials used to construct a non-vented trombe wall in his personal residence. The equipment is not is an essential machine, mechanism, or a component or fitting thereof, used directly and exclusively in the installation or operation of a solar energy system and is not includable in the basis of the solar energy system to which the equipment is installed under the provisions of the Internal Revenue Code of 1986; E may not take the deduction.

E. Example 4: S is a contractor who performs construction services which includes the sale and installation of solar energy systems. S purchases materials and services from T. S may provide T with a buyers written statement pursuant to 3.2.247.8 NMAC. T cannot substantiate the deduction for the solar energy system materials and installation services with a nontaxable transaction certificate for the sale of construction materials that will become ingredients or components of a construction project pursuant to Section 7-9-51 NMSA 1978, or for construction services performed on a construction project pursuant to 7-9-52 NMSA 1978, because the next sale is not subject to gross receipts tax upon completion of the construction project.

F. Example 5: Same facts as example 4. When S sells the completed construction project to home owner H, S may deduct the materials and installation costs of the solar energy system pursuant to Section 7-9-112 NMSA 1978, with sufficient documentation to include the written statement pursuant to 3.2.247.8 NMAC, or other evidence acceptable to the department that the service or equipment is sold for the sole use of the sale and installation of a qualified energy system.

[3.2.247.9 NMAC - N, 3/14/08]

PART 248: DEDUCTION - GROSS RECEIPTS TAX - MEDICAL TREATMENT OF CATTLE

3.2.248.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.2.248.1 NMAC - N, 5/15/08]

3.2.248.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[3.2.248.2 NMAC - N, 5/15/08]

3.2.248.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.2.248.3 NMAC - N, 5/15/08]

3.2.248.4 DURATION:

Permanent.

[3.2.248.4 NMAC - N, 5/15/08]

3.2.248.5 EFFECTIVE DATE:

5/15/08, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.248.5 NMAC - N, 5/15/08]

3.2.248.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.248.6 NMAC - N, 5/15/08]

3.2.248.7 DEFINITIONS:

[Reserved.]

3.2.248.8 WRITTEN STATEMENT OF FARMING OR RANCHING:

A. Receipts from providing veterinary medical services or from selling medicine or medical supplies used in the medical treatment of cattle to a person who states in writing that they are regularly engaged in the business of ranching or farming may be deducted from the seller's gross receipts pursuant to Section 7-9-109 NMSA 1978. The written statement must be accepted in good faith by the seller in order for the seller to take the deduction authorized by Section 7-9-109 NMSA 1978. The good faith acceptance requirement applies to each transaction intended to be covered by the written statement.

B. The following is an example of a statement that will be accepted by the department as conclusive evidence that receipts from selling enumerated items to persons signing the statement may be deducted from the seller's gross receipts pursuant to Section 7-9-109 NMSA 1978 if the seller accepted such a statement in good faith. "I swear or affirm that I am regularly engaged in the business of farming or ranching. This declaration is made for the purpose of allowing receipts from selling veterinary medical services, medicine and medical supplies used in the medical treatment of cattle to be deducted from the gross receipts of the seller pursuant to Section 7-9-109 NMSA 1978."

C. Receipts from selling any of the items mentioned in Section 7-9-109 NMSA 1978 to a person engaged in the farming or ranching business may not be deducted from gross receipts unless the sale is made to a person who makes a written statement which is in compliance with 3.2.248.8 NMAC.

D. For the purposes of Section 7-9-109 NMSA 1978 it is sufficient if the seller receives one written statement from each purchaser, provided the seller maintains that statement on file.

E. When the seller accepts in good faith a person’s written statement that the person is regularly engaged in the business of farming or ranching, the written statement shall be conclusive evidence that the receipts from the transaction with the person having made the statement are deductible from the seller’s gross receipts under Section 7-9-109 NMSA 1978.

[3.2.248.8 NMAC - N, 5/15/08]

PART 249: DEDUCTION - GROSS RECEIPTS TAX - LEASING OF CONSTRUCTION EQUIPMENT

3.2.249.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.2.249.1 NMAC - N, 12/14/12]

3.2.249.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[3.2.249.2 NMAC - N, 12/14/12]

3.2.249.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.2.249.3 NMAC - N, 12/14/12]

3.2.249.4 DURATION:

Permanent.

[3.2.249.4 NMAC - N, 12/14/12]

3.2.249.5 EFFECTIVE DATE:

December 14, 2012, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.249.5 NMAC - N, 12/14/12]

3.2.249.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.249.6 NMAC - N, 12/14/12]

3.2.249.7 DEFINITIONS:

[RESERVED]

3.2.249.8 LEASE OF CONSTRUCTION EQUIPMENT - GENERAL:

A. Receipts from leasing construction equipment, with or without operators, on or after January 1, 2013, to a person engaged in the construction business may be deducted from the lessor's gross receipts pursuant to Section 7-9-52.1 NMSA 1978.

B. Example 1: A is regularly engaged in the lease and rental of construction equipment. A enters into an agreement to lease a crane with an operator to a contractor engaged in the construction business to be used on a construction project. The contractor will direct all of the activity of the crane and operator on the construction site.

A's receipts from the lease of the crane with an operator are receipts from leasing construction equipment pursuant to Section 7-9-52.1 NMSA 1978 and are deductible.

C. Example 2: X is a heating and air conditioning subcontractor on a construction project. X owns a crane which X regularly uses to lift equipment onto the roof of buildings on which X works. X's receipts for construction services includes payment for using the crane. X may deduct those receipts under Section 7-9-52 NMSA 1978. If, however, X agrees to lease the crane with an operator to the prime contractor for work unrelated to the subcontract, which work is performed at the direction of the prime contractor, X would not be able to deduct the receipts for the leasing of the crane under Section 7-9-52 NMSA 1978, but could deduct the receipts under Section 7-9-52.1 NMSA 1978 as receipts from the lease of construction equipment.

D. Example 3: C is engaged in the construction business. C hires S, a scaffolding-rental company, to deliver scaffolding to a specific construction project, erect the scaffolding, inspect the equipment daily for continued safety compliance, disassemble the scaffolding and transport it away from the construction site upon completion of the project. C may execute a nontaxable transaction certificate to S for the lease of the scaffolding pursuant to Section 7-9-52.1 NMSA 1978.

E. This version of 3.2.249.8 NMAC applies to transactions occurring on or after January 1, 2013.

[3.2.249.8 NMAC - N, 12/14/12]

3.2.249.9 LEASE OF CONSTRUCTION EQUIPMENT - OIL FIELD:

A. Receipts from the lease of construction equipment on or after January 1, 2013, may be deducted from gross receipts tax if the leased items are used on a construction project and the requirements of Section 7-9-52.1 NMSA 1978 are met. The following are some examples of items that if leased to a person engaged in the construction business would be deductible under Section 7-9-52.1 NMSA 1978:

(1) drilling equipment, including derricks, blocks, substructures, draw-works, flooring, rotary tables, engines, mud pumps, pipe racks, tanks, doghouses, hoses, water and fuel lines, water well equipment, blowout preventers and other drilling equipment and tools;

(2) drill stems, drill collars, subs and kelly; and

(3) fishing tools.

B. Receipts from the lease of the above items that remain on the oil field after the completion of the construction project, once the well is operational, do not qualify for the deduction under Section 7-9-52.1 NMSA 1978.

C. This version of 3.2.249.9 NMAC applies to transactions occurring on or after January 1, 2013.

[3.2.249.9 NMAC - N, 12/14/12]

PART 250: DEDUCTION - GROSS RECEIPTS AND COMPENSATING TAXES - LOCOMOTIVE FUEL

3.2.250.1 ISSUING AGENCY:

Economic Development Department.

[3.2.250.1 NMAC - N, 7/1/2012]

3.2.250.2 SCOPE:

This part applies to each person claiming the locomotive fuel deduction from gross receipts or in computing the compensating tax.

[3.2.250.2 NMAC - N, 7/1/2012]

3.2.250.3 STATUTORY AUTHORITY:

The promulgation of rules for the issuance of a certificate of eligibility for the purposes of claiming a deduction of receipts from the sale of fuel loaded or used by a common carrier in a locomotive engine from gross receipts and of claiming a deduction of the value of fuel to be loaded or used by a common carrier in a locomotive engine in computing the compensating tax shall be the responsibility of the economic development department pursuant to the governing legislation, NMSA 1978, Section 7-9-110.3(D).

[3.2.250.3 NMAC - N, 7/1/2012]

3.2.250.4 DURATION:

Permanent.

[3.2.250.4 NMAC - N, 7/1/2012]

3.2.250.5 EFFECTIVE DATE:

July 1, 2012.

[3.2.250.5 NMAC - N, 7/1/2012]

3.2.250.6 OBJECTIVE:

The purpose of the deduction of receipts from the sale of fuel loaded or used by a common carrier in a locomotive engine from gross receipts and of the deduction of the value of fuel to be loaded or used by a common carrier in a locomotive engine in computing the compensating tax is to encourage the construction, renovation, maintenance and operation of railroad locomotive refueling facilities and related activities in New Mexico.

[3.2.250.6 NMAC - N, 7/1/2012]

3.2.250.7 DEFINITIONS:

For the purposes of this section, "locomotive engine" means a wheeled vehicle consisting of a self-propelled engine that is used to draw trains along railway tracks.

[3.2.250.7 NMAC - N, 7/1/2012]

3.2.250.8 QUALIFICATIONS AND REQUIREMENTS:

A. To be eligible for the deduction of receipts from the sale of fuel loaded or used by a common carrier in a locomotive engine from gross receipts, the sale shall be made to a common carrier that, after July 1, 2011, made a capital investment of one hundred million dollars ($100,000,000) or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is sold, and the common carrier shall deliver an appropriate nontaxable transaction certificate to the seller.

B. To be eligible for the deduction of the value fuel loaded or used by a common carrier in a locomotive engine in computing the compensating tax, the fuel shall be used or loaded by a common carrier that, after July 1, 2011, made a capital investment of one hundred million dollars ($100,000,000) or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is loaded or used.

C. A common carrier may request a certificate of eligibility from the economic development department to provide to the taxation and revenue department to establish eligibility for a nontaxable transaction certificate for the deduction of receipts from the sale of fuel loaded or used by a common carrier in a locomotive engine from gross receipts and for the deduction of the value of fuel loaded or used by a common carrier in a locomotive engine in computing the compensating tax.

(1) A common carrier shall apply to the economic development department for a certificate of eligibility on forms provided by the economic development department.

(2) Applications shall be considered in the order received.

(3) A common carrier requesting a certificate of eligibility from the economic development department shall provide such information as the economic development department deems necessary to determine that the common carrier has made a capital

investment of one hundred million dollars ($100,000,000) or more in new construction or renovations at a railroad locomotive refueling facility after July 1, 2011.

(4) If the economic development department determines that a common carrier has applied for a certificate of eligibility on forms provided by the economic development department in the manner prescribed by these rules, made a capital investment of one hundred million dollars ($100,000,000) or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is sold, and complied with all reporting requirements, it shall issue a certificate of eligibility to the common carrier.

(5) The certificate of eligibility shall be dated.

[3.2.250.8 NMAC - N, 7/1/2012]

3.2.250.9 REPORTING:

A. Every taxpayer that claims a deduction under Section 7-9-110.1 NMSA 1978 shall report to the economic development department, on forms provided by the department, the following information no later than August 1 for the full year ending on the previous June 30:

(1) the amount of the deduction claimed;

(2) the number of permanent jobs created by the taxpayer as a result of the deductions claimed;

(3) the number of temporary jobs created by the taxpayer as a result of the deductions claimed; and

(4) an estimate of the net revenue to the state as a result of the deductions claimed.

B. Every taxpayer that claims a deduction under Section 7-9-110.2 NMSA 1978 shall report to the economic development department, on forms provided by the department, the amount of the deduction claimed, no later than 30 days after reporting the deduction to the taxation and revenue department.

C. If any deduction amount reported in Subsections A and B above is subsequently denied by the taxation and revenue department, the taxpayer must report the amount of the denial to the economic development department no later than 30 days after receiving notice of the denial or after the resolution of all administrative proceedings, whichever is later.

[3.2.250.9 NMAC - N, 7/1/2012; A, 7/1/2012]

PART 251-299: [RESERVED]

PART 300: CREDIT - GROSS RECEIPTS TAX - SERVICES

3.2.300.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.2.300.1 NMAC - Rp, 3.2.300.1 NMAC 10/13/2021]

3.2.300.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[3.2.300.2 NMAC - Rp, 3.2.300.2 NMAC 10/13/2021]

3.2.300.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.2.300.3 NMAC - Rp, 3.2.300.3 NMAC 10/13/2021]

3.2.300.4 DURATION:

Permanent.

[3.2.300.4 NMAC - Rp, 3.2.300.4 NMAC 10/13/2021]

3.2.300.5 EFFECTIVE DATE:

October 13, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.300.5 NMAC - Rp, 3.2.300.5 NMAC 10/13/2021]

3.2.300.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.300.6 NMAC - Rp, 3.2.300.6 NMAC 10/13/2021]

3.2.300.7 DEFINITIONS:

[**RESERVED**]

[3.2.300.7 NMAC - Rp, 3.2.300.7 NMAC 10/13/2021]

3.2.300.8 CREDIT FOR TAX PAID TO ANOTHER STATE ON SERVICES:

The credit allowed pursuant to the provisions of Section 7-9-79.1 NMSA 1978 shall not exceed the lesser of:

A. the actual amount of tax paid to the other state, paid to any political subdivision of the other state or the combined total paid to the other state and political subdivisions of that state; or

B. the amount determined by multiplying the total consideration received from the sale of the service exclusive of the amount of tax paid to the other state and any political subdivision of that state times the rate of gross receipts tax imposed under Section 7-9-4 NMSA 1978.

[3.2.300.8 NMAC - Rp, 3.2.300.8 NMAC 10/13/2021]

3.2.300.9 CREDIT FOR TAX PAID ON SERVICES PERFORMED OUTSIDE THE STATE:

Under Section 7-9-79.1 NMSA 1978, if another state's sales, gross receipts, or similar tax is paid on services performed outside the state, the gross receipts from which would be subject to the New Mexico gross receipts tax, the taxpayer may take a credit for against the gross receipts tax owed for an amount of the other state's tax paid, provided the credit may not exceed gross receipts tax due on each transaction.

[3.2.300.9 NMAC - N, 10/13/2021]

PART 301: CREDIT - COMPENSATING TAX

3.2.301.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.2.301.1 NMAC - Rn, 3 NMAC 2.79.1.1, 6/14/01]

3.2.301.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[11/15/96; 3.2.301.2 NMAC - Rn, 3 NMAC 2.79.1.2, 6/14/01]

3.2.301.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.2.301.3 NMAC - Rn, 3 NMAC 2.79.1.3, 6/14/01]

3.2.301.4 DURATION:

Permanent.

[11/15/96; 3.2.301.4 NMAC - Rn, 3 NMAC 2.79.1.4, 6/14/01]

3.2.301.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.2.301.5 NMAC - Rn, 3 NMAC 2.79.1.5 & A, 6/14/01]

3.2.301.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[11/15/96; 3.2.301.6 NMAC - Rn, 3 NMAC 2.79.1.6, 6/14/01]

3.2.301.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.2.301.7 NMAC - Rn, 3 NMAC 2.79.1.7, 6/14/01]

3.2.301.8 LIMIT ON CREDIT:

A. The credit under Section 7-9-79 NMSA 1978 cannot exceed the amount of compensating tax assessed by New Mexico on the property on which the out-of-state tax was paid, and excess amounts cannot be applied to other out-of-state purchases.

B. Example 1: Q, a New Mexico construction company, purchased a power unit in California for $50,000 and a trenching implement in Texas for $20,000. The sales tax rates applicable to the purchases were 5.5% in California and 3% in Texas. When bringing the equipment into New Mexico, a 5% compensating tax is imposed on Q. Q is allowed a credit for similar taxes paid in other states on the same property. The New Mexico compensating tax imposed on the California transaction is $2,500 ($50,000 x .05). Q paid $2,750 ($50,000 x .055) in California tax and therefore is entitled to a credit for the full amount of the New Mexico compensating tax. On the Texas transaction, the New Mexico compensating tax is $1,000 ($20,000 x .05). Q paid $600 ($20,000 x .03) in Texas tax and therefore the balance of the New Mexico tax liability on this transaction is

$400 ($1,000 - $600). Q cannot use the excess credit on the California transaction to offset the balance of the liability on the Texas transaction.

C. Example 2: B, a machine company, buys a lathe in Texas for $50,000. The Texas sales tax is 6% at the time the purchase is made, and B pays $3,000 Texas sales tax. B uses the lathe in Texas for six years and then brings it into New Mexico to use in a new shop it is opening. The value of the lathe at the time it enters New Mexico is $25,000. The New Mexico compensating tax owed is $1,250 ($25,000 x .05). The maximum amount of tax credit allowed B will be $3,000. B, therefore, does not owe New Mexico compensating tax on its use of the lathe.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.301.8 NMAC - Rn, 3 NMAC 2.79.1.8 & A, 6/14/01]

3.2.301.9 CREDIT FOR COMPENSATING TAX PAID ON CONSTRUCTION PROJECTS:

A. A credit, equal to the amount of compensating tax paid to the department on the value of a construction project by a person engaged in the construction business, is allowed against the gross receipts tax due from that person on the receipts from the sale.

B. Only the tax paid to the department by the person engaged in the construction business is creditable under Section 7-9-79 NMSA 1978. Penalty and interest assessed by the department on compensating tax not reported and paid on time will not be credited.

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.301.9 NMAC - Rn, 3 NMAC 2.79.1.9 & A, 6/14/01]

PART 302: CREDIT - GROSS RECEIPTS TAX - SERVICE FOR RESALE

3.2.302.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.2.302.1 NMAC - N, 4/14/06]

3.2.302.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[3.2.302.2 NMAC - N, 4/14/06]

3.2.302.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.2.302.3 NMAC - N, 4/14/06]

3.2.302.4 DURATION:

Permanent.

[3.2.302.4 NMAC - N, 4/14/06]

3.2.302.5 EFFECTIVE DATE:

4/14/06, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.302.5 NMAC - N, 4/14/06]

3.2.302.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.302.6 NMAC - N, 4/14/06]

3.2.302.7 DEFINITIONS:

[RESERVED]

3.2.302.8 SERVICE FOR RESALE TAX CREDIT:

A. **Qualifying sales conditions.** The seller of a service may qualify for the credit if the transaction meets these conditions:

(1) the sale for which the credit is sought is subject to gross receipts tax or governmental gross receipts tax;

(2) the service is sold for subsequent resale;

(3) the subsequent resale is not subject to the gross receipts tax; and

(4) the buyer of the service certifies to the seller in writing and in a form prescribed by the secretary that the subsequent resale is in the ordinary course of the buyer's business and will not be subject to gross receipts tax or governmental gross receipts tax.

B. **Amount of credit.** The amount of credit available for qualifying transaction si equal to 10% of the receipts from the sale multiplied by either 5%, if the taxpayer's business I located in the unincorporated area of the county or 3.775%, if the taxpayer's business is located in a municipality. Examples:

(1) A's business is located in a municipality. A sells engineering services to B. B resells the engineering services to C. C sells the services to the final consumer, D. B accepts an nttc pursuant to Section 7-9-48 NMSA 1978 from C because C's sale to D will be taxable. B, however, cannot execute an nttc to A, because B's sale to C is not taxable. B provides written documentation to A that the resale of the service (B's sale to C) is in the ordinary course of business and will not be subject to gross receipts tax. A pays gross receipts tax on the sale to B; but takes a credit of 10 percent of the gross receipts from the sale to B multiplied by 3.775 percent (gross receipts multiplied by .10 multiplied by .03775).

(2) A, located in Albuquerque, sells a service to B for $10,000 on July 15, 2005. B provides documentation that the next sale is in the ordinary course of business and is not subject to gross receipts tax. A may claim a credit of $37.75 (10,000 multiplied by .10 multiplied by .03775).

(3) X, a business located in the unincorporated part of a county, sells accounting services which are performed on tribal land to Y (not a tribal member) who resells those services (in connection with other services which are also performed on tribal land) to Z, a Native American residing on tribal land of which he is a member. Y's sale to Z is not subject to the gross receipts tax because the service was performed on tribal land for a tribal member. Y therefore may not execute an nttc pursuant to Section 7-9-48 NMSA 1978 to X, because a deduction for services sold for resale is only allowed if the next sale is taxable. X, however, may reduce his tax due on the sale to Y by the amount of the credit -- 10 % of the gross receipts from the sale multiplied by 5% -- if Y provides written documentation that the resale (Y's sale to Z) is in the ordinary course of business and will not be subject to gross receipts tax.

C. **Claiming the sale of service for resale credit does not preclude executing an nttc.** A reseller who takes the sale-for-resale credit for the sale of a service may execute an nttc pursuant to Section 7-9-48 NMSA 1978 for the original purchase of that service.

D. **Example:** N purchases drafting services from M and resells them to O who resells them outside New Mexico for initial use outside New Mexico. N can reduce the tax due on his sale to O by the amount of the credit and N may execute an nttc to M for the purchase of the drafting services.

E. **Sale of service for resale credit; documentation.** In order to take the sale-for-resale credit, the seller must obtain from the buyer a completed form RPD-41305 *Declaration of Services Purchased for Resale* certifying that the service is purchased for

resale in the ordinary course of business and stating the reason or reasons why the resale is not subject to gross receipts tax or governmental gross receipts tax.

[3.2.302.8 NMAC - N, 4/14/06]

PART 303 CREDIT - GROSS RECEIPTS TAX - LEGAL SERVICES FOR WILDFIRE COMPENSATION RECOVERY

3.2.303.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.2.303.1 NMAC - N, 9/24/2024]

3.2. 303.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[3.2.303.2 NMAC - N, 9/24/2024]

3.2. 303.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.2.303.3 NMAC - N, 9/24/2024]

3.2. 303.4 DURATION:

Permanent.

[3.2.303.4 NMAC - N, 9/24/2024]

3.2. 303.5 EFFECTIVE DATE:

September 24, 2024, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.303.5 NMAC - N, 9/24/2024]

3.2. 303.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.303.6 NMAC - N, 9/24/2024]

3.2.303.7 DEFINITIONS:

Taxable Period: A "taxable period" for the purposes of Section 7-9-121 NMSA 1978 is one month. The month starts on the first day of a calendar month and ends on the last day of that calendar month.

[3.2.303.7 NMAC - N, 9/24/2024]

7.3.303.8 CLAIMING:

A. The credit pursuant to Section 7-9-121 NMSA 1978, shall be claimed on the gross receipts tax return for the month that the qualifying transaction occurred. Taxpayers who have been authorized to report and pay gross receipts taxes at an interval other than monthly pursuant to Section 7-1-15 NMSA 1978 shall claim the credit on their return for the next authorized reporting and payment date after the qualifying transaction occurred.

B. Any portion of the tax credit that exceeds the taxpayer's gross receipts tax liability can be carried forward for 36 consecutive months or three years from the month that the qualifying transaction occurred. The 36 consecutive month deadline applies to all taxpayers, including those who have been authorized to report and pay gross receipts taxes at an interval other than monthly pursuant to Section 7-1-15 NMSA 1978.

[3.2.303.8 NMAC - N, 09/24/2024]

PART 304 CREDIT - GROSS RECEIPTS TAX - SALE OF DYED SPECIAL FUEL USED FOR AGRICULTURAL PURPOSES

3.2.304.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.2.304.1 NMAC - N, 9/24/2024]

3.2. 304.2 SCOPE:

This part applies to each person engaging in business in New Mexico.

[3.2.304.2 NMAC - N, 9/24/2024]

3.2. 304.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.2.304.3 NMAC - N, 9/24/2024]

3.2. 304.4 DURATION:

Permanent.

[3.2.304.4 NMAC - N, 9/24/2024]

3.2. 304.5 EFFECTIVE DATE:

September 24, 2024, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.304.5 NMAC - N, 9/24/2024]

3.2. 304.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.304.6 NMAC - N, 9/24/2024]

3.2.304.7 DEFINITIONS:

Taxable Period: A "taxable period" for the purposes of Section 7-9-121 NMSA 1978 is one month. The month starts on the first day of a calendar month and ends on the last day of that calendar month.

[3.2.304.7 NMAC - N, 9/24/2024]

3.2.304.8 CLAIMING:

A. The credit pursuant to Section 7-9-58.1 NMSA 1978, shall be claimed on the gross receipts tax return for the month that the qualifying transaction occurred. Taxpayers who have been authorized to report and pay gross receipts taxes at an interval other than monthly pursuant to Section 7-1-15 NMSA 1978 shall claim the credit on their return for the next authorized reporting period and payment date after the qualifying transaction occurred.

B. Any portion of the tax credit that exceeds the taxpayer's gross receipts tax liability can be carried forward for 36 consecutive months or three years from the month that the qualifying transaction occurred. The 36 consecutive month deadline applies to all taxpayers, including those who have been authorized to report and pay gross receipts taxes at an interval other than monthly pursuant to Section 7-1-15 NMSA 1978.

[3.2.304.8 NMAC - N, 9/24/2024]

CHAPTER 3: PERSONAL INCOME TAXES

PART 1: GENERAL PROVISIONS

3.3.1.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.3.1.1 NMAC - Rn, 3 NMAC 3.1.1, 12/14/00]

3.3.1.2 SCOPE:

This part applies to each resident of New Mexico and to each nonresident employed or engaged in the transaction of business in, into or from New Mexico or deriving any income from any property or employment in New Mexico.

[1/15/97; 3.3.1.2 NMAC - Rn, 3 NMAC 3.1.2, 12/14/00]

3.3.1.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.3.1.3 NMAC - Rn, 3 NMAC 3.1.3, 12/14/00]

3.3.1.4 DURATION:

Permanent.

[1/15/97; 3.3.1.4 NMAC - Rn, 3 NMAC 3.1.4, 12/14/00]

3.3.1.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.3.1.5 NMAC - Rn & A, NMAC 3.1.5, 12/14/00]

3.3.1.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Income Tax Act.

[1/15/97; 3.3.1.6 NMAC - Rn, 3 NMAC 3.1.6, 12/14/00]

3.3.1.7 DEFINITIONS:

For purposes of Subsection S of Section 7-2-2 NMSA and Section 3.3.1.9 NMAC, a "day" is any consecutive 24-hour period.

[3.3.1.7 NMAC - N, 4/29/05]

3.3.1.8 CITATION OF REGULATIONS:

Unless otherwise stated, all citations of statutes in Title 3, Chapter 3 NMAC pertaining to the Income Tax Act are to the New Mexico Statutes Annotated, 1978 (NMSA 1978).

[1/15/74, 12/29/89, 3/16/92, 1/15/97; 3.3.1.8 NMAC - Rn, 3 NMAC 3.1.8, 12/14/00]

3.3.1.9 RESIDENCY:

A. **Full-year residents.** For purposes of the Income Tax Act, the following are full-year residents of this state:

(1) an individual domiciled in this state during all of the taxable year, or

(2) an individual other than an individual described in Subsection D of this section who is physically present in this state for a total of one hundred eighty-five (185) days or more in the aggregate during the taxable year, regardless of domicile.

B. **Part-year residents.**

(1) An individual who is domiciled in New Mexico for part but not all of the taxable year, and who is physically present in New Mexico for fewer than 185 days, is a part-year resident.

(a) During the first taxable year in which an individual is domiciled in New Mexico, if the individual is physically present in New Mexico for less than a total of 185 days, the individual will be treated as a non-resident of New Mexico for income tax purposes for the period prior to establishing domicile in New Mexico.

(b) An individual domiciled in New Mexico who is physically present in New Mexico for fewer than 185 days and changes his domicile to a place outside this state with the bona fide intention of continuing to live permanently outside New Mexico, is not a resident for Income Tax Act purposes for periods after that change of domicile.

(2) An individual who moves into this state with the intent to make New Mexico his permanent domicile is a first-year resident. A first-year resident should report any income earned prior to moving into New Mexico as nonresident income even if he is physically present in New Mexico for 185 days or more.

C. **"Domicile" defined:**

(1) A domicile is the place where an individual has a true, fixed home, is a permanent establishment to which the individual intends to return after an absence, and is where the individual has voluntarily fixed habitation of self and family with the intention of making a permanent home. Every individual has a domicile somewhere, and each individual has only one domicile at a time.

(2) Once established, domicile does not change until the individual moves to a new location with the bona fide intention of making that location his or her permanent home.

(3) No change in domicile results when an individual leaves the state if the individual's intent is to stay away only for a limited time, no matter how long, including:

(a) for a period of rest or vacation;

(b) to complete a particular transaction, perform a contract or fulfill an engagement or obligation, but intends to return to New Mexico whether or not the transaction, contract, engagement or obligation is completed, or

(c) to accomplish a particular purpose, but does not intend to remain in the new location once the purpose is accomplished.

(4) To determine domicile, the department shall give due weight to an individual's declaration of intent. However, those declarations shall not be conclusive where they are contradicted by facts, circumstances and the individual's conduct. In particular, the department will consider the following factors in determining whether an individual is domiciled in New Mexico (the list is not intended to be exclusive and is in no particular order):

(a) homes or places of abode owned or rented (for the individual's use) by the individual, their location, size and value; and how they are used by the individual;

(b) where the individual spends time during the tax year and how that time is spent; e.g., whether the individual is retired or is actively involved in a business, and whether the individual travels and the reasons for traveling, and where the individual spends time when not required to be at a location for employment or business reasons, and the overall pattern of residence of the individual;

(c) employment, including how the individual earns a living, the location of the individual's place of employment, whether the individual owns a business, extent of involvement in business or profession and location of the business or professional office, and the proportion of in-state to out-of-state business activities;

(d) home or place of abode of the individual's spouse, children and dependent parents, and where minor children attend school;

(e) location of domicile in prior years;

(f) ownership of real property other than residences;

(g) location of transactions with financial institutions, including the individual's most active checking account and rental of safety deposit boxes;

(h) place of community affiliations, such as club and professional and social organization memberships;

(i) home address used for filing federal income tax returns;

(j) place where individual is registered to vote;

(k) state of driver's license or professional licenses;

(l) resident or nonresident status for purposes of tuition at state schools, colleges and universities, fishing and hunting licenses, and other official purposes; and

(m) where items or possessions that the individual considers "near and dear" to his or her heart are located, e.g., items of significant sentimental or economic value (such as art), family heirlooms, collections or valuables, or pets.

(5) The department shall evaluate questions regarding domicile on a case-by-case basis. No one of the factors considered by the department shall be conclusive with respect to an individual's domicile. Factors such as the state of driver's license, place of voter registration and home address may be given less weight, depending on the circumstances, because they are relatively easy to change for tax purposes.

D. **"Domicile" and residency for armed forces personnel**

(1) A resident of this state who is a member of the United States armed forces does not lose residence or domicile in this state, or gain residency or domicile in another state, solely because the service member left this state in compliance with military orders.

(2) A resident of another state who is a member of the United States armed forces does not acquire residence or domicile in this state solely because the service member is in this state in compliance with military orders.

(3) A resident of another state who is a member of the United States armed forces does not become a resident of this state solely because the service person is in this state for one hundred and eighty-five (185) or more days in a taxable year.

(4) Compensation for service in the armed forces is subject to personal income tax only in the state of the service member's domicile. "Compensation for

military service" does not include compensation for off-duty employment, or military retirement income.

(5) For purposes of this section, "armed forces" means all members of the army of the United States, the United States navy, the marine corps, the air force, the coast guard, all officers of the public health service detailed by proper authority for duty either with the army or the navy, reservists placed on active duty, and members of the national guard called to active federal duty.

E. **Examples:**

(1) A, a life-long resident of Texas, accepts a job in New Mexico. On December 5, 2003, A moves to New Mexico with the intention of making New Mexico her permanent home. A has established domicile in New Mexico during the 2003 tax year. Because she was physically present in New Mexico for fewer than 185 days during that year, she should file as a part-year resident, and she will be treated as a resident for personal income tax purpose only for that period after she establishes a New Mexico domicile.

(2) B, a resident of Arizona, makes several weekend visits to New Mexico in the early months of 2004. On July 1, 2004, he moves to New Mexico with the intention of making it his permanent home. Family matters call him back to Arizona on August 1, 2004, and he soon determines that he must remain in Arizona. B was domiciled in New Mexico during the thirty days he spent in this state with the intention of making it his permanent home. Because B was physically present in this state for fewer than 185 days in 2004, B should file as a part-year resident for that tax year. For personal income tax purposes he will be treated as a resident of New Mexico only from July 1 to August 1, 2004.

(3) C was born and raised in New Mexico. She leaves New Mexico in December 2003 to pursue a two-year master's degree program in Spain. She intends to return to New Mexico when she completes her studies. During her absence she keeps her New Mexico driver's license and voter registration. Because New Mexico remains her domicile, C should file returns for tax years 2003, 2004 and 2005 as a full-year New Mexico resident.

(4) D, a resident of California, comes to New Mexico on three separate occasions in 2004 to work on a movie. D does not intend to remain in New Mexico, and when the movie is completed, D returns to her home in California. D is physically present in New Mexico for 200 days in 2004. Because D was physically present in New Mexico for at least 185 days, D must file as a full-year resident of New Mexico for tax year 2004.

(5) E, a resident of New Mexico, joined the army. Since joining the military, E has been stationed in various places around the world. Although E has not been back to New Mexico in the ten years since he joined the army, he continues to vote in New

Mexico and holds a current New Mexico driver's license. E must file as a full-year resident of New Mexico.

(6) Same facts as Example 5, except that in August 2003, while stationed in Georgia, E retires from the military. Instead of returning to New Mexico, E moves to Florida where he intends to spend his retirement. For tax year 2003, E must file as a part-year resident, because he was not physically present in the state for 185 days or more. E is a resident of New Mexico until August 2003, when he moves to Florida with the intent of making that his permanent home.

(7) F, a resident of Texas, is an air force officer. In March 2002 he moves to New Mexico to begin a two-year assignment at Kirtland Air Force Base. F is registered to vote in Texas and holds a Texas driver's license. F is not a resident of New Mexico in 2002. During the second year of F's assignment, he registers to vote in New Mexico, obtains a New Mexico driver's license, and enrolls his son in a New Mexico university paying resident tuition. Although F's presence in New Mexico under military orders is not sufficient to establish New Mexico residency or domicile, his conduct in 2003 is sufficient to establish domicile. In 2003 F must file as a part-year resident of New Mexico. He will be treated as a non-resident for income tax purposes for that period of 2003 prior to establishing domicile in New Mexico.

(8) G is a Native American who lives and works on his tribe's pueblo in New Mexico. Federal law prohibits the state from taxing income earned by a Native American who lives and works on his tribe's territory. G joins the marines and is stationed outside New Mexico. Because G's domicile remains unchanged during his military service, G's income from military service is treated as income earned on the tribe's territory by a tribal member living on the tribe's territory, and is not taxable by New Mexico.

[10/23/85, 12/29/89, 3/16/92, 6/24/93, 1/15/97; 3.3.1.9 NMAC - Rn & A, 3 NMAC 3.1.9, 12/14/00, A, 4/29/05; A, 4/28/06; A, 12/15/10]

3.3.1.10 MODIFIED GROSS INCOME:

A. **Modified gross income definitions.**

(1) The following definitions apply in determining the amount of modified gross income for each taxable year:

(a) "Social Security Benefits" means only cash payments made pursuant to Title II of the Social Security Act for old age, survivors and disability benefits, including any amount deducted for part B coverage.

(b) "Unemployment Compensation Benefits" means cash benefits paid through the employment security division of the New Mexico department of labor or any similar state agency of another state or any private income substitution program.

(c) "Workers' Compensation Benefits" means cash payments to the worker made by the employer or any insurance company providing workers' compensation coverage where such payments are based on the worker's average weekly wage, but does not include payments for medical or rehabilitative services, whether made directly to the provider or made to the worker for reimbursement of such expenses.

(d) "Public Assistance and Welfare Benefits" means unrestricted cash payments made under the supplemental security income program, the aid to families with dependent children program, general assistance or similar programs. It does not include medical payments or reimbursements under medicaid, medicare, hospital indigency programs, department of vocational rehabilitation programs, V.A. medical assistance, CHAMPUS or other such programs. It does not include housing subsidies or payments.

(e) "Cost of Living Allowances" or "Gifts" do not include provision of free room and board to persons when that room is provided based on financial need or noncommercial considerations. "Costs of living allowances" does include provision of room or compensation for room made during an employer-employee relationship or other commercial situation.

(f) "Income From Discharge of Indebtedness" means income which becomes available because of the forgiveness of a debt. It does not include debts which are discharged by bankruptcy or when the discharge fails to result in the availability of cash resources.

(g) "Gains Derived From Dealings in Property" mean "gains derived from dealings in property" as defined in 26 C.F.R. (Internal Revenue Service Income Tax Regulation) 1.61-6, as amended or renumbered.

(h) "Interest" means "interest" as defined in 26 C.F.R. (Internal Revenue Service Income Tax Regulation) 1.61-7, as amended or renumbered.

(i) "Net Rents" means cash income derived from the rental of real or personal property over and above all expenditures related to the rented property, including but not limited to mortgage payments, management expenses, housekeeping, property taxes, brokerage fees, special assessments and other operating charges.

(j) "Annuities" and "Income From Life Insurance and Endowment Contracts" mean "annuities" and "certain proceeds of endowment and life insurance contracts" as defined in 26 U.S.C. Section 72 (Internal Revenue Code of 1986), as amended or renumbered, and regulations promulgated thereunder.

(2) Scholarships, grants, fellowships or similar payments, made either to the taxpayer or to an educational institution or to both, which do not have to be repaid are modified gross income.

(3) Modified gross income does not include:

(a) payments made for hospital, dental, medical or drug expenses, whether the payment is made directly to the insured/recipient or to a third party provider, and regardless of whether a premium is paid or not.

(b) the value of room and board provided by federal, state or local government or by private individuals or agencies when the assistance is based upon financial need or other noncommercial considerations, and not as a form of compensation.

(c) debts that have been discharged by a United States bankruptcy court.

(d) gifts or gratuities which are not cash or which have no market value or only negligible market value.

(e) any additional benefits or payments made pursuant to a government program made directly or indirectly to a third party, when identified to a particular use or invoice, such as housing rehabilitation grants for low income housing, housing subsidies or payments, weatherization payments and energy crisis intervention payments pursuant to the Home Energy Assistance Act of 1980 (Title III of Public Law 96-223).

(f) payments made to New Mexico residents pursuant to the foster grandparent program under the National Older American Volunteer Act (42 U.S.C. Section 5011).

(g) the value of food stamp coupons under the Food Stamp Act, 7 U.S.C. § 2016c.

(h) monies received during the taxable year as comprehensive low income, food, medical, low income food and medical or property tax rebates.

(i) proceeds from loans which the taxpayer is legally obligated to repay.

(4) Example 1: G has two children and receives $2,796 per year AFDC (Aid to Families with Dependent Children) from the human services department. The monthly rate is $233 per month. G lives in a Section VIII rent subsidy house for which G pays $50 a month rent and the housing authority pays the owner an additional $150 per month. During the year the human services department pays $550 for health and medical expenses for G and G's children under the medicaid program. G's modified gross income is $2,796. Neither the rent subsidy nor medicaid is includable as modified gross income.

(5) Example 2: A is 75 years old and receives a total of $238 per month from social security and supplemental security income ($170 per month social security and $68 per month SSI). A lives in a trailer which A's daughter and son-in-law own and in

which A has permission to remain until A dies. A also received two tanks of bottled gas under the community action energy crisis program. A's modified gross income is $2,856 ($238 a month times 12 months). The rental value of the trailer is not included in modified gross income since it was provided upon noncommercial considerations and to a person in need. The utility assistance A received is also not included.

(6) Example 3: B is a retired person. B has medical bills of $600 for which B's insurance will reimburse B after B pays the doctor. B also received approximately $1,500 in housing rehabilitation benefits, which were paid in one check made payable to B and the housing contractor. Later on B was given a check for $200 by the housing rehabilitation agency to pay for materials which B had purchased on credit as part of the rehabilitation program. B is living on a savings account which earns interest. B's modified gross income is only the amount of interest earned by the savings account. The insurance payment is not modified gross income because it is an indirect medical payment and identified to a particular expense. The same reasoning applies to the $200 payment made for the materials. Finally, the weatherization or rehabilitation benefits are not modified gross income.

(7) Example 4: M is an elderly person who lives alone and receives $500 per month ($6,000 per year) social security payments. Periodically, M receives gifts of food and used clothing from community sources. M is given a used pickup truck, valued at $1,000, and jewelry valued at $3,000 by a relative. M's modified gross income is $6,000 plus $1,000, plus $3,000, for a total of $10,000. The car and jewelry are included since they are gifts which are tangible marketable items. The food and clothing do not represent cash or marketable items and so are not included in modified gross income.

B. **Impact of losses on modified gross income.** "Modified gross income" may not be diminished by deductions or offset by losses which may be allowed under the New Mexico Income Tax Act or under the Internal Revenue Code of 1986, as amended or renumbered. Despite any loss occurring from any transaction, or any expense connected therewith, zero is the lowest amount which may be reported for any item in computing "modified gross income". The loss from one business or activity shall not reduce the income from another business or activity. If a business incurs a loss during the taxable year, the amount of income to be included in modified gross income from that business is zero (-0-) for that taxable year.

C. **Sick pay included in modified gross income.** "Sick pay", payments received for damages for personal injury or illness and disability payments from whatever source are "modified gross income".

D. **Settlement of claims included in modified gross income.** Amounts received in settlement of a claim or as a result of a judgment are "modified gross income".

[1/18/82, 12/29/89, 7/20/90, 3/16/92, 1/15/97; 3.3.1.10 NMAC - Rn, 3 NMAC 3.1.10, 12/14/00]

3.3.1.11 REQUIREMENTS FOR CLAIMING DEPENDENTS AS PERSONAL EXEMPTIONS:

A. Except as otherwise provided by 3.3.1.11 NMAC, each dependent claimed as a personal exemption for New Mexico income tax purposes must meet the tests of dependency in Section 152 of the Internal Revenue Code as amended or renumbered. The taxpayer shall provide the name of each dependent and the social security number for any dependent who is two years of age or older when required to do so by the instructions to the New Mexico income tax return. The personal exemption amount claimed for a dependent may be disallowed if the dependent does not meet the tests of dependency or if required information is not provided.

B. For purposes of claiming a tax rebate or credit for which eligibility is determined by the amount of modified gross income, a dependent must meet all tests of dependency required by Section 152 of the Internal Revenue Code except the requirement that public assistance provide less than half of the dependent's total support.

[10/11/91, 3/16/92, 1/15/97; 3.3.1.11 NMAC - Rn & A, 3 NMAC 3.1.11, 12/14/00]

3.3.1.12 INCOME FROM OBLIGATIONS OF GOVERNMENTS:

A. **Income from United States government obligations.**

(1) Income from obligations issued by the United States are not includable in net income.

(2) Because they are not obligations of the United States, income from investment in the following is includable in net income:

(a) financial instruments guaranteed by the federal national mortgage association ("Fannie Maes"), the government national mortgage association ("Ginnie Maes"), the federal national home loan association ("Freddie Macs") and any similar organization whose income states are not prohibited by federal law from subjecting to income taxation;

(b) financial instruments issued by the College Construction Loan Insurance Corporation or the National Consumer Cooperative Bank;

(c) agreements ("repo's") to sell and repurchase United States government obligations; and

(d) agreements ("reverse repo's") to purchase and resell United States government obligations.

(3) This version of Subsection 3.3.1.12A NMAC is retroactively effective for taxable years beginning on or after January 1, 1991.

B. **Income from obligations of Puerto Rico and territories and possessions of the United States.** Income from obligations of the commonwealth of Puerto Rico and of Guam, the Virgin Islands, American Samoa, Northern Mariana Islands and other territories or possessions of the United States are includable in net income only to the extent that inclusion is not prohibited by federal law. Income from such obligations which New Mexico is prohibited from taxing by the laws of the United States may be deducted from net income.

C. **Exclusion of certain income from mutual funds or trusts.**

(1) Income from investments in mutual funds, unit investment trusts or simple trusts which are invested in obligations of the United States, obligations of the state of New Mexico or its agencies, institutions, instrumentalities or political subdivisions or obligations of the commonwealth of Puerto Rico or territories or possessions of the United States may be deducted from net income to the extent that such investment income is nontaxable income provided that:

(a) for the purposes of this subsection (3.3.1.12C NMAC), "nontaxable income" means income from investments in obligations of:

(i) the United States;

(ii) the state of New Mexico or any of its agencies, institutions, instrumentalities or political subdivisions;

(iii) the commonwealth of Puerto Rico, the income from which obligations states are prohibited from taxing by the laws of the United States; and

(iv) Guam, the Virgin Islands, American Samoa, Northern Mariana Islands or other territories or possessions of the United States, the income from which obligations states are prohibited from taxing by the laws of the United States;

(b) the mutual fund provides to the investor an annual statement of the income, by source, which was distributed to the individual investor; and

(c) the trust provides to the beneficiary an annual statement of the income by source and that the income received by the beneficiary retains the same character under the Internal Revenue Code as that income had when earned by the trust.

(2) Only that amount of income may be deducted which is shown on the statement as flowing through to the investor from obligations of the United States, of the commonwealth of Puerto Rico, of Guam, the Virgin Islands, American Samoa, Northern Mariana Islands or other territories or possessions of the United States or of the state of

New Mexico or any of its agencies, institutions, instrumentalities or political subdivisions.

D. **Expenses related to certain investment income.**

(1) Because this investment income is exempt from income taxation by New Mexico, expenses of the taxpayer related to the earning of income from investments, directly or through mutual funds, unit investment trusts or simple trusts, in obligations of the United States, obligations of the state of New Mexico or its agencies, institutions, instrumentalities or political subdivisions or obligations of the commonwealth of Puerto Rico or territories or possessions of the United States may not be deducted from net income. To the extent that such expenses have been deducted in determining federal taxable income, the amount must be added back to net income.

(2) Income from investment in state and local bonds is subject to New Mexico income taxation. Expenses of the taxpayer related to the earning of income from investments, directly or through mutual funds, unit investment trusts or simple trusts, in state or local bonds are deductible in determining net income. To the extent that such expenses have not been deducted in determining federal taxable income, these amounts may be subtracted from net income.

(3) Subsection 3.3.1.12D NMAC applies to taxable years beginning on or after January 1, 1991.

E. **Income earned on "state or local bonds".**

(1) Not included in the term "state or local bond" is any obligation of the commonwealth of Puerto Rico or of territories or possessions of the United States the income from which New Mexico is prohibited from taxing by the laws of the United States.

(2) For taxable years beginning on or after January 1, 1991, income from investing in any state or local bond, as that term is defined in Section 7-2-2 NMSA 1978, is includable in base income.

(3) Income from investing in state or local bonds is to be included in base income in the year it is actually received without regard to federal tax treatment of the income, except that:

(a) the taxpayer may elect to report this income for New Mexico purposes on an accrual basis; and

(b) income from investing in state or local bonds earned or accrued before the first taxable year beginning on or after January 1, 1991, but which is received after that date is not includable in base income. Income is earned or accrued ratably, by assigning an equal amount of income to each day of the accrual period.

(4) Example 1: A, a New Mexico resident, purchases a state of California municipal bond in 1992 and receives semi-annual interest payments. A does not elect to report to New Mexico on an accrual basis. All income from this bond is included in base income. This income is included only as the interest payments are received.

(5) Example 2: B, a New Mexico resident and calendar year filer, purchases a city of Los Angeles municipal bond in 1990. This bond pays interest semi-annually on April 1 and October 1. B does not elect to report to New Mexico on an accrual basis. On April 10, 1991, B receives $1,000 of interest. Since this payment includes interest earned or accrued before January 1, 1991, this income is to be allocated between the period prior to the tax year and the period following December 31, 1990. The income accrual period is 182 days in length (October 1, 1990, through March 31, 1991), of which 90 days are in B's first taxable year beginning on or after January 1, 1991. B's 1991 base income includes $494.51 ($1,000 x 90/182). The remaining $505.49 is not subject to New Mexico income tax.

(6) Example 3: C, a New Mexico resident and calendar year filer, purchased a city of San Francisco municipal bond on January 1, 1981 for $1,400. C does not elect to report accrued income on this bond for New Mexico income tax purposes. Although this bond pays interest semi-annually, C bought it stripped and at a discount. C has no right to the interest. On January 1, 1995, C receives the bond principal of $5,000. This is C's first and only payment on the bond. Since this payment includes income earned or accrued before January 1, 1991, the income is allocated between the period prior to January 1, 1991, and the period following December 31, 1990. The income accrual period is 5112 days, of which 1461 are after December 31, 1990. C's 1995 base income includes $1,028.87 ((1461/5112) x ($5,000 - $1,400)). The remaining $2,571.13 of income is not subject to New Mexico income tax.

(7) Example 4: Same facts as Example 3, except that C did not become a New Mexico resident until January 1, 1993. The income from the bond must be allocated between the period prior to January 1, 1993, and the period after December 31, 1992. 730 days follow December 31, 1992. C's 1995 base income includes $514.08 ((730/5112) x ($5,000 - $1,400)). The remaining $3,085.92 is not subject to New Mexico income tax.

(8) Subsection 3.3.1.12E NMAC applies to taxable years beginning on or after January 1, 1991.

F. **Bonds issued by tribal governments are not "state or local bonds".**

(1) Bonds issued by Indian governments are not "state or local bonds" under the Income Tax Act. As defined in Section 7-2-2 NMSA 1978, the term "state" does not include Indian nations, tribes or pueblos or their governments. The term "local government" is not defined by the Income Tax Act but is commonly used to mean political subdivisions of states. Indian nations, tribes and pueblos are not political subdivisions of states.

(2) To the extent that the Internal Revenue Code treats interest from bonds issued by Indian governments as if it were interest from "state or local bonds", such interest is excluded from federal adjusted gross income and therefore initially excluded from New Mexico base income as well. Because bonds issued by Indian governments are not "state or local bonds" for purposes of the Income Tax Act, interest income with respect to such bonds is not required to be added to federal adjusted gross income in determining New Mexico base income.

[3/16/92, 6/24/93, 11/17/95, 1/15/97, 1/15/98; 3.3.1.12 NMAC - Rn & A, 3 NMAC 3.1.12, 12/14/00]

3.3.1.13 NET OPERATING LOSSES:

A. **Net operating losses; generated by deduction of income from United States obligations.**

(1) Section 3.3.1.13 NMAC and subsections thereunder apply to the income of a taxpayer derived from any unincorporated business.

(2) If, for an unincorporated business, the exclusion of income from obligations of the United States of America results in a negative amount for New Mexico net income for that business for a taxable year, the resulting negative amount may be deemed to be a net operating loss for that taxable year. The taxpayer must establish the loss from exclusion of income from obligations of the United States of America by filing a New Mexico return or amended return within the time period set forth in Section 7-2-12 NMSA 1978, Subsections B, C and E of Section 7-1-26 NMSA 1978. An amended return carrying back or forward any such net operating loss must be filed within the time period set forth in Subsections B, C and E of Section 7-1-26 NMSA 1978. The taxpayer shall apply relevant provisions of 26 U.S.C. Section 172 of the Internal Revenue Code to determine the years to which the net operating loss may be applied.

(3) Any net operating loss deemed created by this subsection (3.3.1.13A NMAC) may be carried back or forward in accordance with the provisions of Section 7-2-2 NMSA 1978 and Subsections A through E of Section 3.3.1.13 NMAC. For taxable years beginning prior to January 1, 1991, the resulting taxable income shall then be allocated and apportioned in that year pursuant to the provisions of Section 7-2-11 NMSA 1978.

(4) For the purposes of Subsections A through E of Section 3.3.1.13 NMAC, the term "unincorporated business" includes:

(a) S corporations taxed as partnerships for federal income tax purposes; and

(b) limited liability companies formed pursuant to the Limited Liability Company Act or a similar law of another state which are not taxed as corporations for federal income tax purposes.

B. **Net operating losses; time limitation.**

(1) A net operating loss, including any net operating loss deemed created pursuant to Subsection 3.3.1.13A NMAC, for a taxable year may be excluded from the base income of any other taxable year only if the net operating loss for the taxable year is established by the filing of a return, either original or amended, within the time periods set forth in Subsections B, C and E of Section 7-1-26 NMSA 1978.

(2) Example: In 1997, a taxpayer who reports income tax on a calendar year basis discovers an error which relates to the taxpayer's state returns for 1990 and 1993. The original 1990 and 1993 returns were timely filed in 1991 and 1994, respectively. Absent the time limitations on filing amended returns, correcting the error through filing of amended returns would create net operating losses in both 1990 and 1993. An amended return may be filed only for 1993 and only the 1993 loss may be excluded from the base income of any other year.

C. **Net operating losses; must be deductible for federal income tax purposes.** The net operating loss carryover of an unincorporated business acquired by the taxpayer or otherwise included, as for example through a change in reporting method, in the taxpayer's return for a taxable year may be excluded from New Mexico base income only to the extent the Internal Revenue Code and regulations issued thereunder would permit deduction of such loss carryovers for federal income tax purposes for that taxable year by that taxpayer.

D. **Net operating losses; carryover and carryback rules for taxable years beginning after 1990.**

(1) For taxable years beginning on or after January 1, 1991, any net operating loss for federal tax purposes and any net operating loss deemed created pursuant to Subsection 3.3.1.13A NMAC included in net income derived from an unincorporated business may be carried forward only. These loss carryovers may be excluded from base income only for five years or until the total amount of the loss carryover has been excluded, whichever occurs first. The first year in which the loss carryover may be excluded from base income is:

(a) in the case of a timely filed original return, the next taxable year; and

(b) in all other cases, the first taxable year beginning after the date on which the return establishing the loss is filed, not the next taxable year following the taxable year in which the loss occurred.

(2) Example: B reports for income tax purposes on a calendar year basis. The 1991 original return included a net operating profit from a partnership in which B is a partner. Subsequently, the partnership reports revised information to B, showing a net operating loss instead of the original net operating profit. Consequently, in June, 1993, B files an amendment to B's timely filed 1991 original New Mexico individual income tax

return. B may first apply the 1991 net operating loss reported on the 1993 amended return to B's New Mexico individual income tax return for 1994. B may not apply this net operating loss to 1992 or 1993.

(3) For taxable years beginning on or after January 1, 1991, net operating loss carryovers must be applied in the following order:

(a) net operating loss carryovers from taxable years beginning prior to January 1, 1991, beginning with the carryover from the oldest taxable year; and

(b) net operating loss carryovers from taxable years beginning on or after January 1, 1991, beginning with the carryover from the oldest taxable year.

(4) Example: Z began operating a sole proprietorship on January 1, 1988. Z has timely filed (on a calendar year basis) income tax returns every year. Z's business earns a net operating profit in 1988, a net operating profit of zero in 1989 and a net operating loss in 1990 which exceeded the 1988 profit by $5,000. Z's business sustains another net operating loss of $11,000 for 1991 but creates a net operating profit of $8,000 for 1992. In applying the loss carryovers, Z must first apply the net operating loss from 1990 to 1988. On Z's 1992 return, Z first applies the $5,000 carryover balance originating from 1990 and then the loss carryover deriving from 1991.

(5) For taxable years beginning on or after January 1, 1991, any taxpayer excluding a net operating loss carryover from a prior taxable year must attach to the New Mexico return for that taxable year a schedule showing the taxable year in which each net operating loss being carried forward occurred, the amount of each loss excluded in each taxable year following the taxable year in which the loss occurred and the amount of the loss being applied to the taxable year for which the return is being filed.

(6) For any taxable year beginning on or after January 1, 1991, the net operating loss for that taxable year may not be carried back to any preceding taxable year.

E. **Net operating losses; carryover and carryback rules for taxable years beginning before 1991.**

(1) For taxable years beginning prior to January 1, 1991, any net operating loss, including any net operating loss deemed created pursuant to Subsection 3.3.1.13A NMAC, may be carried forward or carried back to any other taxable year beginning prior to January 1, 1991 in accordance with the provisions of the Internal Revenue Code unless contrary to the provisions of the Income Tax Act and Title 3, Chapter 3 NMAC.

(2) For taxable years beginning prior to January 1, 1991, a net operating loss, including any net operating loss deemed created pursuant to Subsection 3.3.1.13A NMAC, may be carried back only to those prior taxable years for which an individual

income tax return was originally due, without regard to any extension, in the period beginning with the January 1 of the third calendar year preceding the calendar year in which began the taxable year for which the loss is established and ending with the day before the first day of the taxable year for which the loss is established.

(3) Example: D operates an unincorporated business and files on a fiscal year basis. D's fiscal year ends April 30. In September, 1993, D files an amended individual income tax return for D's taxable year starting May 1, 1989 and ending April 30, 1990. The amendment establishes a net operating loss for that taxable year. The oldest year to which D may carry back the net operating loss is D's taxable year beginning May 1, 1985 and ending April 30, 1986, the return for which was originally due July 15, 1986.

[3/16/92, 12/28/94, 1/15/97; 3.3.1.13 NMAC - Rn & A, 3 NMAC 3.1.13, 12/14/00]

PART 2: WITHHOLDING WAGES AND UNEARNED INCOME

3.3.2.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.3.2.1 NMAC - Rn, 3 NMAC 3.2.1, 12/14/00]

3.3.2.2 SCOPE:

This part applies to each employer and to each person making payment of a pension or annuity to an individual domiciled in New Mexico.

[1/15/97; 3.3.2.2 NMAC - Rn, 3 NMAC 3.2.2, 12/14/00]

3.3.2.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.3.2.3 NMAC - Rn, 3 NMAC 3.2.3, 12/14/00]

3.3.2.4 DURATION:

Permanent.

[1/15/97; 3.3.2.4 NMAC - Rn, 3 NMAC 3.2.4, 12/14/00]

3.3.2.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.3.2.5 NMAC - Rn & A, 3 NMAC 3.2.5, 12/14/00]

3.3.2.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Withholding Tax Act.

[1/15/97; 3.3.2.6 NMAC - Rn, 3 NMAC 3.2.6, 12/14/00]

3.3.2.7 DEFINITIONS:

[RESERVED]

[1/15/97; 3.3.2.7 NMAC - Rn, 3 NMAC 3.2.7, 12/14/00]

3.3.2.8 WITHHOLDING FROM IRREGULAR WAGES:

A. Employers who make lump sum distributions, one time bonuses and other irregular payments to employees in addition to regular wages and employers required to withhold tax on fringe benefits for federal purposes shall compute the state withholding in the same manner used for computing federal withholding on these items. The employer will then use the withholding tax tables issued by the department to compute the amount of withholding tax due.

B. If an employer elects to withhold, for federal purposes, a flat percentage of the lump-sum distribution, one-time bonus, fringe benefits and other irregular wages as provided in the Internal Revenue Code, the employer shall withhold a flat percentage for state withholding tax purposes. The flat percentage for state withholding tax purposes shall be a rate equal to the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year.

[9/8/86, 1/15/97, 12/15/98; 3.3.2.8 NMAC - Rn, 3 NMAC 3.2.8, 12/14/00, A, 10/31/05]

3.3.2.9 TRANSPORTATION COMPANIES REQUIRED TO WITHHOLD FROM WAGES OF CERTAIN EMPLOYEES:

A. Railroads are required to withhold New Mexico withholding tax from the wages, salaries or other employee remuneration of any employee who is a resident of this state, without regard to the place of employment or amount of time which the employee performs services for the employer in this state or other states.

B. Motor carriers, private motor carriers and airlines shall withhold New Mexico income tax from the wages, salaries or other employee remuneration of any individual employee who is a resident of this state, without regard to the place of employment or amount of time which the employee performs services for the employer in this state or other states.

C. For purposes of this section (3.3.2.9 NMAC) the term "motor carrier" shall mean any person engaged in the business of transporting persons or property by motor vehicle which activity is subject to regulation by either the interstate commerce commission or the New Mexico public regulation commission. The term "private motor carrier" shall mean any person transporting persons or property by motor vehicle which activity is not subject to regulation by either the interstate commerce commission or the New Mexico public regulation commission but who is subject to the Motor Transportation Act. The term "airline" shall mean any person who provides airplane or other aircraft transportation of persons or property for consideration.

[5/24/90, 12/3/90, 1/15/97; 3.3.2.9 NMAC - Rn & A, 3 NMAC 3.2.9, 12/14/00]

3.3.2.10 WITHHOLDING BY PASS-THROUGH ENTITIES:

A. **Withholding by pass-through entities; rate.** For periods beginning on or after January 1, 2004 and ending prior to January 1, 2011, the rate of withholding by pass-through entities pursuant to the provisions of Subsection D of Section 7-3-12 NMSA 1978 shall equal the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year.

B. **Withholding by pass-through entities; agreements; reasonable cause.** The obligation to collect and remit withholding amounts pursuant to Subsection D of Section 7-3-12 NMSA 1978 may be avoided if the nonresident owner submits to the pass-through entity an agreement authorized by Subsection E of that section in the form and manner prescribed by the secretary. An agreement may be restricted to a single taxable year, may cover multiple years or may be put into effect for an indefinite term subject to revocation by the nonresident owner. An agreement must be in the possession of the pass-through entity at the time the pass-through entity files its return for the taxable year to which the agreement pertains. When a nonresident owner becomes a resident of New Mexico, the agreement submitted by that owner is revoked automatically, effective for the taxable year in which the change in residence took place. The obligation to withhold may also be avoided if the pass-through entity demonstrates that failure to withhold is due to a reasonable cause pursuant to Subsection B of Section 7-3-5 NMSA 1978.

C. **Due date exception.** The due date specified in Section 7-3-6 NMSA 1978 does not apply to payment of amounts withheld in accordance with Section 7-3-12 NMSA 1978. The due date specified in Section 7-3-12 NMSA 1978 with respect to such amounts controls.

D. **Crediting to tax year.** Amounts withheld pursuant to the provisions of Section 7-3-12 NMSA 1978 with respect to an owner shall be credited to the owner for the same taxable year for which the income is required to be reported for federal income tax purposes.

E. Withholding by pass-through entities for periods beginning on or after January 1, 2011 is governed by the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act and 3.3.5 NMAC. 3.3.2.10 NMAC does not apply to such withholding by pass-through entities after December 31, 2010 except as provided in Subsection E of 3.3.5.16 NMAC.

[12/31/99; 3.3.2.10 NMAC - Rn & A, 3 NMAC 3.2.10, 12/14/00, A, 10/31/05; A, 12/15/10]

3.3.2.11 CLAIMS FOR SETTLEMENT PAYMENTS FROM THE NATIVE AMERICAN VETERANS' INCOME TAX SETTLEMENT FUND:

A. A claim for a settlement payment from the Native American veterans' income tax settlement fund may be made for any period of active duty in the armed forces of the United States during which the claimant or, where the claimant is a successor, the deceased veteran:

(1) was a member of a federally recognized Indian nation, tribe, or pueblo;

(2) was a resident within the boundaries of the Indian member's or the member's spouse's reservation or pueblo grant, or within the boundaries of lands held in trust by the United States for the benefit of the member or spouse or the member's or spouse's nation, tribe or pueblo; and

(3) had New Mexico personal income tax withheld from his or her active duty military pay, and the amount withheld:

(a) has not already been refunded to the claimant or the claimant's representative; and

(b) cannot be claimed as a refund by filing a New Mexico personal income tax return because the period for filing a refund has run under the applicable statute of limitations.

B. A claim for a settlement payment must provide the following substantiation of the claimant's or, where the claimant is a successor, the deceased veteran's, eligibility for the claim and the amount of the claim.

(1) **Active duty in the armed forces of the United States**. The claimant must provide a copy of *certificate of release or discharge from active duty* (DD Form 214) or other proof of service provided by the department of defense and approved by the department of veterans' service. If a claimant does not have a copy of his or her DD Form 214 or other proof of service, the claimant can request that the department of veterans' services request the claimant's DD Form 214 or other proof of service from the department of defense.

(2) **Status as a Native American**. The claimant must provide a statement signed by the claimant that the claimant or, where the claimant is a successor, the deceased veteran was a member of a federally recognized Indian nation, tribe, or pueblo during the period(s) of his or her active duty in the armed forces of the United States.

(3) **Domicile on tribal land during period(s) of active duty**. The claimant must substantiate domicile on tribal land (as described in Paragraph (2) of Subsection A above) during the period(s) any New Mexico personal income tax was withheld from active duty military pay. If the address shown on the DD Form 214 or other proof of service is on the claimant's tribal land, the claimant's or deceased veteran's DD Form 214 is sufficient substantiation. If the address shown on the claimant's or deceased veteran's DD Form 214 or other proof of service is not on tribal land, or the claimant cannot establish that the address is on tribal land, the claimant must provide a statement signed by the claimant that the claimant or deceased veteran was domiciled on tribal land during the period(s) any New Mexico personal income tax was withheld from active duty military pay; the statement must provide the claimant's or deceased veteran's address on the tribal land for each period and an official designated by the nation, tribe, or pueblo must attest that each address is on tribal land.

(a) For the purposes of this regulation, "domicile" means a place where an individual has a true fixed home and is a permanent establishment to which the individual intends to return after an absence. Every individual has a domicile somewhere, and each individual has only one domicile at a time. Once established, domicile does not change until the individual moves to a new location with the bona fide intention of making that location his or her permanent home. No change in domicile results when an individual leaves the tribal land if the individual's intent is to stay away only for a limited time, no matter how long.

(b) Examples:

(i) G is a Native American who lives and works on his tribe's pueblo in New Mexico. G joins the marines and is stationed outside New Mexico. G's domicile remains unchanged during his military service unless G moves to a new location with the intent to make that location his permanent home after leaving the military.

(ii) C is a Native American who lives on her tribe's pueblo in New Mexico. She leaves New Mexico to pursue a two-year master's degree program in Spain. She intends to return to her pueblo when she completes her studies. She remains domiciled on her pueblo while in Spain.

(4) **Amount of New Mexico personal income tax withheld from active duty military pay**. The claimant can substantiate this amount by providing copies of Form(s) W-2 covering active duty military pay for the year(s) during which New Mexico personal income tax was withheld. If a claimant does not have copies of the applicable Form(s) W-2 for one or more of these years, the claimant can request that the taxation

and revenue department obtain the claimant's or deceased veteran's Form(s) W-2 (or other withholding information in a form approved by taxation and revenue department) from the department of defense.

(5) **Amount of withholding has not already been refunded**. The claimant must provide a signed statement attesting that the claimant or deceased veteran did not receive a refund of the New Mexico personal income tax withheld for the year(s) for which the claimant is filing a claim for a settlement payment.

C. A claim for a settlement payment must be made by the eligible Native American veteran, or, in the case of a deceased veteran, by the veteran's surviving spouse, other successor or personal representative (an executor, administrator, or anyone in charge of the deceased veteran's property). If the claim is being made for a deceased veteran, the claim must be accompanied by a death certificate or other proof of death and by:

(1) if the claimant is a successor who is not the surviving spouse of the deceased veteran, a signed and dated notarized statement attesting that:

(a) the value of the entire probate estate of the decedent, wherever located, less liens and encumbrances, does not exceed thirty thousand dollars ($30,000);

(b) at least 30 days have elapsed since the death of the decedent; and

(c) the successor is entitled to the settlement payment, or

(2) if the claimant is a personal representative, executor, or other representative authorized to administer the estate under applicable state law or the tribal law of the deceased veteran, a signed and dated notarized statement attesting that:

(a) he or she has been duly appointed as the personal representative, executor, or other representative of the estate of the decedent; and

(b) a copy of that appointment is attached;

(3) if the estate exceeds thirty thousand dollars ($30,000), only the surviving spouse, a personal representative, an executor, or other representative of the estate as designated by applicable law or tradition may make a claim.

D. No claim for a settlement payment can be made for an amount of withholding that can be claimed as a refund by filing a New Mexico personal income tax return. A New Mexico personal income tax return can be filed by a Native American veteran to claim a refund by the later of:

(1) December 31 of the year three years after the veteran separated from military service, or

(2) December 31 of the year three years after the year in which New Mexico personal income tax was withheld from the active duty pay of the veteran.

E. All claims for settlement payments must be made with the department of veterans' services on the form prescribed by the taxation and revenue department. No claim for a settlement payment may be made after December 31, 2012.

F. Settlement payments will include interest on substantiated amounts of eligible withholding, computed on a daily basis from the date of withholding to the date a settlement warrant is issued at the rate specified for individuals pursuant to Section 6621 of the Internal Revenue Code of 1986. The date of withholding will be determined as follows:

(1) for withholding that occurred over an entire calendar year, one-twelfth of the amount withheld during the year will be considered to have been paid on the last day of each calendar month of the year; or

(2) for withholding that occurred over a period of less than an entire calendar year, the amount withheld during the period will be divided by the number of months (including partial months) in the period, and the resulting amount will be considered to have been paid on the last day of each calendar month during the period.

G. Eligible settlement payments will be made by the taxation and revenue department from the Native American veterans' income tax settlement fund. Settlement payments will be made on a "first come, first served" basis until the fund is exhausted or until no further claims are received.

H. Department of veterans' services must determine whether the claim meets the requirements of Paragraphs (1), (2) and (3) of Subsection B above and must act on a claim for settlement payment within 210 days of receipt of the claim. Claims not acted upon within 210 days are deemed denied.

I. A claimant whose claim is denied by department of veterans' services for failure to meet the requirements of Paragraphs (1), (2) and (3) of Subsection B above may dispute the denial by filing with the secretary of the department of veterans' services a written protest of the denial.

(1) The protest must contain the name and address of the claimant and must state with specificity the grounds for the protest. All evidence in support of the protest must also be submitted with the written protest. The secretary or designated hearing officer shall not consider any evidence that has not been submitted to the department of veterans' services at least 10 days prior to the hearing.

(2) The written protest must be filed within 30 days of the date of mailing to the claimant by the department of veterans' services of the denial of the claim.

(3) Upon timely receipt of a protest, the department of veterans' services shall promptly set a date for hearing and on that date hear the protest. The hearing shall be scheduled no later than 90 days after the filing of the written protest. Notice of the hearing shall be mailed to the protestant no less than 15 days prior to the date of the hearing. The secretary of the department of veterans' services may designate a hearing officer to conduct the hearing. The claimants may appear at a hearing for themselves, may have the assistance of an advocate, or may be represented by an attorney. Hearings shall not be open to the public except upon request of the claimant and may be postponed or continued at the discretion of the secretary or hearing officer.

(4) The technical rules of evidence and the rules of civil procedure shall not apply in the hearings, but hearings shall be conducted so that claims are amply and fairly presented. It is the burden of the claimant to prove that the denial of the claim was improper.

(5) A complete record of the proceedings will be made. A written decision shall be issued within 30 days of the hearing.

J. If the department of veterans' services approves the claim, the claim will be sent to taxation and revenue department to determine whether the claim meets the requirements of Paragraphs (4) and (5) of Subsection B above. The taxation and revenue department must act on a claim within 210 days of the date that the claim is received by the taxation and revenue department from the department of veterans' services. Claims not acted upon within 210 days are deemed denied.

K. A claimant whose claim is denied in whole or in part by the taxation and revenue department for failure to meet the requirements of Paragraphs (4) and (5) of Subsection B above may dispute the denial by filing with the secretary of the taxation and revenue department a written protest of the denial.

(1) The protest must contain the name and address of the claimant and must state with specificity the grounds for the protest. All evidence in support of the protest must also be submitted with the written protest. The secretary or designated hearing officer shall not consider any evidence that has not been submitted to the taxation and revenue department at least 10 days prior to the hearing.

(2) The written protest must be filed within 30 days of the date of mailing to the claimant by the taxation and revenue department of the denial of the claim.

(3) Upon timely receipt of a protest, the taxation and revenue department shall promptly set a date for hearing and on that date hear the protest. The hearing shall be scheduled no later than 90 days after the filing of the written protest. Notice of the hearing shall be mailed to the protestant no less than 15 days prior to the date of the hearing. The secretary of the taxation and revenue department may designate a hearing officer to conduct the hearing. The claimants may appear at a hearing for themselves, may have the assistance of an advocate, or may be represented by an attorney.

Hearings shall not be open to the public except upon request of the claimant and may be postponed or continued at the discretion of the secretary or hearing officer.

(4) The technical rules of evidence and the rules of civil procedure shall not apply in the hearings, but hearings shall be conducted so that claims are amply and fairly presented. It is the burden of the claimant to prove that the claimant or deceased veteran is entitled to a settlement payment.

(5) A complete record of the proceedings will be made. A written decision shall be issued within thirty (30) days of the hearing.

[3.3.2.11 NMAC - N, 12/1/09; A, 12/15/11]

PART 3: IMPOSITION AND LEVY OF TAX

3.3.3.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.3.3.1 NMAC - Rn, 3 NMAC 3.3.1, 12/14/00]

3.3.3.2 SCOPE:

This part applies to each resident of New Mexico and to each nonresident employed or engaged in the transaction of business in, into or from New Mexico or deriving any income from any property or employment in New Mexico.

[1/15/97; 3.3.3.2 NMAC - Rn, 3 NMAC 3.3.2, 12/14/00]

3.3.3.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.3.3.3 NMAC - Rn, 3 NMAC 3.3.3, 12/14/00]

3.3.3.4 DURATION:

Permanent.

[1/15/97; 3.3.3.4 NMAC - Rn, 3 NMAC 3.3.4, 12/14/00]

3.3.3.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.3.3.5 NMAC - Rn & A, 3 NMAC 3.3.5, 12/14/00]

3.3.3.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Income Tax Act.

[1/15/97; 3.3.3.6 NMAC - Rn, 3 NMAC 3.3.6, 12/14/00]

3.3.3.7 DEFINITIONS:

: "Nonresident trust" defined. A trust is a nonresident trust if the trustee responsible for the trust funds and for distributions from the fund is a resident of another state. A nonresident trust is subject to New Mexico income tax to the extent that it is engaged in the transaction of business in, into or from this state or is deriving income from any property located in this state. The presence of beneficiaries of the trust in New Mexico, alone, will not cause a tax liability to become due from the trust based on the activities of the trust. Beneficiaries who are residents of this state will incur a tax liability on their share of distributions from the trust to the extent that such distributions are subject to income taxation under the provisions of the Internal Revenue Code.

[7/20/90, 3/16/92, 1/15/97; 3.3.3.7 NMAC - Rn, 3 NMAC 3.3.7, 12/14/00]

PART 4: EXEMPTIONS

3.3.4.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.3.4.1 NMAC - Rn, 3 NMAC 3.4.1, 12/14/00]

3.3.4.2 SCOPE:

This part applies to each resident of New Mexico and to each nonresident employed or engaged in the transaction of business in, into or from New Mexico or deriving any income from any property or employment in New Mexico.

[1/15/97; 3.3.4.2 NMAC - Rn, 3 NMAC 3.4.2, 12/14/00]

3.3.4.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.3.4.3 NMAC - Rn, 3 NMAC 3.4.3, 12/14/00]

3.3.4.4 DURATION:

Permanent.

[1/15/97; 3.3.4.4 NMAC - Rn, 3 NMAC 3.4.4, 12/14/00]

3.3.4.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.3.4.5 NMAC - Rn & A, 3 NMAC 3.4.5, 12/14/00]

3.3.4.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Income Tax Act.

[1/15/97; 3.3.4.6 NMAC - Rn, 3 NMAC 3.4.6, 12/14/00]

3.3.4.7 DEFINITIONS:

[RESERVED]

[1/15/97; 3.3.4.7 NMAC - Rn, 3 NMAC 3.4.7, 12/14/00]

3.3.4.8 INCOME OF A MEMBER OF A NATO FORCE:

A. For purposes of this section (3.3.4.8 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. The salary, fringe benefits and other emoluments received by a member of a NATO force with respect to employment by or membership in the NATO force are not subject to the New Mexico income tax pursuant to Article X, Section 1 of the North Atlantic Treaty.

C. Income of a member of a NATO force from sources within New Mexico, other than from the member's employment by or membership in the NATO force, are subject to the tax imposed by Section 7-2-3 NMSA 1978.

D. This applies to taxable years beginning on or after January 1, 1995.

[12/22/95, 1/15/97; 3.3.4.8 NMAC - Rn & A, 3 NMAC 3.4.8, 12/14/00]

3.3.4.9 APPORTIONMENT OF SECTION 7-2-5.2 NMSA 1978 EXEMPTION:

A. Any individual who is blind or sixty-five years of age or older, who has income both within and without this state and who claims the exemption provided by Section 7-2-5.2 NMSA 1978 shall apportion the exemption amount claimed in accordance with this section (3.3.4.9 NMAC).

B. For taxable years beginning in 1987, 1988 or 1989, apportionment shall be accomplished by reducing the individual's deduction for non-New Mexico income by an amount equal to the product of the maximum allowable amount for the individual's filing status and adjusted gross income multiplied by the percentage of non-New Mexico income computed on the individual's New Mexico income tax return or any schedules or attachments thereto.

(1) Example 1: X is a single individual over sixty-five years of age whose total adjusted gross income is $19,000. Thirty percent of X's adjusted gross income is non-New Mexico income. X must reduce X's non-New Mexico income by $2,100, computed as follows:

Maximum allowable amount for a single	
individual with $19,000 AGI	$ 7,000
30% x $7,000	x .30
Adjustment to non-New Mexico Income	$ 2,100

(2) Example 2: A and B are married and file a joint return. A is over 65. B is 62 and blind. 10% of their $25,000 adjusted gross income is from outside New Mexico. A & B must reduce their non-New Mexico income by an amount of 1,600 computed as follows:

Maximum allowable amount per individual for a	
married couple filing jointly with $25,000 AGI	$ 8,000
Multiply by 2 since both individuals qualify	x 2

	$16,000
10% x $16,000	x .10
Adjustment to non-New Mexico Income	$ 1,600

C. For taxable years beginning on or after January 1, 1990, apportionment is accomplished in the process of determining tax due and the amount of the credit available pursuant to Subsection C of Section 7-2-11 NMSA 1978. Accordingly, no separate process is necessary to apportion the exemption provided by Section 7-2-5.2 NMSA 1978.

D. This version of this section (3.3.4.9 NMAC) is retroactively applicable to taxable years beginning on or after January 1, 1990.

[3/3/89, 12/29/89, 3/16/92, 1/15/97; 3.3.4.9 NMAC - Rn & A, 3 NMAC 3.4.9, 12/14/00]

3.3.4.10 SECTION 7-2-5.4 NMSA 1978: EXEMPTION APPORTIONMENT:

A. Any individual who has adopted a special needs child on or after January 1, 1988, who has income both within and without this state and who claims the exemption provided by Section 7-2-5.4 NMSA 1978 shall apportion the exemption amount claimed in accordance with this section (3.3.4.10 NMAC).

B. For taxable years beginning in 1988 or 1989, apportionment shall be accomplished by reducing the deduction for non-New Mexico income by an amount equal to the product of the exemption amount multiplied by the percentage of non-New Mexico income computed on the individual's New Mexico income tax return or any schedules or attachments thereto.

C. Example: A & B are married and file a joint return for 1988 and for 1989. 25% of their income is from outside New Mexico in 1988 but only 20% in 1989. In March, 1988, they adopted a special needs child. In July, 1989, they adopt a second special needs child. For the 1988 tax year, they must reduce the amount of their allocation and apportionment of non-New Mexico income by $625, and for the 1989 tax year $1,000, computed as follows:

Example:

	1988	1989
Statutory maximum per child $2,500	$2,500	
Number of children adopted	x 1	x 2

	$2,500	$5,000
% of non-New Mexico income for 1988	x .25	
% of non-New Mexico income for 1989		x .20
Adjustment to non-New Mexico income	$ 625	$1,000

D. For taxable years beginning on or after January 1, 1990, apportionment is accomplished in the process of determining tax due and the amount of the credit available pursuant to Subsection C of Section 7-2-11 NMSA 1978. Accordingly, no separate process is necessary to apportion the exemption provided by Section 7-2-5.4 NMSA 1978.

E. This version of this section (3.3.4.10 NMAC) is retroactively applicable to taxable years beginning on or after January 1, 1990.

[3/3/89, 12/29/89, 3/16/92, 1/15/97; 3.3.4.10 NMAC - Rn & A, 3 NMAC 3.4.10, 12/14/00]

3.3.4.11 MEDICAL CARE SAVINGS ACCOUNT AMOUNTS:

Any amount exempt from taxation under the Income Tax Act by the provisions of the Medical Care Savings Account Act that is excluded, exempted or deducted in determining federal taxable income may not be deducted from base income in determining net income. With respect to such an amount, the exemption under Section 7-2-5.6 NMSA 1978 is provided through the process of determining federal taxable income.

[9/15/97; 3.3.4.11 NMAC - Rn & A, 3 NMAC 3.4.11, 12/14/00]

3.3.4.12 PENSION INCOME OF TRIBAL MEMBERS AND SPOUSES WHO ARE TRIBAL MEMBERS:

A. For the purposes of Section 7-2-5.5 NMSA 1978, pension income of a New Mexico resident who is a member of an Indian nation, tribe or pueblo and who resides on the tribal territory of the resident's or the spouse's Indian nation, tribe or pueblo is qualified for the exemption provided by Section 7-2-5.5 NMSA 1978 to the extent the pension derives from the resident's employment within the boundaries of the resident's or the spouse's Indian nation, tribe or pueblo during marriage to that spouse.

B. A pension received from the United States armed forces qualifies for the exemption provided by Section 7-2-5.5 NMSA 1978 to the extent the pension derives from service of the resident while stationed on the tribal territory of the resident's or, during the marriage, the spouse's Indian nation, tribe or pueblo or while the resident's home of record was on the tribal territory of the resident's or, during the marriage, the spouse's Indian nation, tribe or pueblo.

C. Except for wages and pensions described in Subsections A and B of this section, income received by a member of an Indian nation, tribe or pueblo while the member resides in New Mexico on the tribal territory of the member's or the spouse's Indian nation, tribe or pueblo generally is net income subject to New Mexico income tax and generally is not exempt under Section 7-2-5.5 NMSA 1978. To the extent, however, the income derives from property or activities on the tribal territory of the member's or, during the marriage, the spouse's Indian nation, tribe or pueblo, the income may be excluded from net income only to the extent state taxation is prohibited by federal law. For example, rents from property owned by the member on the tribal territory of the member's Indian nation, tribe or pueblo are excluded from net income but rents from property not on tribal territory are not. If a negligible portion of the income derives from property or activities on the tribal territory of the member's or spouse's Indian nation, tribe or pueblo, the entire amount is net income.

D. For the purposes of this regulation, "spouse" means an individual who is a member of an Indian nation, tribe or pueblo and is married to the resident or member of an Indian nation, tribe or pueblo.

[3.3.4.12 NMAC - N, 5/15/01]

PART 5: OIL AND GAS PROCEEDS WITHHOLDING

3.3.5.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.3.5.1 NMAC - N, 10/15/03]

3.3.5.2 SCOPE:

This part applies to all remitters of oil and gas proceeds from New Mexico wells and to pass-through entities.

[3.3.5.2 NMAC - N, 10/15/03; A, 12/15/10]

3.3.5.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.3.5.3 NMAC - N, 10/15/03]

3.3.5.4 DURATION:

Permanent.

[3.3.5.4 NMAC - N, 10/15/03]

3.3.5.5 EFFECTIVE DATE:

10/15/03, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.3.5.5 NMAC - N, 10/15/03]

3.3.5.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

[3.3.5.6 NMAC - N, 10/15/03; A, 12/15/10]

3.3.5.7 DEFINITIONS:

For the purposes of 3.3.5 NMAC:

A. "gross amount" includes amounts deducted by the remitter for expenses and severance taxes, but does not include amounts deducted for expenses or taxes prior to receipt by the remitter. If a taxpayer receives a Form 1099-MISC for its oil and gas proceeds, the gross amount is the amount reported on federal Form 1099-MISC in box 2, royalties, and in box 7, nonemployee compensation; and

B. "resident of New Mexico" means (1) an individual domiciled in this state during all of the taxable year, or (2) an individual other than an individual described in Subsection D of 3.3.1.9 NMAC who is physically present in this state for a total of one hundred eighty-five (185) days or more in the aggregate during the taxable year, regardless of domicile or (3) an individual who moves into this state with the intent to make New Mexico his permanent domicile.

[3.3.5.7 NMAC - N, 10/15/03; A, 12/15/10; A, 6/28/13]

3.3.5.8 EFFECTIVE DATE OF OIL AND GAS PROCEEDS WITHHOLDING REQUIREMENTS:

The withholding requirements imposed by Section 7-3A-3 NMSA 1978 apply to payments made on or after October 1, 2003, regardless of production date.

[3.3.5.8 NMAC - N, 10/15/03]

3.3.5.9 OIL AND GAS PROCEEDS:

A. The following are not oil and gas proceeds for the purposes of the Oil and Gas Proceeds Withholding Tax Act and are not subject to the withholding tax imposed by that act, when payment is not offset against a share of future production: advance royalty payments, bonus payments, minimum royalty payments, shut-in payments and rental payments.

B. If the production is from a well subject to a unit or communitization agreement whose area crosses state boundaries, the amount attributable to "oil and gas production from any well located in New Mexico" may be derived through the allocation methodology set out in the agreement.

C. If the amount received by the remitter has had severance taxes or other expenses deducted prior to the time the remitter receives it, then the remitter shall be required to withhold only from the amount it received.

[3.3.5.9 NMAC - N, 10/15/03]

3.3.5.10 WITHHOLDING RATES:

A. For periods beginning on or after January 1, 2005 and before January 1, 2011, the rate of withholding shall equal the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year.

B. For periods beginning on or after January 1, 2011, the rate of withholding pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act shall be set by directive of the secretary. The withholding rate set in the directive shall be effective no earlier than ninety (90) days after the date on which the directive is promulgated. The directive shall be posted on the taxation and revenue department’s web site, along with past, current and, when the rate is announced to change at a future time, future withholding rates and the time periods to which they pertain.

[3.3.5.10 NMAC - N, 10/15/03; A, 12/15/10]

3.3.5.11 WITHHOLDING MINIMUMS:

A. With respect to oil and gas proceeds, no withholding from a payment to a remittee is required if:

(1) the sum of all payments, including the subject payment, to that remittee by the remitter in the calendar quarter does not exceed thirty dollars ($30.00); and

(2) the amount to be withheld from the subject payment is less than ten dollars ($10.00).

B. With respect to net income from pass-through entities, no withholding is required from a payment to an owner if the sum of all payments, including the subject payment,

to that owner by the pass-through entity in the calendar year is less than one hundred dollars ($100.00).

C. The remitter may withhold from a payment described in Subsection A or B of this section without creating a right of action by the remittee or owner against the remitter or pass-through entity.

D. This version of 3.3.5.11 NMAC applies to payments for periods beginning on or after January 1, 2012.

[3.3.5.11 NMAC - N, 10/15/03; A, 12/15/10; A, 6/28/13]

3.3.5.12 REMITTEES WITH A NEW MEXICO ADDRESS:

With respect to payments made for periods prior to January 1, 2011, a remitter is not obligated to deduct and withhold under the Oil and Gas Proceeds Withholding Tax Act from payments to a remittee with a New Mexico address. The relevant address for purposes of Section 7-3A-3 NMSA 1978 is the remittee address to which federal Form 1099-MISC is mailed or otherwise transmitted, or the address that is shown on federal Form W-9 or similar form. If federal law does not require the remitter to mail a federal Form 1099-MISC to the remittee, and the remitter has not received a federal Form W-9 or similar form, the relevant address is the address to which the oil and gas proceeds are mailed or otherwise transmitted. This section does not apply to payments for periods beginning on or after January 1, 2011. See 3.3.5.16 NMAC for equivalent provisions for withholding for periods beginning on or after January 1, 2011.

[3.3.5.12 NMAC - N, 10/15/03; A, 12/15/10]

3.3.5.13 PAYMENTS TO 501(C)(3) ORGANIZATIONS:

A remitter or pass-through entity is not obligated to deduct and withhold under the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act from payments to a remittee or owner granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code. Acceptable proof that a remittee or owner is a 501(c)(3) organization includes a copy of the remittee's or owner’s federal Form W-9, or a copy of the determination letter from the internal revenue service granting the remittee or owner 501(c)(3) status. This version of 3.3.5.13 NMAC applies to payments for periods beginning on or after January 1, 2011.

[3.3.5.13 NMAC - N, 10/15/03; A, 12/15/10]

3.3.5.14 REASONS FOR NOT WITHHOLDING:

The department will accept as reasons for not withholding, the following:

A. written notification from a remittee that the payment is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners or production payment interest owners;

B. internal documentation such as signed division orders demonstrating that the payment is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners or production payment interest owners;

C. reliance on a New Mexico address, shown on internal revenue service Form 1099-MISC, or a successor form, or on a *pro forma* 1099-MISC, or a successor form, for those entities that do not receive an internal revenue service Form 1099-MISC, supplied by the remittee; the remitter may rely on a New Mexico address supplied by the remittee for up to thirty (30) days after receiving written notice from the remittee of a change in address to an address outside New Mexico;

D. receipt of a declaration signed under penalty of perjury, from the remittee or owner, stating that the individual is a resident of New Mexico or that the corporation maintains a principal place of business in New Mexico;

E. receipt of a written agreement from a remittee or owner under 3.3.5.17 NMAC that the remittee or owner will timely report and pay amounts required to be withheld and remitted;

F. inability to make payment of withholding from net income for the quarter due to nonavailability of cash or due to contracts and other binding written covenants with unrelated third parties, unless cash payments have been made to any owner during the quarter, in which case the pass through entity is liable for payment of the withholding amount due up to the extent of the cash payment made during the quarter;

G. with respect to tax years 2014 through 2018, the pass-through entity has elected pursuant to 26 USC 108(i) to defer income from the discharge of indebtedness in connection with the reacquisition after December 31, 2008 and before January 1, 2011 of an applicable debt instrument for the period 2014 through 2018 and the entity has insufficient cash to remit the withholding amount due on the deferred income reported in the year; and

H. any other reason acceptable to the secretary, to be determined on a case-by-case basis.

[3.3.5.14 NMAC - N, 10/15/03; A, 12/15/10; A, 6/28/13]

3.3.5.15 STATEMENTS OF WITHHOLDING AND INFORMATION RETURNS:

A. Each remitter shall:

(1) provide a federal Form 1099-MISC, or a successor form, or for those entities that do not receive an internal revenue service Form 1099-MISC, a *pro forma* 1099-MISC, or a successor form, to each remittee on or before February 15 of the year following the year for which the statement is made, reflecting the proceeds paid to the remittee and the state tax withheld;

(2) provide a federal Form 1099-MISC, or a successor form, or for those entities that do not receive an internal revenue service Form 1099-MISC, a *pro forma* 1099-MISC, or a successor form, to the department on or before the last day of February of the year following the year for which the statement is made; and

(3) provide to the department, a report listing the remittees to whom oil and gas proceeds were paid by the remitter, and for whom the remitter has received an agreement pursuant to Subsection G of Section 7-3A-3 NMSA 1978; this report must include:

(a) the name, address and federal identification number for each remittee;

(b) the gross oil and gas proceeds paid to the remittee during the tax year of the report; and

(c) the remitter's name, federal identification number and the total New Mexico gross oil and gas proceeds distributed by the remitter to all remittees.

B. The reports provided to the department pursuant to Paragraph (3) of Subsection A above, must be provided using a department-approved electronic medium, unless the remitter is not required to file electronically pursuant to 3.3.5.19 NMAC.

C. If a pass-through entity is not required to file a federal income tax return for the taxable year, the entity shall file an annual information returns with the department not later than one hundred five (105) days after the end of its taxable year and provide to each of its owners sufficient information to enable the owner to comply with the provisions of the Income Tax Act or Corporate Income and Franchise Tax Act with respect to the owner's share of the net income.

[3.3.5.15 NMAC - N, 10/15/03; A, 12/15/10; A, 6/28/13]

3.3.5.16 PRINCIPAL PLACE OF BUSINESS OR RESIDENCE IN NEW MEXICO:

A. If a remitter or pass-through entity is not excused from the obligation to deduct and withhold from payments because of the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act, the obligation to deduct and withhold remains in force until the remitter or owner establishes that the corporation's principal place of business or the individuals residence is in New Mexico except as provided in Subsection E of this section.

B. Once the corporation establishes that its place of business is in New Mexico or an individual establishes that his or her residence is in New Mexico, it does not matter where remittances to the corporation or individual are sent.

C. A remitter or pass-through entity may establish residency if the address provided by the remittee or owner, to which federal Form 1099-MISC, *pro forma* 1099-MISC or successor form is to be mailed. A remitter or pass-through entity may also accept a declaration signed under penalty of perjury, from the remittee or owner, stating that the individual is a resident of New Mexico or that the corporation maintains a principal place of business in New Mexico.

D. The obligation to deduct and withhold applies with respect to all remittees and owners that are not corporations or individuals regardless of the remittee's or owner's physical or mailing address, effective January 1, 2011, unless the remitter or pass-through entity is party to an agreement in force with the remittee or owner pursuant to Subsection G of Section 7-3A-3 NMSA 1978.

E. This version of 3.3.5.16 NMAC applies to payments for periods beginning on or after January 1, 2011. However, to ease the transition to the new requirements of this section, remitters and pass-through entities may continue to rely on New Mexico addresses pursuant to 3.3.5.12 NMAC for withholding for calendar quarters ending prior to January 1, 2012.

[3.3.5.16 NMAC - N, 12/15/10; A, 6/28/13]

3.3.5.17 OPTIONAL WITHHOLDING PAYMENT BY REMITTEE, OWNER:

A. A remitter may enter into an agreement with a remittee that the remittee will remit to the taxation and revenue department at the time and in the manner required by the department the amounts that the remitter is required to withhold and remit with respect to payments to the remittee. Similarly, a pass-through entity may enter into an agreement with an owner, except as provided in Subsection E of 3.3.5.17 NMAC, that the owner will remit to the department the amounts that the pass-through entity is required to withhold and remit with respect to payments to the owner.

B. The agreement must be in a form prescribed by the department or substantially equivalent to such form. It must be in the remitter's or pass-through entity's possession at the time it files its annual statement of withholding pursuant to Section 7-3A-7 NMSA 1978. The agreement may remain in effect for a single taxable year, multiple taxable years, or an indefinite term, and may be revoked or amended on mutual agreement of the parties.

C. Upon notice by the department that the remittee or owner has not complied with the requirements of the agreement, the remitter or pass-through entity must revoke the agreement and withhold and remit with respect to future payments to the remittee or owner pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax

Act. Once an agreement has been revoked a new agreement between the remitter and remittee or between the pass-through entity and the owner, may not be entered into for two years from the date the department notifies the remitter or the pass-through entity of the remittee's or owner's failure to pay amounts required by the agreement.

D. Remittances to the department pursuant to an agreement by a remittee or owner that is subject to corporate income tax or personal income tax may be credited against the remittee's or owner's estimated tax liability pursuant to Section 7-2A-9.1 NMSA 1978 or Section 7-2-12.2 NMSA 1978 since the remittances relate to the remitter's or owner's own corporate income tax or personal income tax liability.

E. Pursuant to Subsections H and I of Section 7-3A-3 NMSA 1978 a pass-through entity that is a personal service business as defined in Subsection J of Section 7-3A-2 NMSA 1978 may not enter into an agreement with its owners.

[3.3.5.17 NMAC - N, 12/15/10; A, 6/28/13]

3.3.5.18 DISREGARDED ENTITIES:

A. The term "pass-through entity," in addition to the exclusions listed in Subsection H of Section 7-3A-2 NMSA 1978, also excludes entities treated as "disregarded entities" for federal income tax purposes. These include qualified subchapter S subsidiaries, as defined in 26 USC Section 1361(b)(3)(B), partnerships electing under 26 USC Section 761(a) to be treated as disregarded entities, qualified joint ventures, as defined in 26 USC Section 761(f), and qualified entities defined in internal revenue service revenue procedure 2002-69.

B. When a business association is treated as a disregarded entity for federal income tax purposes for only part of the association's taxable year, the association is subject to the withholding and reporting requirements of the Oil and Gas Proceeds and Pass-Through Entity Tax Withholding Act for that portion of the taxable year in which it is not treated as a disregarded entity and must submit an annual statement of withholding pursuant to Section 7-3A-7 NMSA 1978 covering that portion its taxable year in which the association was not treated as a disregarded entity.

[3.3.5.18 NMAC - N, 12/15/10]

3.3.5.19 E-FILING REQUIREMENTS:

A. Annual income and withholding information returns, federal Form 1099-MISC, *pro forma* 1099-MISC or successor forms must be filed with the department using a department-approved electronic medium if the remitter or pass-through entity has more than fifty (50) New Mexico payees in a tax year, unless the remitter or pass-through entity obtains an exception pursuant to Subsection C of 3.3.5.19 NMAC.

B. The annual income information report of oil and gas proceeds distributed - no tax withheld, and the annual income and withholding detail report of pass-through entity allocable net income must be filed using a department-approved electronic medium if the pass-through entity or remitter has more than fifty (50) New Mexico payees in a tax year, unless the remitter or pass-through entity obtains an exception pursuant to Subsection C of 3.3.5.19 NMAC.

C. A taxpayer may request an exception to the requirement of electronic filing. The request must be in writing, addressed to the secretary of the taxation and revenue department and must be received by the department at least thirty (30) days before the taxpayer's electronic information return or report is due. Exceptions will be granted in writing and only upon a showing of hardship including that there is no reasonable access to the internet in taxpayer's community. The taxpayer must also show a good faith effort to comply with the electronic filing requirements before an exception will be considered. The request for an exception must include the information return or report to which the exception if granted will apply; a clear statement of the reasons for the exception; and the signature of the taxpayer.

D. If a remitter or pass-through entity is required by regulation or statute to file information returns or reports electronically, the information return or report shall not be considered filed until filed electronically if filed by any means other than as specified in that regulation or statute.

[3.3.5.19 NMAC - N, 6/28/13]

PART 6: [RESERVED]

PART 7: INDIVIDUAL INCOME TAX

3.3.7.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.3.7.1 NMAC - Rn, 3 NMAC 3.7.1, 12/14/00]

3.3.7.2 SCOPE:

This part applies to each resident of New Mexico and to each nonresident employed or engaged in the transaction of business in, into or from New Mexico or deriving any income from any property or employment in New Mexico.

[1/15/97; 3.3.7.2 NMAC - Rn, 3 NMAC 3.7.2, 12/14/00]

3.3.7.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.3.7.3 NMAC - Rn, 3 NMAC 3.7.3, 12/14/00]

3.3.7.4 DURATION:

Permanent.

[1/15/97; 3.3.7.4 NMAC - Rn, 3 NMAC 3.7.4, 12/14/00]

3.3.7.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.3.7.5 NMAC - Rn & A, 3 NMAC 3.7.5, 12/14/00]

3.3.7.6 OBJECTIVE

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Income Tax Act.

[1/15/97; 3.3.7.6 NMAC - Rn, 3 NMAC 3.7.6, 12/14/00]

3.3.7.7 DEFINITIONS:

[RESERVED]

[1/15/97; 3.3.7.7 NMAC - Rn, 3 NMAC 3.7.7, 12/14/00]

3.3.7.8 PRORATION FOR FISCAL YEAR TAXPAYERS:

A. A taxpayer whose taxable year ends on a date other than December 31 shall compute the tax on the tax taxable income for the entire fiscal year using both the old and the new rates. The final tax is the sum of that part of the old tax which is proportionate to that portion of the taxable year preceding the effective date of the new tax and that part of the new tax which is proportionate to that portion of the taxable year beginning with the effective date of the new tax rates.

B. Example 1: A taxpayer files a fiscal year return beginning October 1, 1982, and ending September 30, 1983. The tax taxable income for the entire fiscal year is $10,000. The taxpayer computes the tax due on the entire $10,000 based on the 1982 tax table and also computes the tax due on the entire $10,000 based on the 1983 tax table. As three months of the fiscal year were in 1982 and nine months were in 1983, the final tax is 1/4 of the tax computed based on the 1982 tax table plus 3/4 of the tax computed based on the 1983 tax table.

C. Example 2: A taxpayer files a fiscal year return beginning July 1, 1982, and ending June 30, 1983. The taxable income for the entire fiscal year is $50,000. The taxpayer computes the tax due on the entire $50,000 based on the 1983 tax rate. As six months of the fiscal year were in 1982 and six months were in 1983, the final tax is one half of the tax computed based on the 1982 tax table plus one half of the tax computed based on the 1983 tax table.

[1/6/84, 12/29/89, 3/16/92, 1/15/97; 3.3.7.8 NMAC - Rn, 3 NMAC 3.7.8, 12/14/00]

3.3.7.9 TAX TABLES:

A. For taxable years beginning on or after January 1, 1983, any taxpayer who files a personal income tax return on a calendar-year basis will be required to use the tax tables which are incorporated into the department's instructions for the personal income tax form for the specific calendar year, provided that the taxpayer's taxable income and number of personal exemptions are included within the tax table.

B. Taxpayers whose number of personal exemptions or whose taxable income is not included specifically within the tax tables are required to calculate income tax due by using the tax rate schedule set forth in Section 7-2-7 NMSA 1978.

[3/31/86, 12/29/89, 3/16/92, 1/15/97; 3.3.7.9 NMAC - Rn & A, 3 NMAC 3.7.9, 12/14/00]

3.3.7.10 CHANGES IN TAX RATES:

In the event of a change in the tax rates, the instructions prepared by the department for the personal income tax forms will incorporate tax tables computed substantially on the basis of the rates prescribed in Section 7-2-7 NMSA 1978 for the year or years affected.

[3/31/86, 12/29/89, 3/16/92, 1/15/97; 3.3.7.10 NMAC - Rn & A, 3 NMAC 3.7.10, 12/14/00]

PART 8: [RESERVED]

PART 9: TAX COMPUTATION - ALTERNATIVE METHOD [RESERVED]

PART 10: INCOME TAXES APPLIED TO INDIVIDUALS ON FEDERAL AREAS [RESERVED]

PART 11: TAX CREDIT - INCOME ALLOCATION AND APPORTIONMENT

3.3.11.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.3.11.1 NMAC - Rn, 3 NMAC 3.11.1, 12/14/00]

3.3.11.2 SCOPE:

This part applies to each resident of New Mexico and to each nonresident employed or engaged in the transaction of business in, into or from New Mexico or deriving any income from any property or employment in New Mexico.

[1/15/97; 3.3.11.2 NMAC - Rn, 3 NMAC 3.11.2, 12/14/00]

3.3.11.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.3.11.3 NMAC - Rn, 3 NMAC 3.11.3, 12/14/00]

3.3.11.4 DURATION:

Permanent.

[1/15/97; 3.3.11.4 NMAC - Rn, 3 NMAC 3.11.4, 12/14/00]

3.3.11.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.3.11.5 NMAC - Rn & A, 3 NMAC 3.11.5, 12/14/00]

3.3.11.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Income Tax Act.

[1/15/97; 3.3.11.6 NMAC - Rn, 3 NMAC 3.11.6, 12/14/00]

3.3.11.7 DEFINITIONS:

[RESERVED]

[1/15/97; 3.3.11.7 NMAC - Rn, 3 NMAC 3.11.7, 12/14/00]

3.3.11.8 COMPUTATION FOR NON-RESIDENT TAXPAYERS WHO HAVE N EW MEXICO ROYALTY INCOME:

A. A non-resident taxpayer whose only income from New Mexico sources is royalty income of less than five thousand dollars ($5,000) may elect to compute the New Mexico income tax due based on the gross royalty income received in lieu of filing a complete New Mexico tax return including the allocation and apportionment schedule. To figure taxable income, a taxpayer must add back the standard deduction, itemized deductions and personal exemption amounts excluded from net income under Section 7-2-2 NMSA 1978, Subsection N, Paragraphs (1) through (6) for taxable years beginning in 1987, 1988 or 1989 and Paragraphs (1) through (3) for taxable years beginning on or after January 1, 1990 to the gross royalty income and then, using the computed taxable income, must determine the tax due according to the tax table appropriate to filing status.

B. As originally filed, 3.3.11.8 NMAC applies to taxable years beginning on or after January 1, 1985. The amendment December 29, 1989 is given retroactive effect to taxable years beginning on or after January 1, 1987. The amendment filed March 16, 1992 is given retroactive effect to taxable years beginning on or after January 1, 1990.

[8/12/85, 12/29/89, 3/16/92, 1/15/97; 3.3.11.8 NMAC - Rn & A, 3 NMAC 3.11.8, 12/14/00]

3.3.11.9 APPORTIONMENT OF DEDUCTION AMOUNTS:

A. Any individual who has income from both within and without this state and who claims the standard or itemized deductions provided by Section 7-2-2 NMSA 1978, Subsection N, Paragraphs (1) through (5) for taxable years beginning in 1987, 1988 or 1989 and Paragraphs (1) and (2) for taxable years beginning on or after January 1, 1990 shall apportion the deduction amount claimed in accordance with this section (3.3.11.9 NMAC).

B. For taxable years beginning in 1987, 1988 or 1989, apportionment shall be accomplished by reducing the amount deducted as non-New Mexico income by an amount equal to the product of the deduction amount multiplied by the percentage of non-New Mexico income computed on the individual's income tax return or any schedules or attachments thereto.

C. Example: A & B are married and file a joint return for taxable year 1988. For the purposes of 7-2-2N(5) NMSA 1978, they have $1,500 in New Mexico itemized deductions. Thirty percent of their income is calculated to be from outside New Mexico. They must reduce the amount of their deduction for non-New Mexico income by $1,650, computed as follows:

Deduction for married persons filing jointly	$4,000
New Mexico itemized deductions	1,500
Sub-Total	$5,500

30% x $5,500	x .30
Adjustment to non-New Mexico income	$1,650

D. For taxable years beginning on or after January 1, 1990, apportionment is accomplished in the process of determining tax due and the amount of the credit available pursuant to Subsection C of Section 7-2-11 NMSA 1978 and so no separate process is necessary to apportion the deduction amounts.

E. This version of 3.3.11.9 NMAC is applicable retroactively to taxable years beginning on or after January 1, 1990.

[2/8/89, 12/29/89, 3/16/92, 1/15/97; 3.3.11.9 NMAC - Rn & A, 3 NMAC 3.11.9, 12/14/00]

3.3.11.10 APPORTIONMENT OF PERSONAL EXEMPTION AMOUNT:

A. Any individual who has income from both within and without this state and who claims a personal exemption amount pursuant to Section 7-2-2 NMSA 1978, Subsection N, Paragraph (6) for taxable years beginning in 1987, 1988 or 1989 and Paragraph (3) for taxable years beginning on or after January 1, 1990 shall apportion the personal exemption amount claimed in accordance with this section (3.3.11.10 NMAC).

B. For taxable years beginning in 1987, 1988 or 1989, apportionment shall be accomplished by reducing the amount deducted as non-New Mexico income by an amount equal to the product of the personal exemption amount multiplied by the percentage of non-New Mexico income computed on the individual's income tax return or any schedules or attachments thereto.

C. Example: Z is a head of household with 2 dependent children. Twenty percent of Z's income for taxable year 1989 comes from outside New Mexico. Z must reduce the amount of deduction for non-New Mexico income by $1,200, computed as follows:

Personal exemption amount per 7-2-2N(6) NMSA 1978	$2,000
Exemptions allowed for federal purposes	x 3
Sub-Total	$6,000
20% x $6,000	x .20
Adjustment to non-New Mexico income	$1,200

D. For taxable years beginning on or after January 1, 1990, apportionment is accomplished in the process of determining tax due and the amount of the credit available pursuant to Subsection C of Section 7-2-11 NMSA 1978 and so no separate process is necessary to apportion the deduction amounts.

E. This version of Section 3.3.11.10 NMAC is applicable retroactively to taxable years beginning on or after January 1, 1990.

[2/8/89, 12/29/89, 3/16/92, 1/15/97; 3.3.11.10 NMAC - Rn & A, 3 NMAC 3.11.10, 12/14/00]

3.3.11.11 ALLOCATION OF COMPENSATION RECEIVED BY A RESIDENT:

A. All compensation received while a resident of New Mexico shall be allocated to this state whether or not such compensation is earned from employment in this state.

B. Example 1: X is a "resident" of New Mexico pursuant to Section 7-2-2 NMSA 1978. For six weeks during the taxable year, X was employed in the state of Nevada where X received compensation for personal services rendered. During this six-week period, X did not return to the state of New Mexico. X points out that inasmuch as Nevada does not impose an income tax, X is not eligible for a tax credit pursuant to Section 7-2-13 NMSA 1978. X's compensation earned in Nevada is allocable to New Mexico. There is no specific exemption or deduction which would authorize X to exclude the compensation earned in Nevada from the New Mexico base income.

C. Example 2: Y is registered to vote in this state, lives in the Canal Zone, is not physically present in New Mexico for any part of the taxable year and earns income from sources both within and without the state of New Mexico. Y is a "resident" as that term is defined by Section 7-2-2 NMSA 1978, and is required to report and pay New Mexico income tax as a resident of New Mexico. Under the provisions of Section 7-2-11 NMSA 1978, Y is required to allocate all compensation earned to New Mexico and to allocate and apportion other items of income according to the provisions of the Uniform Division of Income for Tax Purposes Act.

[7/2/90, 3/16/92, 1/15/97; 3.3.11.11 NMAC - Rn & A, 3 NMAC 3.11.11, 12/14/00]

3.3.11.12 DISTRIBUTIVE SHARES OF INCOME FROM UNINCORPORATED BUSINESS ENTITIES:

A. For the purposes of this section (3.3.11.12 NMAC), the term "unincorporated business entity" means any person engaging in business other than an individual, a sole proprietor or a corporation, except that corporations or other business entities electing to be treated as partnerships for federal income tax purposes are unincorporated business entities.

B. A taxpayer's distributive share of nonbusiness and business income shall be allocated and apportioned in accordance with this section (3.3.11.12 NMAC) to determine the portion of the distributive share of income taxable under the New Mexico Income Tax Act unless the taxpayer is qualified to elect, and has elected, to report the income in accordance with 3.3.11.8 NMAC.

C. The taxpayer shall allocate the taxpayer's distributive share of the unincorporated business entity's nonbusiness income to that taxpayer's state of residence in accordance with Sections 7-4-5 through 7-4-8 NMSA 1978. If the unincorporated business entity fails to provide the taxpayer with information distinguishing nonbusiness income from business income, the entire distribution from the unincorporated business entity must be considered business income and none of the income will be subject to allocation.

D. The taxpayer shall apportion the taxpayer's distributive share of the unincorporated business entity's business income to New Mexico by multiplying the taxpayer's distributive share times the New Mexico apportionment percentage determined by application of the Uniform Division of Income for Tax Purposes Act to the entire business income of the unincorporated business entity. If the unincorporated business entity fails to provide the taxpayer with the necessary New Mexico apportionment percentage or information sufficient to enable the taxpayer to calculate the percentage, the taxpayer shall apportion the taxpayer's entire distributive share of business income as if all of the entity's activities, property, payroll and sales were in New Mexico.

[7/2/90, 3/16/92, 1/15/97; 3.3.11.12 NMAC - Rn & A, 3 NMAC 3.11.12, 12/14/00]

3.3.11.13 RETIREMENT INCOME:

A. "Retirement income" as used in this regulation means "retirement income" as defined by 4 U.S.C. Section 114(b)(1), as that paragraph may be amended or renumbered. Retirement income is compensation for purposes of the Income Tax Act.

B. Retirement income of a resident is allocable to New Mexico, regardless of the source of the retirement income, where it is paid from or whether the resident was a resident of New Mexico at the time of the employment which gave rise to the income. Retirement income received by a first-year resident after the first-year resident becomes a resident of New Mexico is allocable to New Mexico.

C. Retirement income of a non-resident is allocable to the non-resident's state of residence regardless of the fact that the income is paid by or derived from a source in New Mexico or the employment giving rise to the income took place in New Mexico. Retirement income received by a first-year resident before the first-year resident becomes a resident of New Mexico is not allocable to New Mexico.

[12/15/99; 3.3.11.13 NMAC - Rn, 3 NMAC 3.11.13, 12/14/00]

3.3.11.14 INCOME FROM TRADING SECURITIES ON OWN ACCOUNT:

A. Income of an individual, other than a dealer holding securities for sale to customers in the ordinary course of the dealer’s trade or business, from the purchase or sale of securities for the individual’s own account or from the writing of securities option

contracts for the individual's own account is deemed to be income other than income from engaging in a trade or business. The income is allocable to the individual's state of residence.

B. Income of an investment entity from the purchase or sale of securities for the entity's own account or from the writing of securities option contracts in the entity's own account is deemed to be income other than income from engaging in a trade or business. The income attributable to each of the entity's owners is allocable to that owner's state of residence.

C. For the purposes of this regulation, the term "investment entity" means a pass-through entity, as that term is defined in Section 7-3-2 NMSA 1978, meeting the following criteria:

(1) the entity is not a dealer holding securities for sale to customers in the ordinary course of the entity's trade or business;

(2) each of the entity's owners during the taxable year is an individual; and

(3) ninety percent or more of the entity's income during the taxable year derives from the purchase or sales of securities or from writing of securities option contracts.

[3.3.11.14 NMAC - N, 3/14/01]

PART 12: TAXPAYER RETURNS - PAYMENT OF TAX

3.3.12.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1150 South St. Francis Drive, P.O. Box 630, Santa Fe NM 97504-0630.

[1/31/96; 3.3.12.1 NMAC - Rn, 3 NMAC 3.12.1, 12/14/00]

3.3.12.2 SCOPE:

All persons filing or required to file a New Mexico income tax return and all tax return preparers and persons printing New Mexico income tax forms.

[1/31/96; 3.3.12.2 NMAC - Rn, 3 NMAC 3.12.2, 12/14/00]

3.3.12.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/31/96; 3.3.12.3 NMAC - Rn, 3 NMAC 3.12.3, 12/14/00]

3.3.12.4 DURATION:

Permanent.

[1/31/96; 3.3.12.4 NMAC - Rn, 3 NMAC 3.12.4, 12/14/00]

3.3.12.5 EFFECTIVE DATE:

1/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/31/96; 3.3.12.5 NMAC - Rn & A, 3 NMAC 3.12.5, 12/14/00]

3.3.12.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Income Tax Act.

[1/31/96; 3.3.12.6 NMAC - Rn, 3 NMAC 3.12.6, 12/14/00]

3.3.12.7 DEFINITIONS:

[RESERVED]

[1/31/96; 3.3.12.7 NMAC - Rn, 3 NMAC 3.12.7, 12/14/00]

3.3.12.8 [RESERVED]

[1/31/96; 3.3.12.8 NMAC - Rn, 3 NMAC 3.12.8, 12/14/00]

3.3.12.9 REQUIREMENTS FOR THE PREPARATION OF ACCEPTABLE REPRODUCTIONS OF NEW MEXICO INCOME TAX FORMS:

A. The purpose of this regulation is to state the requirements for the acceptance of reproduced or privately printed New Mexico individual income tax return forms (i.e., PIT-1, PIT-B, PIT-CG, PIT-D, PIT-RC and other related schedules). Subject to the specifications and conditions enumerated in this regulation, the department will accept for filing reproduced or privately printed New Mexico individual income tax return forms.

B. Specifications.

(1) Reproduced or privately printed New Mexico individual income tax forms and related schedules shall be identical to the forms and schedules furnished by the department. The format must be exact; target marks and bar codes must be included. These conditions are critical because the department uses imaging technology for data capture which requires definition of placement for each data field, and uses target

marks to make sure forms are properly aligned for imaging. If the form or schedule furnished by the department is printed on both sides of the paper, it is preferred that both sides of the paper be used in making reproductions. However, the department will not object if the form is not printed back-to-back, provided page 2 face-to-back of page 1 is printed so the form will be readable left to right without flipping top to bottom (head-to-head).

(2) All reproduced or privately printed tax forms must include space for the preparer's signature (other than taxpayer) and the preparer's taxation and revenue department identification number or social security number.

(3) Drop-out colors may not be possible when using some PC applications, or when using templates. Because drop-out colors do facilitate the data capture process, increasing both speed and accuracy, the department strongly recommends, but does not require their use in reproduced or privately printed forms. Vendors wishing to include a drop-out color should contact the department for color specifications.

(4) Reproduced or privately printed tax forms, except for Form PIT-P, must be on 8-1/2" by 11" good quality standard stock machine stationery not less than 0.0030 inch thick (20 lb. paper). All printing shall be black ink on white paper. Form PIT-P must meet these same standards except that the size of the form is 8-1/2" by 3-3/4".

(5) Reproduced or privately printed tax forms shall have a high standard of legibility. The department will reject any substitutes which are not legible for microfilm purposes.

C. Conditions and other requirements.

(1) Reproductions which do not meet the requirements of the department may not be filed in lieu of the official forms and schedules. Supporting statements shall provide detail and explain entries, shall furnish all required information in the same sequence as called for on the official forms or schedules, and shall be attached to the form or schedule in the same order as the entries appear on the official forms or schedule. Supporting statements shall conform to the size of the form or schedule to which they apply. The totals on all supporting statements shall also be entered on the appropriate official form or schedule.

(2) The department ordinarily does not undertake to approve or disapprove the specific equipment or process used in reproducing official forms, but requires only that the reproduced forms and schedules satisfy the conditions stated in this regulation.

(3) Taxpayer(s) and preparer signature(s) on forms to be filed with the department must be original signatures. Only the tax practitioner's firm name and taxation and revenue department identification number or social security number can be a facsimile (stamp), or preprinted.

(4) Reproduction of forms and schedules meeting the above conditions may be used without prior approval of the department. However, if specific approval of a reproduction of any such form or schedule is desired or if the use of a reproduction of any form or schedule not listed herein or otherwise specifically authorized is desired, forward a sample of the proposed reproduction by letter to the department.

(5) Internal control numbers and identifying symbols may be shown on the reproduced or privately printed forms if the use of such numbers or symbols is acceptable to the taxpayer or his representative. If shown, such information may be printed only in the margin at the top of the form and must not interfere with any of the format on the form.

D. This regulation is applicable to taxable years beginning on or after January 1, 1995.

[4/18/84, 12/29/89, 3/16/92, 1/31/96; 3.3.12.9 NMAC - Rn & A, 3 NMAC 3.12.9, 12/14/00]

3.3.12.10 REQUIREMENTS FOR THE ACCEPTANCE OF COMPUTER-GENERATED INCOME TAX FORMS AND RELATED SCHEDULES:

A. The purpose of this regulation is to state the requirements for the acceptance of computer-generated New Mexico individual income tax return forms (i.e., PIT-1, PIT-B, PIT-CG, PIT-D, PIT-RC and other related schedules). Subject to the specifications and conditions enumerated in this regulation, the department will accept for filing computer-prepared New Mexico individual income tax return forms.

B. Specifications.

(1) Margins on computer generated forms shall be consistent with margins on forms furnished by the department. A full scale definition may be obtained from the department.

(2) All computer generated tax forms must include space for the preparer's signature (other than taxpayer) and the preparer's taxation and revenue department identification or social security number.

(3) Drop-out colors are not required on computer-generated forms. Persons wishing to include a drop-out color should contact the department for color specifications.

(4) Computer-generated tax forms must be on 8 1/2" by 11" good quality standard stock machine stationery not less than 0.0030 inch thick (20 lb. paper). The image size of printed material shall be as close as possible to that of the official form.

(5) The format must be exact; target marks and bar codes must be included. These conditions are critical because the department uses imaging technology for data capture which requires definition of placement for each data field, and uses target marks to make sure forms are properly aligned for imaging.

(6) Line instructions may be omitted, but all line numbers and items shall be printed even though the amount entered may be zero.

(7) All computer-generated forms shall be printed back-to-back or page 2 face-to-back of page 1 so the form will be readable left to right without flipping top to bottom (head-to-head).

(8) Computer-generated forms shall have a high standard of legibility. The department will reject any substitutes which are not legible for microfilm purposes.

(9) An asterisk (*) or other accepted symbol shall appear on the computer-generated form to designate those lines which are identified on the official form through the use of a solid triangle.

(10) The computer generated form must provide the necessary number of "For Department Use Only" squares on the right margin. The specific number of "For Department Use Only" boxes, and their placement, for any taxable year may be obtained by contacting the department.

C. Conditions and additional requirements.

(1) All formats must receive prior approval from the secretary or the secretary's delegate.

(2) Internal control numbers and identifying symbols of the computer form preparer may be shown on the form if the use of such numbers or symbols is acceptable to the taxpayer or the taxpayer's representative. If shown, such information may be printed only in the margin at the top of the form and must not interfere with any of the format on the form.

(3) Negative line entries must be properly identified by indicating negative amounts in parentheses or brackets, i.e., "( )" or "[ ]".

(4) Taxpayer(s)' and preparer signature(s) on forms to be filed with the department must be original signatures. Only the tax practitioner's firm name and taxation and revenue department identification number or social security number can be a facsimile (stamp) or preprinted.

D. This regulation is applicable to taxable years beginning on or after January 1, 1995.

[9/4/87, 12/29/89, 3/16/92, 1/31/96; 3.3.12.10 NMAC - Rn, 3 NMAC 3.12.10, 12/14/00]

3.3.12.11 FILING OF TENTATIVE INCOME TAX RETURNS NOT ALLOWED:

The filing of a "tentative" return is not allowed by taxpayers filing New Mexico income tax returns within the meaning of Section 7-2-12 NMSA 1978. Taxpayers wishing to make a prepayment of their tentative or estimated tax liability prior to the due date of the return should use a prepayment form PIT-P. The instructions on the form PIT-P should be followed carefully to ensure that any prepayment is applied to the correct taxable year. This regulation is applicable to taxable years beginning on or after January 1, 1995.

[3/16/92, 6/24/93, 1/31/96; 3.3.12.11 NMAC - Rn & A, 3 NMAC 3.12.11, 12/14/00]

3.3.12.12 FILING STATUS; TAXPAYER NAME:

A. A taxpayer filing a New Mexico income tax return shall use the same filing status for New Mexico purposes as for federal purposes for the taxable year. Spouses using the status "married filing jointly" for federal purposes must use the same status for New Mexico purposes; those using the status "married filing separately" for federal purposes must do likewise for New Mexico.

B. Spouses who report income to the federal government for income tax purposes using different last names, whether they report jointly or separately, must report their income to New Mexico using the same names as used on the federal return. Spouses who report to the United States under one surname must also report to New Mexico under the same surname.

[7/20/90, 3/16/92, 1/15/97; 3.3.12.12 NMAC - Rn, 3 NMAC 3.12.12, 12/14/00]

3.3.12.13 ELECTRONICALLY FILED RETURNS:

A taxpayer, a taxpayer's representative or a tax return preparer may file the personal income tax return and associated schedules in an electronic format that meets all criteria for filing through an electronic media as set forth by the department. Returns filed through an electronic media must use computer programming determined by the department to be compatible with the computer programming and equipment used by the department for processing income tax returns. The returns must be submitted in an approved format using a computer language designated by the department. The product used to generate the electronic return must receive prior approval from the department for the method of filing.

[7/20/90, 3/16/92, 1/15/97; 3.3.12.13 NMAC - Rn & A, 3 NMAC 3.12.13, 12/14/00; A, 1/31/08]

3.3.12.14 [RESERVED]

[8/30/95, 1/15/97, 12/15/98, 7/30/99; 3.3.12.14 NMAC - Rn & A, 3 NMAC 3.12.14, 12/14/00, A, 10/31/05; Repealed, 12/30/10]

3.3.12.15 WHEN WITHHELD TAX NOT CONSIDERED ESTIMATED TAX:

Payment pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act by an oil and gas proceeds remitter or a pass-through entity of withholding tax required to be withheld from payments to a remittee or an owner relate to the remittee's or owner's income tax or corporate income tax liability, not to the remitter's or pass-through entity's. Accordingly, when a remitter or pass-through entity is a person subject to personal income tax and has an obligation to pay estimated tax pursuant to Section 7-2-12.2 NMSA 1978, the person may not credit the amounts it withheld under Section 7-3A-3 NMSA 1978 from payments the person owes to remittees or owners against the person's own estimated tax liability. See 3.3.5.17 NMAC for treatment of withholding owed by remitter or pass-through entity but paid by remittee or owner pursuant to an agreement.

[3.3.12.15 NMAC - N, 12/15/10]

PART 13: TAX REBATES AND CREDITS

3.3.13.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.3.13.1 NMAC - Rn, 3 NMAC 3.13.1, 12/14/00]

3.3.13.2 SCOPE:

This part applies to each resident of New Mexico and to each nonresident employed or engaged in the transaction of business in, into or from New Mexico or deriving any income from any property or employment in New Mexico.

[1/15/97; 3.3.13.2 NMAC - Rn, 3 NMAC 3.13.2, 12/14/00]

3.3.13.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.3.13.3 NMAC - Rn, 3 NMAC 3.13.3, 12/14/00]

3.3.13.4 DURATION:

Permanent.

[1/15/97; 3.3.13.4 NMAC - Rn, 3 NMAC 3.13.4, 12/14/00]

3.3.13.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.3.13.5 NMAC - Rn & A, 3 NMAC 3.13.5, 12/14/00]

3.3.13.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Income Tax Act.

[1/15/97; 3.3.13.6 NMAC - Rn, 3 NMAC 3.13.6, 12/14/00]

3.3.13.7 DEFINITIONS:

[RESERVED]

[1/15/97; 3.3.13.7 NMAC - Rn, 3 NMAC 3.13.7, 12/14/00]

3.3.13.8 TAX REBATE OF PROPERTY TAX DUE WHICH EXCEEDS THE ELDERLY TAXPAYER'S MAXIMUM PROPERTY TAX LIABILITY – REFUND:

A. Rental component of nursing home charges.

(1) Any resident 65 or older meeting the requirements for the tax rebate who resides in a long-term residential care facility (nursing home) which is subject to taxation under the Property Tax Code and which does not itemize an amount for rent in its billings to the resident may compute the allowable amount of property tax rebate in accordance with this subsection (3.3.13.8A NMAC).

(2) 32% of the amount billed to, or for the benefit of, the resident by the long term residential care facility for the taxpayer's taxable year shall be the computed amount of gross rent for the purposes of the property tax rebate.

(3) For the purposes of this subsection (3.3.13.8A NMAC), the term "long-term residential care facility" means any facility which provides room, board and health care services to persons residing in the facility for more than a temporary period of time. "Long-term residential care facility" does not include any general or other hospital unless the hospital maintains a separate area for purposes of providing long-term room, board and health care services for persons not requiring admission to the hospital.

B. **Fiscal year filers.** Residents who file income tax on a fiscal year basis shall determine the amount of the tax rebate by:

(1) determining the weight of each calendar year by dividing the number of days in each calendar year included in the taxpayer's income tax fiscal year by the number of days in the taxpayer's income tax fiscal year;

(2) multiplying the property tax paid in each calendar year by the weight determined for that year; and

(3) combining the results for the 2 calendar years.

[12/23/93, 1/15/97; 3.3.13.8 NMAC - Rn & A, 3 NMAC 3.13.8, 12/14/00]

3.3.13.9 CREDIT FOR EXPENSES FOR DEPENDENT CHILD DAY CARE NECESSARY TO ENABLE GAINFUL EMPLOYMENT TO PREVENT INDIGENCY:

A. **Definition of "dependent" for purposes of the child care credit**. "Dependent" for purposes of Section 7-2-18.1 NMSA 1978 is a "dependent" as defined in Section 152 of the Internal Revenue Code, as amended or renumbered, and includes a child of divorced or legally separated parents when the taxpayer meets all the requirements of Section 44A(f)(5) and Section 152(E) of the Internal Revenue Code, as amended or renumbered.

B. **"Gainfully employed" defined**. As used in Section 7-2-18.1 NMSA 1978, a resident who is "gainfully employed" includes any resident who is working for wages, salary, commissions or any other form of employee remuneration or any resident who engages in any business activity as a proprietor or partner and who is required to report and pay taxes under the provisions of the federal Self-Employment Contributions Act.

C. **Period of gainful employment**.

(1) The credit for expenses for dependent child day care may only be claimed for expenses which occur during periods in which the taxpayer is gainfully employed. A taxpayer may not include child care expenses incurred during periods in which the taxpayer is not gainfully employed.

(2) Example: X, a single parent who provides over 50% of the support of a ten year old dependent child, attended school and was not employed during the months of January through May of the taxable year. On June 1, X began a career and was employed for the remainder of the year. X incurred child care expenses during the whole year. X can claim the credit for child care computed on only those expenses which were incurred during those months in which X was gainfully employed, June through December. X may not include the expenses for child care during the months of January through May in computing the amount of the credit.

[11/10/83, 10/24/89, 12/29/89, 3/16/92, 1/15/97; 3.3.13.9 NMAC - Rn & A, 3 NMAC 3.13.9, 12/14/00]

3.3.13.10 CREDIT FOR PRESERVATION OF CULTURAL PROPERTY:

A. **Cultural property credit defined**. The preservation of cultural property credit is a credit against a taxpayer's New Mexico personal income tax due for amounts expended for the restoration, rehabilitation and preservation of cultural property owned by the taxpayer and listed on the official New Mexico register of cultural properties as those terms are defined in 1 of the cultural properties review committee Rule 84-1. Any taxpayer who files a New Mexico personal income tax return and who is not a dependent of another individual may claim a credit in an amount equal to one-half of the cost of the restoration, rehabilitation or preservation of the cultural property, not to exceed a maximum of twenty-five thousand dollars ($25,000).

B. **Filing requirements**.

(1) The claim for the cultural property credit shall consist of a copy of the letter of certification, a copy of Form B, part 2 from the cultural properties review committee and a copy of the invoices or a statement from the contractor(s) showing the cost incurred for the year of the claim.

(2) The claim must be submitted with and attached to the New Mexico personal income tax return for the year or years in which the restoration, rehabilitation or preservation is carried out.

C. **S-corporation claim for cultural property credit**.

(1) A shareholder in a small business corporation may claim the shareholder's pro rata share of the cultural property credit against New Mexico personal income tax due. The total aggregate credit for all shareholders and other owners of a property shall not exceed an amount equal to one-half the cost of restoration, rehabilitation or preservation or twenty-five thousand dollars ($25,000) for a single restoration, rehabilitation or preservation project for any cultural property.

(2) A shareholder shall claim the cultural property credit in the same manner as specified in 3.3.13.10B NMAC and shall, in addition, provide a schedule listing the names, addresses and social security numbers of all shareholders in the corporation and any other owners of the property, the pro rata share of the credit of each shareholder and other owner(s) and the New Mexico tax identification number under which the New Mexico income and franchise tax return for "S" Corporations (CIT-2) is filed.

D. **Partnership claim for cultural property credit**.

(1) A partner in a partnership or joint venture may claim the partner's pro rata share of the cultural property credit against New Mexico personal income tax due. The total aggregate credit for all partners shall not exceed an amount equal to one-half the cost of restoration, rehabilitation or preservation or twenty-five thousand dollars

($25,000) for a single restoration, rehabilitation or preservation project for any cultural property.

(2) A partner shall claim the cultural property credit in the same manner as specified in 3.3.13.10B NMAC and shall, in addition, provide a schedule listing the names, addresses and social security numbers or federal employer identification numbers of all partners in the partnership or joint venture, the pro rata share of the credit of each partner and the New Mexico tax identification number under which the partnership or joint venture is filing CRS-1 Forms.

[5/17/85, 12/29/89, 3/16/92, 1/15/97; 3.3.13.10 NMAC - Rn & A, 3 NMAC 3.13.10, 12/14/00]

3.3.13.11 QUALIFIED BUSINESS FACILITY REHABILITATION CREDIT:

A. **No qualified business facility rehabilitation credit allowed for cultural or historic properties**. No qualified business facility rehabilitation credit will be allowed for any qualified business facility that is also:

(1) a building listed on the official New Mexico register of cultural properties as those terms are defined in section 1 of the cultural properties review committee Rule 84-1; or

(2) a building listed on the national register or determined to be contributing to a national register district.

B. **No qualified business facility rehabilitation credit allowed for costs qualifying for credit under Investment Credit Act**. Any expenditure by an owner of a qualified business facility that would qualify for the investment credit provided by the Investment Credit Act may not also be used as the basis for claiming the credit provided in Section 7-2-18.4 NMSA 1978.

C. **Costs qualifying for the credit**. The following costs may be included in determining the qualified building rehabilitation credit:

(1) architectural and engineering services related directly to the restoration, rehabilitation or renovation project;

(2) inspection reports, such as structural conditions or environmental inspections;

(3) building permits and fees;

(4) abatement programs, such as asbestos abatement or lead-based paint abatement;

(5) all direct materials costs used in the project, including energy upgrading materials such as insulation or interior storm windows;

(6) all direct labor costs used in the project, except for salary paid to the owner for the owner's own labor;

(7) all direct materials and labor costs incurred for compliance with the Americans With Disabilities Act;

(8) rental of equipment necessary for project completion, such as tools and machinery;

(9) purchase of tools where the life expectancy of the tool is not longer than the life of the project, such as paint brushes and drop cloths;

(10) upgrade of utilities to meet current codes, including plumbing, mechanical and electrical;

(11) upgrade of utilities connections, including water, gas, electricity and telecommunications;

(12) exterior lighting, security lighting, light fixtures, and alarm systems;

(13) repair or replacement of existing bathroom plumbing fixtures;

(14) New Mexico gross receipts and compensating taxes; and

(15) liability, fire, and workers' compensation insurance premiums during the time of work on the project.

D. **Costs not qualifying for the credit**. The following costs may not be included in determining the qualified business facility rehabilitation credit:

(1) all acquisition costs of the qualified business facility, such as surveys, appraisals, loan fees, commissions, legal fees;

(2) architectural, engineering and planning services related to expansion of or additions to a building if the expansion or addition increases the usable square footage of the building by more than ten percent;

(3) accounting fees;

(4) office supplies, bank fees and charges, film and similar expenditures;

(5) automotive repairs, maintenance and gasoline;

(6) furnishings, including furniture, floor coverings and carpeting, wall coverings, window coverings, and linens;

(7) purchase of tools where the life expectancy of the tool is longer than the life of the project, such as ladders, drills, and saws;

(8) landscaping;

(9) bathroom accessories;

(10) kitchen appliances, cabinets, and accessories;

(11) meals and food;

(12) membership fees or dues;

(13) property damaged at or stolen from a project site; and

(14) routine maintenance including, but not limited to, cleaning, painting, minor repairs and periodic upkeep except where these items are part of an initial overall restoration, rehabilitation or renovation project.

E. **"Single project" defined**.

(1) Except as otherwise provided in this subsection (3.3.13.11E NMAC), credit for restoring, rehabilitating or renovating a qualified business facility may be claimed only once for a building, although the actual period of time during which that restoration, rehabilitation or renovation occurs may be as long as three consecutive, calendar years.

(2) If a qualified business facility has been restored, rehabilitated or renovated and has been put into service by a person in the manufacturing, distribution or service industry immediately following the restoration, rehabilitation or renovation, the person claims and is granted a credit under either Section 7-2-18.4 or Section 7-2A-15 NMSA 1978 and the qualified business facility is subsequently taken out of service by that person and remains vacant for twenty-four consecutive calendar months, a credit may be claimed for additional costs of restoration, rehabilitation or renovation for that building, provided all other requirements of Section 7-2-18.4 NMSA 1978 are met.

F. **Prior approval required to qualify for credit**.

(1) No qualified business facility rehabilitation credit will be allowed unless the taxpayer has submitted a plan and specifications for the restoration, rehabilitation or renovation of a qualified business facility to the New Mexico enterprise zone program officer of the economic development department and received approval from the New

Mexico enterprise zone program officer for the plan and specifications prior to commencement of the restoration, rehabilitation or renovation

(2) In addition, the taxpayer must receive certification from the New Mexico enterprise zone program officer after completing the restoration, rehabilitation or renovation that it conformed to the plan and specifications.

G. **Filing requirements**.

(1) The claim for the qualified business facility rehabilitation credit shall consist of the certification from the New Mexico enterprise zone program officer and a completed claim form provided by the department.

(2) The certification and claim form must be submitted with and attached to the New Mexico personal income tax return for the year or years in which the restoration, rehabilitation or renovation is carried out.

H. **Record retention requirements**.

(1) The original contracts, invoices, bills, statements and other documents showing the costs incurred for the year or years in which a qualified business facility rehabilitation credit is claimed must be retained for three calendar years following the close of the calendar year in which the credit is claimed.

(2) Copies of the original contracts, invoices, bills, statements and other documents must be provided to the department on written request or during the course of an audit.

I. **Claim for qualified business facility rehabilitation credit deriving from partnership, joint venture or limited liability company**.

(1) An individual who is a partner in a partnership or joint venture or who is a shareholder in a limited liability company that is not required to file and pay income taxes as a corporation under the Internal Revenue Code may claim a credit against the individual's New Mexico personal income tax due in an amount equal to the individual's pro rata share of the qualified business facility rehabilitation credit of the partnership, joint venture or limited liability company. The total aggregate credit for all partners or shareholders shall not exceed an amount equal to one half the cost of restoration, rehabilitation or renovation or fifty thousand dollars ($50,000), whichever is less, for a single restoration, rehabilitation or renovation project for any qualified business facility.

(2) An individual claiming the qualified business facility rehabilitation credit derived from a partnership, joint venture or limited liability company shall claim the credit in the same manner as specified in Subsections F and G of Section 3.3.13.11 NMAC but shall also provide a schedule listing the names, addresses and social security numbers or federal employer identification numbers of all partners in the partnership or

joint venture or the shareholders in the limited liability company, the pro rata share of the credit of each partner or shareholder and the federal employer identification number and New Mexico CRS identification number, if any, of the partnership, joint venture or limited liability company.

J. **S-corporation claim for qualified business facility rehabilitation credit**.

(1) A shareholder in an S-corporation may claim a credit against the individual's New Mexico personal income tax due in an amount equal to the individual's pro rata share of the qualified business facility rehabilitation credit of the S-corporation. The total aggregate credit for all shareholders shall not exceed an amount equal to one half the cost of restoration, rehabilitation or renovation or fifty thousand dollars ($50,000), whichever is less, for a single restoration, rehabilitation or renovation project for any qualified business facility.

(2) An individual claiming the qualified business facility rehabilitation credit derived from an S-corporation shall claim the credit in the same manner as specified in Subsections F and G of Section 3.3.13.11 NMAC but shall also provide a schedule listing the names, addresses and social security numbers of the shareholders in the S-corporation, the pro rata share of the credit of each shareholder and the S-corporation's federal employer identification number and New Mexico CRS identification number, if any.

K. **Total claimable in a year may exceed $50,000**.

(1) No individual may claim nor may the department allow a credit in excess of $50,000 for any single project. An individual, however, may be involved in several different approved projects. If the individual's share of allowable credits from the several projects exceeds $50,000, the individual may claim and the department may allow an aggregate credit amount which exceeds $50,000.

(2) Example: An individual owns a qualified business facility and is also a shareholder in an S-corporation and in a limited liability company, both of which also own qualified business facilities. All three undertake restoration, renovation or rehabilitation projects on their respective buildings within the same year. The individual earns credits of $40,000 from the individual's own building, and $20,000 and $12,000 shares from the other two. The individual may claim a credit equal to the sum of the individual's share from the three projects, or $72,000. If, however, the $72,000 exceeded the individual's income tax liability before application of this credit, then the excess would have to be carried into succeeding taxable years.

L. **Priority in claiming**. An individual who has both an amount of carryover credit from a prior taxable year and a new credit amount derived from a qualifying restoration, rehabilitation or renovation project in the taxable year for which the return is being filed shall first apply the amount of carryover credit against the individual's income tax

liability. If the amount of the liability exceeds the amount of the carryover credit, then the current year credit may be applied against the liability.

[2/9/95, 1/15/97; 3.3.13.11 NMAC - Rn & A, 3 NMAC 3.13.11, 12/14/00]

PART 14: NEW SOLAR MARKET DEVELOPMENT INCOME TAX CREDIT

3.3.14.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Energy, Conservation and Management Division.

[3.3.14.1 NMAC – Rp, 3.3.14.1 NMAC, 7/16/2024]

3.3.14.2 SCOPE:

3.3.14 NMAC applies to the application and certification procedures for administration of the new solar market development income tax credit.

[3.3.14.2 NMAC - Rp, 3.3.14.2 NMAC, 7/16/2024]

3.3.14.3 STATUTORY AUTHORITY:

3.3.14 NMAC is established under the authority of Section 7-2-18-31 and Subsection 9-1-5 NMSA 1978.

[3.3.14.3 NMAC - Rp, 3.3.14.3 NMAC, 7/16/2024]

3.3.14.4 DURATION:

Permanent.

[3.3.14.4 NMAC - Rp, 3.3.14.4 NMAC, 7/16/2024]

3.3.14.5 EFFECTIVE DATE:

July 16, 2024, unless a later date is cited at the end of a section.

[3.3.14.5 NMAC - Rp, 3.3.14.5 NMAC, 7/16/2024]

3.3.14.6 OBJECTIVE:

3.3.14 NMAC's objective is to establish procedures for administering the certification program for the new solar market development income tax credit.

[3.3.14.6 NMAC - Rp, 3.3.14.6 NMAC, 7/16/2024]

3.3.14.7 DEFINITIONS:

A. "Applicant" means a New Mexico taxpayer that has installed a solar energy system at a residence, business or agricultural enterprise that the taxpayer owns or a New Mexico taxpayer who has installed a solar energy system at a residence, business, or agricultural enterprise held in leasehold and located on a federally recognized Indian nation, tribe or pueblo that is located in whole or in part within New Mexico and who requests that the department certify the solar energy system pursuant to 3.3.14 NMAC so that the taxpayer may receive a state tax credit.

B. "Application package" means the application documents an applicant submits to the department for certification to receive a state tax credit.

C. "Array" means the collectors of a solar thermal system or the modules of a photovoltaic system.

D. "Building code authority" means the New Mexico regulation and licensing department, construction industries department or the local government agency having jurisdiction for building, electrical and mechanical codes.

E. "Certified" or **"certification"** means department approval of a solar energy system, which makes the applicant owning the system eligible for a state tax credit.

F. "Collector" means the solar thermal system component that absorbs solar energy for conversion into heat or electricity.

G. "Collector aperture" means the area of a solar thermal collector that absorbs solar energy for conversion into usable heat.

H. "Component" means a solar energy system's equipment and materials.

I. "Department" means the energy, minerals and natural resources department.

J. "Division" means the department's energy conservation and management division.

K. "Energy system" means an engineered system that delivers solar energy to an end use by flow of fluid or electricity caused by energized components such as pumps, fans, inverters, or controllers.

L. "Installed", or **"installation"** means the direct work of placing a solar energy system into service to operate and produce energy at the expected level for a system of its size, which shall include completion of any required final inspections, unless the installation is on tribal or pueblo land in which case contractor certification of installation shall suffice for the system to meet this definition.

M. "Mobile" means not permanently connected to a residence, business or agricultural enterprise or connected to a mobile vehicle that is a part of a residence, business, or agricultural enterprise.

N. "Module" means the photovoltaic system component that absorbs sunlight for conversion into electricity.

O. "New" means the condition of being recently manufactured and not used previously in any installation.

P. "New solar market development income tax credit" means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified pursuant to 3.3.14 NMAC.

Q. "Non-residential" means a business or agricultural enterprise.

R. "OG" means operating guidelines that the solar rating and certification corporation has or will establish including system performance or component characteristics as defined in the applicable SRCC directory. Operating guidelines shall be from SRCC directory in effect on March 1, 2006, or any applicable successive revisions.

S. "Solar collector" means a solar thermal collector or photovoltaic module.

T. "Solar energy system" means a solar thermal system or photovoltaic system.

U. "Solar storage tank" means a tank provided as a component in a solar thermal system that is not heated by electricity or a heating fuel.

V. "SRCC" means the solar rating and certification corporation.

W. "Standard test conditions" means the environmental conditions under which a manufacturer tests a photovoltaic module for power output, which are a photovoltaic cell temperature of 25 degrees Celsius and solar insolation of 1000 watts per square meter on the photovoltaic cell surface.

X. "State tax credit" means the new solar market development income tax credit.

Y. "Substantially Complete" means a system that produces energy to the benefit of the residence, business or agricultural enterprise and has been inspected by the applicable authorities. A system that is substantially complete shall be eligible for the tax credit even if the original installation contractor is no longer in business.

Z. "Supplemental state tax credit" means the new solar market development income tax credit awarded for eligible solar energy systems installed in calendar years

2020-2023 when certification was not previously awarded due to exhaustion of credit certification limits.

[3.3.14.7 NMAC - Rp, 3.3.14.7 NMAC, 7/16/2024]

3.3.14.8 GENERAL PROVISIONS:

A. The state tax credit may be claimed for taxable years prior to January 1, 2032.

B. Only a New Mexico individual taxpayer, corporation or agricultural enterprise who has purchased and installed, on property that he, she, or the corporation owns, or, in the case of a federally recognized Indian nation, tribe or pueblo, holds in leasehold, an operating or substantially complete solar energy system that the department has certified pursuant to this part is eligible for a state tax credit for the tax year in which the system is installed, unless the system is eligible for a supplemental state tax credit.

C. An applicant must own the residence, business, or agriculture enterprise on which the solar energy system is located to qualify for the tax credit, unless the applicant has installed a solar energy system at a residence, business, or agricultural enterprise located on a federally recognized Indian nation, tribe or pueblo located in whole or in part within New Mexico, in which case the applicant must hold the property in leasehold from the applicable Indian nation, tribe or pueblo. The applicant may rent the residence, business, or agricultural enterprise that the applicant owns to another entity, however, the renter does not qualify for the tax credit.

D. Multiple different systems located at the same address are all eligible for the credit, provided the total amount awarded for all systems at the same address does not exceed the allocation limit in 3.3.14.15 NMAC; systems must meet eligibility requirements. The restriction in this paragraph applies even if the solar energy systems are separately metered.

E. A taxpayer who is not a dependent of another individual and who, on or after March 1, 2020, purchases and installs a solar thermal system or a photovoltaic system on a residence, business or agricultural enterprise in New Mexico owned by that taxpayer or on land held by a federally recognized Indian nation, tribe or pueblo and held in leasehold by that taxpayer, may apply for, and the department may allow, a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act. The tax credit provided by this section may be referred to as the "new solar market development income tax credit."

F. A taxpayer may apply for a new solar market development income tax credit certificate for the taxable year in which the taxpayer purchases and installs a solar thermal or photovoltaic system. To receive a new solar market development income tax credit certificate, a taxpayer shall apply to the department on forms and in the manner prescribed by the department within twelve months following the calendar year in which the system was installed.

G. The annual aggregate amount of credits that may be certified by the department as eligible is:

(1) in the calendar year 2024 and any subsequent year thereafter, thirty million dollars ($30,000,000); and

(2) For calendar years 2020 through 2023, where the calendar year limitation has previously been met in any one of those years, a total of twenty million dollars ($20,000,000). Such supplemental state tax credits shall be claimed in taxable year 2023 regardless of whether the system was purchased and installed in calendar years 2020 through 2023. Applications for supplemental state tax credits certificates must be submitted on or before 12/31/2025.

H. When the aggregate amount of certificates issued reaches the cap in the foregoing paragraph, the department will no longer certify systems for that year. Applications received after the aggregate limit is reached shall not be approved and will be returned to applicant. The department shall keep a record of the order of receipt of all application packages to ensure the annual aggregate amount is not exceeded in any given year.

I. In the event of a discrepancy between a requirement of 3.3.14 NMAC and an existing New Mexico regulation and licensing department or New Mexico taxation and revenue department rule promulgated prior to 3.3.14 NMAC's adoption, the existing rule shall govern.

[3.3.14.8 NMAC - Rp, 3.3.14.8 NMAC, 7/16/2024]

3.3.14.9 APPLICATION:

A. To apply for a state tax credit an applicant shall submit an application for a certificate of eligibility to the division using either a department-developed application or an approved electronic application system as directed by the division director. The department will not accept paper applications or applications submitted by e-mail unless specifically authorized by the division. An applicant may obtain a state tax credit application form and system installation form from the division.

B. An application package shall include a completed state tax credit application form and written attachments for a solar thermal system or photovoltaic system. To be considered complete, an application must include the state tax credit application form and any required attachments; partial applications will not be accepted. An applicant shall submit one application package for each eligible solar energy system. After the department has certified a solar energy system, applicants may not amend the certified application package to seek additional credits for that system. If there are multiple owners of the property where the solar energy system is installed, a joint application must be submitted.

C. The application package shall meet the requirements of 3.3.14 NMAC. If an application package fails to meet a requirement, the department shall disapprove the application.

D. The completed application form shall consist of the following information:

(1) the applicant's name, mailing address, e-mail address, telephone number and the last four digits of the applicant's social security number or employer identification number (EIN) provided by a business or agricultural enterprise;

(2) the address where the solar energy system is located, if located at a residence, business or agricultural enterprise, or a location description if located at an agricultural enterprise;

(3) the solar energy system's type and description;

(4) the date the solar energy system was installed;

(5) if a contractor installed the solar energy system, the contractor's name, address, telephone number, e-mail address, license category and license number;

(6) acknowledgement the applicant installed the solar energy system, if applicable;

(7) the separately itemized net cost of equipment, materials, and labor of installing the solar energy system, excluding the expenses and income listed in 3.3.14 NMAC; and

(8) a statement the applicant signed and dated, which signature may be a form of electronic signature if approved by the department, agreeing that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge;

(b) applicant understands that there is annual aggregate cap on available state tax credits in place for solar energy systems and that they are eligible for a credit only in the year the system was installed, or, in the case of systems installed in 2020, 2021, 2022 and 2023, tax year 2023;

(c) applicant understands that the department must certify the solar energy system documented in the application package before becoming eligible for a state tax credit;

(d) applicant agrees to make any changes the department requires to the solar energy system for compliance with 3.3.14 NMAC; and

(e) to ensure compliance with 3.3.14 NMAC, applicant agrees to allow the department or its authorized representative to inspect the solar energy system described in the application package at any time after the date of submittal of the application package until three years after the department has certified the solar energy system, upon the department providing a minimum of five days' notice to the applicant.

E. An application package must contain the following information as attachments (the requirements in the subparagraph below depend on solar energy system location and whether application is seeking a state tax credit or a supplemental state tax credit):

(1) A completed application package for solar energy systems installed in years 2024 and after on private land shall remit the following attachments:

(a) A current property tax bill or other equivalent proof of ownership in the applicant's name for the residence, business, or agricultural enterprise where the solar energy system is installed. All names, partnerships and titles listed as property owners shall be listed on application;

(b) A Building Code Inspection report including the name of the building code authority, the permit number, and the date of successful inspection, either noted on a physical form, photo of inspection sticker, or a web-based report. The department prefers the permit for electrical inspection over the general building permit.

(c) An itemized invoice documenting the equipment, materials, and labor costs of the solar energy system, including but not limited to itemized accounting of permits, design, equipment, material, categorized fees, and installation labor of the solar energy system. For categorized fees please see Subsection C. of 3.3.14.14 NMAC; and

(d) The solar energy system's design schematic and technical specifications.

(2) The application package remitted for solar energy systems installed in years 2024 and after on lands of a federally recognized Indian nation, tribe or pueblo and held in leasehold by that taxpayer shall consist of the following information provided as attachments:

(a) A leasehold agreement, trust, allotment of property or other equivalent proof that the property where the solar system is installed is held on behalf of the individuals applying. All names, partnerships and titles listed as leaseholders shall be listed on application;

(b) For projects in areas subject to a building code authority's inspection: the permit number and issuance date, and date of successful inspection, if applicable, noted on a physical form, photo of inspection sticker, or a web-based report the applicable building code authority approves. For projects in areas not subject to a building code authority's inspection, a certification from a licensed New Mexico

electrician that the solar energy system was properly integrated into the applicable structure's electrical system;

(c) An itemized invoice documenting the equipment, materials, and labor costs of the solar energy system, including but not limited to itemized accounting of permits, design, equipment, material, categorized fees, and installation labor of a solar energy system. For categorized fees please see Subsection C. of 3.3.14.14 NMAC; and

(d) The solar energy system's design schematic and technical specifications.

(3) The application package for a supplemental state tax credit for a project purchased and installed in years 2020 through 2023 shall consist of the following information provided as attachments:

(a) a current property tax bill or other equivalent proof of ownership in the applicant's name for the residence, business, or agricultural enterprise where the solar energy system is installed. All names, partnerships and titles listed as property owners shall be listed on application;

(b) for projects on tribal lands: a leasehold agreement, trust, allotment of property or other equivalent proof that the property where the solar system is installed is held on behalf of the individuals applying. All names, partnerships and titles listed as leaseholders shall be listed on application;

(c) the equipment, materials, and labor costs of a solar energy system the department certifies, documented in an itemized invoice. The invoice shall itemize the following costs including but not limited to permits, design, equipment, material, categorized fees, and installation labor of a solar energy system. The department may accept a purchase/installment agreement. For categorized fees please see Subsection C. of 3.3.14.14 NMAC. If an applicant cannot obtain an itemized invoice for a project installed in years 2020 through 2023, due to their contractor no longer being in business, the department may accept at its sole discretion evidence of project costs, such as evidence of total payments made and a certification that such payments did not include otherwise excluded costs under categorized fees please see Subsection C. of 3.3.14.14 NMAC; and

(d) for projects in areas subject to a building code authority's inspection: the permit number and issuance date, and date of successful inspection, if applicable, noted on a physical form, photo of inspection sticker, or a web-based report the applicable building code authority approves; and

(e) for projects in areas not subject to a building code authority's inspection, a certification from a licensed New Mexico electrician that the solar energy system was properly integrated into the applicable structure's electrical system.

(f) the solar energy system's design schematic and technical specifications.

(4) In addition to the requirements in the preceding paragraphs, if the application is for a solar thermal system, a completed solar thermal list form that includes the:

(a) manufacturer or supplier of system components and their model numbers;

(b) number of collectors;

(c) collector aperture dimensions;

(d) orientation of collectors by providing the azimuth angle from true south and tilt angle from horizontal;

(e) SRCC solar collector certification identification number; and

(f) manufacturer's specifications for collectors if collectors are unglazed;

(5) In addition to the requirements in the preceding paragraphs, if the application is for a photovoltaic system, a completed solar photovoltaic list form that includes the:

(a) manufacturer or supplier of major system components and their model numbers;

(b) number of modules;

(c) module rated direct current power output in watts under manufacturer's standard test conditions;

(d) collectors' orientation by providing the azimuth angle from true south and tilt angle from horizontal;

(e) total inverter capacity in kilowatts if an inverter is a part of the system;

(f) battery storage size and capacity in kilowatts and kilowatt-hours, if battery storage is a part of the system; and

(g) the building code authority's permit number and issuance date, and date of successful inspection, if applicable, noted on a physical form, photo of inspection sticker or a web-based report the applicable building code authority approves.

(6) Other information the department needs to evaluate the specific system type for certification.

[3.3.14.9 NMAC - Rp, 3.3.14.9 NMAC, 7/16/2024]

3.3.14.10 APPLICATION REVIEW PROCESS:

A. The department shall consider complete applications in the order received. If the department receives multiple applications on the same day that would cumulatively exceed the overall limit of state tax credit or supplemental state tax credit availability, the department shall certify the first application received for the last remaining tax credit.

B. The department shall review the application package to calculate the state tax credit or supplemental state tax credit; check the accuracy of the applicant's documentation; and determine whether the department shall certify the solar energy system. The department shall disapprove an application that is not complete, correct, or does not meet the approval criteria.

C. If the department finds the application package meets 3.3.14 NMAC's requirements and a state tax credit or supplemental state tax credit is available, the department shall certify the applicant's solar energy system and document the applicant as eligible for a state tax credit or supplemental state tax credit, as appropriate. A certificate issue for a system shall include the applicant's contact information, the last four digits of their social security number or EIN, system certification and the state tax credit amount. If a state tax credit or supplemental state tax credit is not available in the calendar year when the application was submitted, the department will notify the applicant that the program has reached the applicable aggregate tax credit certification cap and their application is not certified. The department provides notification of credit unavailability through written notification to the applicant.

D. The department shall report to the taxation and revenue department the information required to verify, process, and distribute each state tax credit or supplemental state tax credit by providing a copy of the department's certification notification.

E. The applicant may submit a revised application package to the department; however, the division shall place the resubmitted application in the review schedule as if it were a new application unless the application is disapproved because the annual cap has been reached.

F. If applicable, the department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for a disapproved project, but it shall be reviewed as if it were a new application.

[3.3.14.10 NMAC - Rp, 3.3.14.10 NMAC, 7/16/2024]

3.3.14.11 SAFETY, CODES AND STANDARDS:

A. Solar energy systems that the department may certify shall meet the following requirements:

(1) compliance with the latest adopted version of all applicable federal, state, and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time that the applicant submits the application package.

B. Solar thermal systems that the department may certify shall meet the following requirements:

(1) design, permitting and installation in full compliance with all applicable provisions of the latest New Mexico Plumbing Code 14.8.2 NMAC, the New Mexico Mechanical Codes 14.9.2 NMAC, Solar Energy Code 14.9.6 NMAC, the New Mexico General Construction Building Codes, 14.7.2 to 14.7.7 NMAC and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under Sections 3-17-6 and 3-18-6 NMSA 1978.

C. Photovoltaic systems that the department may certify shall meet the following requirement for design, permitting and installation in full compliance with all applicable provisions of the latest New Mexico Electrical Code 14.10.4 NMAC and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under Sections 3-17-6 and 3-18-6 NMSA 1978.

[3.3.14.11 NMAC - Rp, 3.3.14.11 NMAC, 7/16/2024]

3.3.14.12 MINIMUM SYSTEM SIZES, SYSTEM APPLICATIONS AND LISTS OF ELIGIBLE COMPONENTS:

A. Solar energy systems or their portions that the department may certify shall meet the following requirements:

(1) be primarily constituted by new equipment, components, and materials; except that the department may certify a system with recycled or reused components if the use of a used component would not adversely impact generation efficiency or overall system longevity and so long as it is not otherwise ineligible for certification;

(a) a system that is on a recreational vehicle, is mobile, does not serve a permanent end use energy load or is not permanently located in New Mexico;

(b) a system that is not connected to a structure or foundation and does not serve a permanent end use energy load or is not permanently located in New Mexico;

(c) a system or portion of a system having one or more components not manufactured on a regular basis by a business enterprise; and

(d) a system or portion of a system that replaces a system or portion of a system the department has certified in a previous application for a state tax credit.

B. The department may disapprove a system type, solar thermal collector type, photovoltaic module type or a solar energy system component if not listed in 3.3.14 NMAC for certification.

C. Solar thermal systems that the department may certify include:

(1) the system applications of solar domestic hot water, solar space heating, solar air heating, solar process heating, solar space cooling or combinations of solar thermal system applications listed in 3.3.14 NMAC;

(2) the collector types of flat plate, parabolic trough, and evacuated tube; and

(3) the listed component categories of collectors, pumps, fans, solar storage tanks, expansion tanks, valves, controllers, and heat exchangers.

D. A solar thermal system component that the department may certify is a photovoltaic system providing power for a solar thermal system component's incidental electricity needs. The department shall not certify such a photovoltaic system as a separate solar energy system eligible for a separate state tax credit.

E. Solar thermal systems or their components that the department shall not certify are as follows:

(1) a heating system or heating system components necessary for a swimming pool or a hot tub;

(2) equipment sheds, wall preparation, cabinetry, site-built enclosures, distribution piping and associated installation costs;

(3) a building design element used for passive solar space heating, space cooling, daylighting, or other environmental comfort attribute;

(4) a water quality distillation or processing system;

(5) in a combined system, the portions of the system not allowed to receive a state tax credit or for which the department shall not certify the system;

(6) A system that does not comply with the latest version of the New Mexico Solar Code.

F. Solar thermal systems that the department may certify shall meet the following requirements:

(1) minimum system size of 15 square feet of solar collector aperture area;

(2) a collector that is listed as certified by the SRCC by OG-100 collector certification or OG-300 system certification processes; and

(3) all components approved by an agency accredited by the American national standards institute, if available for that specific component category.

G. Photovoltaic systems that the department may certify include:

(1) the system applications of direct power without battery storage, utility grid interconnected without battery storage, utility grid interconnected with without battery storage, stand-alone with battery storage, stand-alone with utility backup capability and water pumping;

(2) the flat plate module types of crystalline, poly-crystalline or thin-film amorphous silicon;

(3) the listed component categories of modules, inverters, batteries, manufactured battery enclosures, charge controllers, power point trackers, well pumps, racks, sun tracking mechanisms, performance monitoring equipment, communications, datalogging or lightning protection; and

(4) disconnect components, safety components, standard electrical materials, and standard electrical hardware necessary for the assembly of the listed component categories into a complete, safe, and fully operational system.

H. Photovoltaic systems that the department may certify shall meet the following requirements:

(1) a minimum total array power output of 100 watts direct current at manufacturer's standard test conditions;

(2) all components listed and labeled by a nationally recognized testing laboratory, if such listing is available for that specific component category; and

(3) an agricultural enterprise photovoltaic system on a farm or ranch that is not connected to an electric utility transmission or distribution system.

I. Photovoltaic systems or their portions that the department shall not certify are as follows:

(1) a commercial or industrial photovoltaic system that is not connected to an electric utility transmission or distribution system;

(2) power equipment sheds, wall preparation, cabinetry, site-built battery enclosures, distribution wiring and associated installation costs;

(3) the drilling, well casing, storage tanks, distribution piping, distribution controls and associated installation costs of a water pumping system; and

(4) a packaged product powered by photovoltaic cells that an applicant purchased directly from a retail business enterprise, is not custom designed, and does not require a permit from the building code authority for installation, including gate or door openers, watches, calculators, walkway lights, and toys.

[3.3.14.12 NMAC – Rp, 3.3.14.13 NMAC, 7/16/2024]

3.3.14.13 CERTIFICATION:

A. The purpose of the department's certification program is to evaluate certification of complete solar energy systems for state tax credit or supplemental state tax credit eligibility that are composed of components and materials that are tested, certified, approved or listed, as applicable, by other organizations identified or referenced in 3.3.14 NMAC.

B. If an applicant has received a state tax credit or a supplemental state tax credit for a solar energy system under this part, the solar energy system may not be used to meet the requirements for other tax credits available under state law:

(1) If the 2021 sustainable building tax credit application uses a solar energy system to achieve the energy reduction performance rating, and that solar energy system was previously certified for the state tax credit or the supplemental state tax credit, the department shall disapprove the application for that portion of a2021 sustainable building tax credit;

(2) if an onsite solar system is used to meet the 2021 sustainable building tax credit requirements of either the rating system certification level or the energy reduction requirement, the applicant may not claim a state tax credit or supplemental state tax credit under this part;

(3) a solar energy system may receive a state tax credit or supplemental state tax credit new installation certification only once; and

(4) in the case of an expansion to an existing solar energy system that previously received certification as a new installation, the department may approve a subsequent certification, but any credit issued shall cover only the costs of the expansion portion of the solar energy system.

C. If, after the department has issued a certification, any of these requirements are found to be insufficient, the department may rescind the certification.

[3.3.14.13 NMAC - Rp, 3.3.14.14 NMAC, 7/16/2024]

3.3.14.14 CALCULATING THE SOLAR ENERGY SYSTEM COST:

A. A state tax credit or supplemental state tax credit shall be based on the equipment, materials, labor, design fees, permitting inspection fees, design review stamp and interconnections costs of a solar energy system the department has certified. Self-installed systems shall be eligible for these costs, except that self-installers may not claim their own labor but may claim labor they hire.

B. The equipment, materials, and labor costs of a solar energy system the department certifies shall be documented in an itemized invoice. An invoice shall itemize the following costs which include but are not limited to: permits, design, equipment, material, categorized fees, and installation labor of a solar energy system.

C. The cost of a solar energy system the department certifies shall be the net cost of acquiring the system and shall not include the following:

(1) expenses, including but not limited to:

(a) unpaid labor or the applicant's labor;

(b) unpaid equipment or materials;

(c) land costs or property taxes;

(d) costs of structural, surface protection and other functions in building elements that would be included in building construction if a solar energy system were not installed;

(e) mortgage, lease or rental costs of the residence, business or agricultural enterprise;

(f) legal and court costs;

(g) research fees or patent search fees;

(h) membership fees;

(i) financing costs or loan interest;

(j) marketing, promotional or advertising costs;

(k) repair, operating or maintenance costs;

(l) warranty or extended warranty costs;

(m)system resale costs;

(n) system visual barrier costs;

(o) adjacent structure modification costs for building structures such as portals, garages, or pergolas to hold solar panels, or costs for modification or roof repair to hold solar panels;

(p) vegetation maintenance costs including tree trimming;

(q) contractor or inspector travel, mileage, or overnight hotel stays;

(r) recreational vehicle or hot tub ports;

(s) trenching exceeding 50 feet;

(t) donations to food banks on the applicant's behalf;

(u) system critter guard;

(v) non-descriptive miscellaneous items; and

(w) excess battery storage that is not consistent with industry standards;

(2) income, including:

(a) payments the solar energy system contractor or other parties provide or receive that reduce the system cost, including rebates, discounts, grants and refunds, except for federal tax credits;

(b) services, benefits, or material goods the solar energy system contractor or other parties provide by the same or separate contract, whether written or verbal.

D. The department shall make the final determination of the net cost of a solar energy system the department certifies pursuant to 3.3.14 NMAC.

[3.3.14.14 NMAC - Rp, 3.3.14.15 NMAC, 7/16/2024]

3.3.14.15 CALCULATING THE STATE TAX CREDIT OR SUPPLEMENTAL STATE TAX CREDIT:

A. A state tax credit or supplemental state tax credit to an applicant for a solar energy system the department has certified shall not exceed:

(1) up to ten percent of the purchase and installation costs of a solar thermal or photovoltaic system as provided in 3.3.14.14 NMAC; and

(2) six thousand dollars ($6,000) per taxpayer per taxable year.

B. The taxation and revenue department shall make the final determination of the amount of a state tax credit.

[3.3.14.15 NMAC – N, 7/16/2024]

3.3.14.16 CLAIMING THE STATE TAX CREDIT OR SUPPLEMENTAL STATE TAX CREDIT:

A. An applicant shall apply for the state tax credit or supplemental state tax credit with the taxation and revenue department and provide the department certification and any other information the taxation and revenue department requires within 12 months following the calendar year in which the system was installed.

B. An applicant claiming a state tax credit or supplemental state tax credit shall not claim a state tax credit pursuant to another law for costs related to the same solar energy system costs.

[3.3.14.16 NMAC – 7/16/2024]

3.3.14.17 INSPECTION OF SOLAR ENERGY SYSTEMS:

A. The only inspection required through this application process for certification of an applicant's solar energy system are an inspection by the applicable building code authority for building, electrical, or mechanical code compliance, as applicable to the solar energy system type, if applicable. An applicant should be aware that their electric utility company may require additional inspections for photovoltaic systems that are interconnected to the distribution grid of that electric utility company. The applicant is solely responsible for compliance with such requirements.

B. For purposes of monitoring compliance with 3.3.14 NMC, the department or its authorized representative shall have the authority to inspect a solar system owned by an applicant who has submitted an application for certification, upon the department providing five days' notice to the applicant."

[3.3.14.17 NMAC - Rp, 3.3.14.19 NMAC, 7/16/2024]

3.3.14.18 [RESERVED]:

[3.3.14.18 NMAC - N, 8/25/2020; Repealed, 7/16/2024]

3.3.14.19 [RESERVED]:

[3.3.14.19 NMAC - N, 8/25/2020; A, 12/13/2022; Repealed, 7/16/2024]

PART 15-19: [RESERVED]

PART 20: RENTS AND ROYALTIES

3.3.20.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.3.20.1 NMAC - Rn, 3 NMAC 3.20.1, 12/14/00]

3.3.20.2 SCOPE:

This part applies to each resident of New Mexico and to each nonresident employed or engaged in the transaction of business in, into or from New Mexico or deriving any income from any property or employment in New Mexico.

[1/15/97; 3.3.20.2 NMAC - Rn, 3 NMAC 3.20.2, 12/14/00]

3.3.20.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.3.20.3 NMAC - Rn, 3 NMAC 3.20.3, 12/14/00]

3.3.20.4 DURATION:

Permanent.

[1/15/97; 3.3.20.4 NMAC - Rn, 3 NMAC 3.20.4, 12/14/00]

3.3.20.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.3.20.5 NMAC - Rn & A, 3 NMAC 3.20.5, 12/14/00]

3.3.20.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Income Tax Act.

[1/15/97; 3.3.20.6 NMAC - Rn, 3 NMAC 3.20.6, 12/14/00]

3.3.20.7 DEFINITIONS:

Reserved]

[1/15/97; 3.3.20.7 NMAC - Rn, 3 NMAC 3.20.7, 12/14/00]

3.3.20.8 INFORMATION RETURNS; RENTS AND ROYALTIES:

A. Persons paying rents and royalties from oil and gas properties located in New Mexico, who are required to file internal revenue service information return Form 1099-MISC on such payments shall file the rent and royalty information with the department in the manner stated below.

(1) Persons paying such rents and royalties on properties located in New Mexico are required to segregate the New Mexico rents and royalties paid from the rents and royalties paid everywhere and report only those rents and royalties from New Mexico properties to the department. The department will accept the information on magnetic media in lieu of paper returns. The magnetic media must comply with the internal revenue service reporting requirements for filing information returns.

(2) A person who has entered into an agreement with the internal revenue service identified as Consent For Internal Revenue Service To Release Tax Information will be deemed to have complied with the filing requirements of this section (3.3.20.8 NMAC).

B. The due date for information returns required to be filed with the department shall be June 15 of each year following the close of the previous calendar year.

[1/25/83, 12/29/89, 3/16/92, 1/15/97; 3.3.20.8 NMAC - Rn & A, 3 NMAC 3.20.8, 12/14/00]

3.3.20.9 INFORMATION RETURNS; OIL AND GAS WITHHOLDING:

For annual statements of withholding and information returns to be filed by remitters of oil and gas proceeds see Sections 3.3.5.7 through 3.3.5.15 NMAC promulgated under Section 7-3A-7 NMSA 1978.

[3.3.20.9 NMAC - N, 10/15/03]

PART 21: FISCAL YEARS AND ACCOUNTING METHODS [RESERVED]

PART 22: ADMINISTRATION [RESERVED]

PART 23: OPTIONAL CONTRIBUTION OF TAX REFUND [RESERVED]

PART 24-26: [RESERVED]

PART 27: LEGISLATIVE FINDING AND INTENT [RESERVED]

PART 28: SOLAR MARKET DEVELOPMENT TAX CREDIT

3.3.28.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Energy, Conservation and Management Division.

[3.3.28.1 NMAC - N, 7-1-06; A, 1-31-08]

3.3.28.2 SCOPE:

3.3.28 NMAC applies to the application and certification procedures for administration of the solar market development tax credit.

[3.3.28.2 NMAC - N, 7-1-06]

3.3.28.3 STATUTORY AUTHORITY:

3.3.28 NMAC is established under the authority of NMSA 1978, Sections 7-2-18.14 and 9-1-5(E).

[3.3.28.3 NMAC - N, 7-1-06; A, 1-31-08]

3.3.28.4 DURATION:

Permanent.

[3.3.28.4 NMAC - N, 7-1-06]

3.3.28.5 EFFECTIVE DATE:

July 1, 2006 unless a later date is cited at the end of a section.

[3.3.28.5 NMAC - N, 7-1-06]

3.3.28.6 OBJECTIVE:

3.3.28 NMAC's objective is to establish procedures for administering the certification program for the solar market development tax credit.

[3.3.28.6 NMAC - N, 7-1-06; A, 1-31-08]

3.3.28.7 DEFINITIONS:

A. "Applicant" means a New Mexico taxpayer that has installed a solar energy system and that desires to have the department certify the solar energy system pursuant to 3.3.28 NMAC so that the taxpayer may receive a state tax credit.

B. "Application package" means the application documents an applicant submits to the division for certification to receive a state tax credit.

C. "Array" means the collectors of a solar thermal system or the modules of a photovoltaic system.

D. "Balance of system" means portions of a solar energy system other than the array.

E. "Building code authority" means the New Mexico regulation and licensing department, construction industries division or the local government agency having jurisdiction for building, electrical and mechanical codes.

F. "Certified" or "certification" means department approval of a solar energy system, which makes the taxpayer owning the system eligible for a state tax credit.

G. "Collector" means the solar thermal system component that absorbs solar energy for conversion into heat.

H. "Collector aperture" means the area of a solar thermal collector that absorbs solar energy for conversion into usable heat.

I. "Component" means a solar energy system’s equipment and materials.

J. "Department" means the energy, minerals and natural resources department.

K. "Division" means the department’s energy conservation and management division.

L. "Energy system" means an engineered system that delivers solar energy to an end use by flow of fluid or electricity caused by energized components such as pumps, fans, inverters or controllers.

M. "Homeowner" means a taxpayer that may obtain a permit limited to construction of single-family dwellings, private garages, carports, sheds, agricultural buildings and fences.

N. "Innovative" means an alternative method or material that is not commercialized for use in a solar energy system.

O. "Install" or "installation" means the direct work of placing a solar energy system into service to operate and produce energy at the expected level for a system of its size.

P. "Interconnection" means connection of a photovoltaic system that an electric utility customer operates to that utility's distribution grid system.

Q. "Interconnection agreement" means an agreement allowing the applicant to interconnect a solar energy system of a specified type and size to a suitable electric transmission or distribution line.

R. "Module" means the photovoltaic system component that absorbs sunlight for conversion into electricity.

S. "New" means the condition of being recently manufactured and not used previously in any installation.

T. "Non-residential" means a business or agricultural enterprise.

U. "OG" means operating guidelines that the solar rating and certification corporation has or will establish including system performance or component characteristics the SRCC defines in its directory. Operating guidelines shall be from the directory in effect on July 1, 2006 and all successive revisions.

V. "Photovoltaic system" means an energy system that collects or absorbs sunlight for conversion into electricity.

W. "Portable" means not permanently connected to a residence, business or agricultural enterprise or connected to a mobile vehicle that is a part of a residence, business or agricultural enterprise.

X. "Solar collector" means a solar thermal collector or photovoltaic module.

Y. "Solar market development tax credit" means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.

Z. "Solar energy system" means a solar thermal system or photovoltaic system.

AA. "Solar storage tank" means a tank provided as a component in a solar thermal system that is not heated by electricity or a heating fuel.

BB. "Solar thermal system" means an energy system that collects or absorbs solar energy for conversion into heat for the purposes of space heating, space cooling or water heating.

CC. "SRCC" means the solar rating and certification corporation.

DD. "Standard test conditions" means the environmental conditions under which a manufacturer tests a photovoltaic module for power output, which are a

photovoltaic cell temperature of 25 degrees celsius and solar insolation of 1000 watts per square meter on the photovoltaic cell surface.

EE. "State tax credit" means the solar market development tax credit.

FF. "Taxpayer" means the owner of a solar energy system and the residence, business or agricultural enterprise where the solar energy system is located who applies for certification of an operating solar energy system in order to receive a state tax credit.

[3.3.28.7 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

3.3.28.8 GENERAL PROVISIONS:

A. Only a New Mexico taxpayer having purchased and installed an operating solar energy system the department has certified is eligible for a state tax credit.

B. A corporation shall not be eligible for certification of a solar energy system the corporation owns under 3.3.28 NMAC's requirements. A corporation may install a solar energy system that complies with 3.3.28 NMAC's requirements and sell the solar energy system in a residence, business or agricultural enterprise to a taxpayer. If by this sale the taxpayer becomes the full owner of both the solar energy system and the residence, business or agricultural enterprise, and complies with 3.3.28 NMAC's requirements, that taxpayer is eligible for certification of that solar energy system.

C. A taxpayer owning a solar energy system the department certifies shall locate that system at the residence, business or agricultural enterprise that taxpayer owns. The taxpayer may rent a residence, business or agricultural enterprise that the taxpayer owns to another entity.

D. The annual aggregate amounts of the state tax credit available to taxpayers owning certified solar energy systems is limited to $2,000,000 for solar thermal systems and $3,000,000 for photovoltaic systems per calendar year. When the $2,000,000 limit for solar thermal systems or the $3,000,000 limit for photovoltaic systems is reached based on the total of taxpayers certified, the department will no longer certify taxpayers, but will accept them for future consideration in the next year, except for the last taxable year when the state tax credit is in effect. The division shall keep a record of the order of receipt of all application packages.

E. In the event of a discrepancy between a requirement of 3.3.28 NMAC and an existing New Mexico regulation and licensing department or New Mexico taxation and revenue department rule promulgated prior to 3.3.28 NMAC's adoption, the existing rule shall govern.

[3.3.28.8 NMAC - N, 7-1-06; A, 1-31-08]

3.3.28.9 APPLICATION:

A. To apply for a state tax credit an applicant shall submit an application package to the division. An applicant may obtain a state tax credit application form and system installation form from the division.

B. An application package shall include a completed state tax credit application form and written attachments for a solar thermal system or photovoltaic system. The applicant shall submit the state tax credit application form and any attachments required at the same time as a complete application package. An applicant shall submit one application package for each solar energy system. All material submitted in the application package shall be capable of being provided on 8½-inch x 11-inch paper.

C. The application package shall meet 3.3.28 NMAC's requirements. If an application package fails to meet a requirement, the department shall disapprove the application.

D. The completed application form shall consist of the following information:

(1) the taxpayer's name, mailing address, telephone number and social security number;

(2) the address where the solar energy system is located, if located at a residence, business or agricultural facility or, a location description if located at an agricultural enterprise;

(3) the solar energy system's type and description;

(4) the date the solar energy system started continuous operation or that an upgrade to an existing system became operational, if applicable;

(5) if a contractor installed the solar energy system, the contractor's name, address, telephone number, license category and license number;

(6) acknowledgement that the homeowner installed the solar energy system; if applicable;

(7) the net cost of equipment, materials and labor of the solar energy system, excluding the expenses and income listed in 3.3.28 NMAC;

(8) a statement that the applicant signed and dated, which may be a form of electronic signature if approved by the department, agreeing that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge;

(b) applicant has read the certification requirements contained in 3.3.28 NMAC;

(c) applicant understands that there are annual aggregate state tax credit limits in place for solar thermal systems and photovoltaic systems;

(d) applicant understands that the department must certify the solar energy system documented in the application package before becoming eligible for a state tax credit;

(e) applicant agrees to make any changes the department requires to the solar energy system for compliance with 3.3.28 NMAC; and

(f) to ensure compliance with 3.3.28 NMAC applicant agrees to allow the division or its authorized representative to inspect the solar energy system that is described in the application package at any time from the application package's submittal to three years after the department has certified the solar energy system, upon the division providing a minimum of five days notice to the applicant; and

(9) a project number the division assigns to the application.

E. The application form shall request the following as optional information provided by the applicant:

(1) taxpayer's email address; and

(2) contractor's email address.

F. The application form shall include optional selections where the applicant can indicate interest in allowing the department to take the following actions:

(1) adding energy monitoring equipment to the solar energy system;

(2) conducting an analysis of solar energy system operation and performance; or

(3) conducting an analysis of taxpayer's utility bill records.

G. The application package shall consist of the following information provided as attachments:

(1) a copy of a current property tax bill to the taxpayer for the residence, business or agricultural enterprise where the solar energy system is located;

(2) a copy of the invoice of itemized equipment and labor costs for the solar energy system;

(3) a copy of the solar energy system's design schematic and technical specifications as described in 3.3.28 NMAC;

(4) a photographic record of the solar energy system after installation is completed;

(5) a completed system installation form;

(6) a completed taxpayer and contractor statement of understanding that shall include 3.3.28.19 NMAC;

(7) if application is for a solar thermal system, a completed solar thermal list form that includes the:

(a) manufacturer or supplier of system components and their model numbers;

(b) number of collectors;

(c) collector aperture dimensions;

(d) orientation of collectors by providing the azimuth angle from true south and tilt angle from horizontal;

(e) SRCC solar collector certification identification number or, if SRCC has not certified the collector and the application package is submitted on January 1, 2007 or later but before January 1, 2010, a copy of the application for solar collector certification form the manufacturer has submitted to the SRCC and report status of SRCC certification process;

(f) a description of the freeze protection;

(g) a description of overheating protection;

(h) thermal storage fluid or material and its volume, if thermal storage is a part of the system and if the thermal storage does not have energy provided from a non-solar or non-renewable source; and

(i) manufacturer's specifications for collectors, if collectors are unglazed;

(8) if application is for a photovoltaic system, a completed solar photovoltaic list form that includes the:

(a) manufacturer or supplier of major system components and their model numbers;

(b) number of modules;

(c) module rated direct current power output in watts under manufacturer's standard test conditions;

(d) collectors' orientation by providing the azimuth angle from true south and tilt angle from horizontal;

(e) inverter capacity in kilowatts, if an inverter is a part of the system;

(f) battery storage capacity in kilowatt-hours, if battery storage is a part of the system; and

(g) a copy of the signature and specifications pages of the fully executed interconnection agreement with the electric utility if the photovoltaic system is interconnected to a utility transmission line or distribution system; and

(9) other information the department needs to evaluate the specific system type for certification.

H. The completed system installation form shall include the following information:

(1) printed name of the taxpayer who is identified on the application form,

(2) printed name, title and telephone number of the contractor's authorized representative, if applicable, who approves the system installation form;

(3) printed name, title and telephone number of the building code authority's authorized representative, if applicable, who approves the system installation form;

(4) date on which solar energy system installation was complete and ready to operate;

(5) if a contractor installed the solar energy system, a statement that the contractor's authorized representative has signed and dated, which may be a form of electronic signature if approved by the department, agreeing that:

(a) the solar energy system was installed in full compliance with all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time of installation;

(b) contractor has read 3.3.28 NMAC's certification requirements;

(c) the date on which the solar energy system was ready to operate;

(d) the installed solar energy system will work properly with regular maintenance; and

(e) contractor provided written operations and maintenance instructions to the applicant and posted a one-page summary of these instructions in a sheltered

accessible location acceptable to the taxpayer and which is near or at the solar energy system's array or balance of system components;

(6) a statement that the building code authority's authorized representative has signed and dated, which may be a form of electronic signature if approved by the department, that the solar energy system was installed in full compliance with all applicable codes; and

(7) if the applicant is unable to obtain a signed and dated statement from the building code authority's authorized representative on the system installation form, then the applicant may provide one of the following instead:

(a) a photograph or copy of the permit tag clearly identifying the building code authority's authorized representative's signature, the date and the permit number;

(b) an official document from the building code authority that includes the:

(i) agency's name;

(ii) authorized representative's name, title, telephone number and signature;

(iii) date of authorized representative's signature; and

(iv) permit number; or

(c) a web-based application the building code authority approves.

I. The division shall return an incomplete application to the applicant.

[3.3.28.9 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

3.3.28.10 APPLICATION REVIEW PROCESS:

A. The department shall consider applications in the order received, according to the day they are received, but not the time of day. The department gives applications received on the same day equal consideration. If the department approves applications received on the same day and the applications would exceed the overall limit of state tax credit availability, then the department divides the available state tax credit among those applications on a prorated, net solar energy system cost basis.

B. The division reviews the application package to calculate the state tax credit, checks accuracy of the applicant's documentation and determines whether the department certifies the solar energy system.

C. If the division finds that the application package meets 3.3.28 NMAC's requirements and a state tax credit is available, the department certifies the applicant's solar energy system and documents the taxpayer as eligible for a state tax credit. If a state tax credit is not available in the taxable year of certification of the solar energy system submitted in the application package, the division places the taxpayer on a waiting list for inclusion in the following taxable year, if a state tax credit remains available. The department provides approval through written notification to the applicant. The notification shall include the taxpayer's contact information, social security number, system certification number, net solar energy system cost eligible for the state tax credit, the state tax credit amount and waiting list status, if applicable.

D. The division reports to the taxation and revenue department the information required to verify, process, and distribute each state tax credit by providing a copy of the department's approval notification.

E. The applicant may submit a revised application package to the division. The division shall place the resubmitted application in the review schedule as if it were a new application.

F. The department disapproves an application that is not complete or correct or does not meet the approval criteria. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application.

[3.3.28.10 NMAC - N, 7-1-06; A, 1-31-08]

3.3.28.11 SAFETY, CODES AND STANDARDS:

A. Solar energy systems that the department may certify shall meet the following requirements:

(1) compliance with the latest adopted version of all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time that the applicant submits the application package;

(2) compliance with all applicable utility company or heating fuel vendor requirements, if the system being served with a solar energy system is also served by utility electricity or a heating fuel;

(3) compliance with the building code authority's structural design requirements, as applicable to new and existing structures upon which solar energy system components may be mounted and support structures of solar energy system components;

(4) permitted and inspected by the building code authority for building, electrical or mechanical code compliance, as applicable to the type of solar energy system installed; and

(5) a written final inspection approval obtained from the building code authority after the solar energy system's installation, as applicable to the solar energy system type, or alternative system approval as allowed by 3.3.28 NMAC.

B. The department may certify a solar energy system that a taxpayer who is also the homeowner of the residence at which the solar energy system is located has installed and shall not certify a solar energy system that the owner of a non-residential facility has installed.

C. Solar thermal systems that the department may certify shall meet the following requirements:

(1) if installed at a residence by a

(a) contractor, installation by a certified mechanical journeyman who is an employee of a company holding a valid New Mexico mechanical contractor license provided, however, that an apprentice may work under a validly certified journeyman's direct supervision;

(b) homeowner, installation by that homeowner who has met all the building code authority's requirements for obtaining a homeowner's permit, including passing a written examination for plumbing work the building code authority administers;

(2) if installed at a non-residential facility, installation by a certified mechanical journeyman who is an employee of a company holding a New Mexico mechanical contractor license provided, however, that an apprentice may work under a validly certified journeyman's direct supervision; and

(3) design, permitting and installation in full compliance with all applicable provisions of the New Mexico Plumbing Code (14.8.2 NMAC), the New Mexico Mechanical Codes (14.9.2 - 5 NMAC), Solar Energy Code 14.9.6 NMAC, the New Mexico General Construction Building Codes (14.7.2 - 8 NMAC) and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under NMSA 1978, Sections 3-17-6 and 3-18-6.

D. Photovoltaic systems that the department may certify shall meet the following requirements:

(1) if installed at a residence by a:

(a) contractor, installation by a certified electrical journeyman who is an employee of a company holding a valid New Mexico electrical contractor license

provided, however, that an apprentice may work under a validly certified journeyman's direct supervision; or

(b) homeowner, installation by that homeowner who has met all the building code authority's requirements for obtaining a homeowner's permit, including passing a written examination for electrical work the building code authority administers;

(2) if installed at a non-residential facility, installation by a certified electrical journeyman who is an employee of a company holding a New Mexico electrical contractor license provided, however, that an apprentice may work under a validly certified journeyman's direct supervision; and

(3) design, permitting and installation in full compliance with all applicable provisions of the New Mexico Electrical Code (14.10.4 NMAC) and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under NMSA 1978, Sections 3-17-6 and 3-18-6.

[3.3.28.11 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

3.3.28.12 SOLAR COLLECTOR AND MODULE ORIENTATION AND SUN EXPOSURE:

A. A solar energy system array the department certifies shall have an azimuth angle or sun exposure reduction due to shading or other factors that results in annual energy production of the total solar energy system having a combined derating of not more than 25 percent when compared to an ideal solar energy system at the same location that has an unshaded array tilt equal to local latitude and azimuth of true south. For cases in which the combined impact of orientation and sun exposure of an array is evaluated, the applicant shall estimate a derating using a department approved method or model.

B. A tracking array of a solar energy system that the department certifies shall have a mechanism to track the sun so that the array absorber surface consistently receives the sun's direct beam at all times when the direct beam of full sun is available, without requiring manual adjustment, except for a solar energy system having the following tracking array control features:

(1) automatic and intentional stowage of the array due to high velocity wind to avoid damage to the array and its support structure;

(2) automatic and intentional adjustment to off-direct-beam array orientations at low sun angles to optimize the solar energy system's annual energy production; or

(3) other automatic and intentional array control features that demonstrate to the department's satisfaction that the solar energy system's annual energy production is optimized.

C. A solar energy system that the department certifies shall have an array and balance of system components that are automatically controlled to collect sunlight or solar heat and deliver to an end use, without requiring manual operation.

D. It is the applicant's sole responsibility to take action or meet the Solar Rights Act's requirements, if applicable.

[3.3.28.12 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

3.3.28.13 MINIMUM SYSTEM SIZES, SYSTEM APPLICATIONS AND LISTS OF ELIGIBLE COMPONENTS:

A. Solar energy systems or their portions that the department may certify shall meet the following requirements:

(1) be made of new equipment, components and materials;

(2) if installed by a contractor, have a written minimum two year warranty provided by the contractor on parts, equipment and labor with the following exceptions;

(a) the warranty provided by the contractor on each specific piece of equipment shall not exceed the duration and conditions of the warranty provided by the manufacturer of the equipment against defects in materials and workmanship;

(b) in the case of an expansion of an existing system, the warranty provided by the contractor shall be limited to cover only parts, equipment and labor directly related to the upgrade or expansion; and

(c) the owner of the solar energy system shall bear the actual cost of shipping the product for the repair and replacement.

(3) be a complete energy system that collects, converts and distributes solar energy to the residence, business or agricultural enterprise it serves, unless requirements are met for expansion of an existing solar energy system or replacement of an existing solar energy system's components;

(4) if an expansion of an existing solar energy system, end use annual energy production of the new system shall be increased in comparison to the existing system by the amount of the minimum system size requirement and the contractor or homeowner shall provide a written summary of the condition of each major component of the system;

(5) if replacement of one or more components of an existing system, end use annual energy production of the new system shall be increased in comparison to the system's operation under existing conditions and the contractor or homeowner shall

provide a written summary of the condition of each of the system's major components; and

(6) if a specialty or retrofit component is required for a complete solar energy system, then that component shall be included as part of the solar energy system that is eligible for department certification.

B. Solar energy systems or their portions that the department shall not certify are as follows:

(1) a system or portion of a system that uses non-solar or non-renewable sources in its operation, with the exception of the following:

(a) power necessary to provide for solar energy system components' incidental electricity needs; and

(b) non-solar or non-renewable sources that do not exceed 25 percent of the system's annual energy production;

(2) a system or portion of a system that would be present if the solar energy system was not installed;

(3) a system that increases an existing residence, business or agricultural enterprise's average annual energy consumption;

(4) a system that is mobile and does not serve a permanent end use energy load or is not permanently located in New Mexico;

(5) a system that is not connected to a structure or foundation and does not serve a permanent end use energy load or is not permanently located in New Mexico;

(6) a system or portion of a system having one or more components not manufactured on a regular basis by a business enterprise;

(7) a system installed on a recreational vehicle;

(8) a system not serving an end use energy load; or

(9) a system or portion of a system that replaces a system or portion of a system the department has certified in a previous application for a state tax credit.

C. The department may disapprove a system type, solar thermal collector type, photovoltaic module type or a solar energy system component if not listed in 3.3.28 NMAC for certification or may deem it innovative, if the applicant requests in the application package.

D. Solar thermal systems that the department may certify include:

(1) the system applications of solar domestic hot water, solar space heating, solar air heating, solar process heating, solar space cooling or combinations of solar thermal system applications listed in 3.3.28 NMAC;

(2) the collector types of flat plate, parabolic trough and evacuated tube; and

(3) the listed component categories of collectors, pumps, fans, solar storage tanks, expansion tanks, valves, controllers and heat exchangers.

E. A solar thermal system component that the department may certify is a photovoltaic system providing power for a solar thermal system component's incidental electricity needs. The department shall not certify such a photovoltaic system as a separate solar energy system eligible for a separate state tax credit.

F. Solar thermal systems or their components that the department shall not certify are as follows:

(1) a heating system or heating system components necessary for a swimming pool or a hot tub;

(2) equipment sheds, wall preparation, cabinetry, site-built enclosures, distribution piping and associated installation costs;

(3) a building design element used for passive solar space heating, space cooling, daylighting or other environmental comfort attribute;

(4) a water quality distillation or processing system;

(5) in a combined system, the portions of the system not allowed to receive a state tax credit or for which the department shall not certify the system;

(6) systems without adequate freeze protection;

(7) systems incorporating drain down as a freeze protection method; and

(8) systems without adequate overheating protection.

G. Solar thermal systems that the department may certify shall meet the following requirements:

(1) minimum system size of 15 square feet of solar collector aperture area;

(2) for solar domestic hot water systems installed at a residence or business, a minimum of 50 percent of the total domestic water heating load provided by solar energy;

(3) a collector that is:

(a) listed as certified by the SRCC by OG-100 collector certification or OG-300 system certification processes or, if collector is not certified by the SRCC and application package is submitted on January 1, 2007 or later but before January 1, 2010, submitted by the manufacturer to the SRCC for certification and is active in the SRCC certification process;

(b) if glazed, made of all-metal enclosures, absorber plates, fasteners and fittings; aperture glazing of tempered glass; and fiberglass or polyisocyanurate insulation; or

(c) if unglazed, made of durable materials having a minimum 12 year warranty period for full replacement; and

(4) all components approved by an agency accredited by the American national standards institute, if available for that specific component category.

H. Photovoltaic systems that the department may certify include:

(1) the system applications of direct power without battery storage, utility grid interconnected without battery storage, utility grid interconnected with battery storage, stand-alone with battery storage, stand-alone with utility backup capability and water pumping;

(2) the flat plate module types of crystalline, poly-crystalline or thin-film amorphous silicon;

(3) the listed component categories of modules, inverters, batteries, manufactured battery enclosures, charge controllers, power point trackers, well pumps, racks, sun tracking mechanisms, performance monitoring equipment, communications, datalogging or lightning protection; and

(4) disconnect components, safety components, standard electrical materials and standard electrical hardware necessary for the assembly of the listed component categories into a complete, safe and fully operational system.

I. Photovoltaic systems that the department may certify shall meet the following requirements:

(1) a minimum total array power output of 100 watts direct current at manufacturer’s standard test conditions; and

(2) all components listed and labeled by a nationally recognized testing laboratory, if such listing is available for that specific component category.

J. Photovoltaic systems or their portions that the department shall not certify are as follows:

(1) a commercial or industrial photovoltaic system other than an agricultural photovoltaic system on a farm or ranch that is not connected to an electric utility transmission or distribution system;

(2) power equipment sheds, wall preparation, cabinetry, site-built battery enclosures, distribution wiring and associated installation costs;

(3) the drilling, well casing, storage tanks, distribution piping, distribution controls and associated installation costs of a water pumping system; and

(4) a packaged product powered by photovoltaic cells that a taxpayer purchased directly from a retail business enterprise, is not custom designed, and does not require a permit from the building code authority for installation, including watches, calculators, walkway lights and toys.

[3.3.28.13 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

3.3.28.14 INNOVATIVE SOLAR ENERGY SYSTEMS:

A. The department may certify an innovative solar energy system.

B. A taxpayer shall request that the department review an application package as an innovative solar energy system.

C. The division shall conduct a design review of a solar energy system when the taxpayer has requested innovative status.

D. The department may determine that a solar energy system is innovative if

(1) it does not include a system application, component, packaged system, solar thermal collector type or photovoltaic module type that the department may certify; and

(2) the division approves the design.

E. Design approval by the division does not indicate department approval of actual system operation, energy production or code compliance.

F. The application package of an innovative solar energy system shall include attachments in addition to those required in other sections of 3.3.28 NMAC that fully describe the solar energy system, as follows:

(1) a request for innovative status and a description of the innovative feature;

(2) a design schematic detail of each system application, component, packaged system, solar thermal collector type or photovoltaic module type that makes the solar energy system innovative;

(3) a description of system operation; and

(4) an energy analysis of the solar energy system, including an estimate of annual energy production.

G. Innovative solar energy systems that the department may certify shall meet all requirements of 3.3.28 NMAC, with the exception of the specific system application, component, packaged system, solar thermal collector type or photovoltaic module type that is to be installed.

H. The department may approve an innovative component or system for inclusion on the department's list of certified components, if that component or system has been tested, certified, approved or listed by the applicable organization for the specific type of component or system and if such testing, certification, approval or listing is available. Upon the department listing a component or system as certified, subsequent applicants are not required to submit that component or system as an innovative system.

[3.3.28.14 NMAC - N, 7-1-06; A, 1-31-08]

3.3.28.15 CERTIFICATION:

A. The purpose of the department's certification program is to evaluate certification of complete solar energy systems for state tax credit eligibility that are comprised of components and materials that are tested, certified, approved, or listed, as applicable, by other organizations identified or referenced in 3.3.28 NMAC.

B. When a taxpayer has installed a solar energy system, submits an application package, and complies with 3.3.28 NMAC's certification requirements, then the solar energy system the taxpayer owns is eligible to receive department certification. The taxpayer shall submit a completed application package.

C. For purposes of monitoring compliance with 3.3.28 NMAC, the division or its authorized representative shall have the authority to inspect a solar energy system owned by a taxpayer who has submitted an application for certification, upon the division providing five days notice to the taxpayer.

[3.3.28.15 NMAC - N, 7-1-06]

3.3.28.16 CALCULATING THE SOLAR ENERGY SYSTEM COST:

A. A state tax credit shall be based on the equipment, materials and labor costs of a solar energy system the department has certified.

B. The equipment, materials and labor costs of a solar energy system the department certifies shall be documented in writing.

C. The cost of a solar energy system the department certifies shall be the net cost of acquiring the system and shall not include the following:

(1) expenses, including but not limited to:

(a) unpaid labor or the applicant's labor;

(b) unpaid equipment or materials;

(c) land costs or property taxes;

(d) costs of structural, surface protection and other functions in building elements that would be included in building construction if a solar energy system were not installed;

(e) mortgage, lease or rental costs of the residence, business or agricultural enterprise;

(f) legal and court costs;

(g) research fees or patent search fees;

(h) fees for use permits or variances;

(i) membership fees;

(j) financing costs or loan interest;

(k) marketing, promotional or advertising costs;

(l) repair, operating, or maintenance costs;

(m) extended warranty costs;

(n) system resale costs;

(o) system visual barrier costs;

(p) adjacent structure modification costs; and

(q) vegetation maintenance costs;

(2) income, including:

(a) payments the solar energy system contractor or other parties provide that reduce the system cost, including rebates, discounts and refunds with the exception of federal, state and local government and utility company solar incentives;

(b) services, benefits or material goods the solar energy system contractor or other parties provide by the same or separate contract, whether written or verbal; and

(c) other financial incentives provided for solar energy system installation, if applicable.

D. The division shall make the final determination of the net cost of a solar energy system the department certifies pursuant to 3.3.28 NMAC.

[3.3.28.16 NMAC - N, 7-1-06; A, 1-31-08]

3.3.28.17 CALCULATING THE STATE TAX CREDIT:

A. A state tax credit to a taxpayer for a solar energy system the department has certified shall not exceed:

(1) 10 percent of the net solar energy system cost as provided in 3.3.28.16 NMAC; and

(2) $9000.

B. The total sum of the state tax credit and the federal tax credit shall not exceed 10 percent of the net solar energy system cost.

C. The taxation and revenue department shall make the final determination of the amount of a state tax credit.

[3.3.28.17 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

3.3.28.18 CLAIMING THE STATE TAX CREDIT:

A. To claim the state tax credit, a taxpayer owning a solar energy system that the department has certified shall submit to the taxation and revenue department a claim, which shall consist of the notification the department issued to the taxpayer, a

completed claim form the taxation and revenue department has approved and any other information the taxation and revenue department requires.

B. If the amount of state tax credit claimed exceeds the taxpayer's individual income tax liability, the taxpayer may carry the excess forward for up to 10 consecutive taxable years.

C. A taxpayer who has both a carryover state tax credit and a new state tax credit derived from a certified solar energy system in the taxable year for which the return is being filed shall first apply the amount of carryover state tax credit against the income tax liability. If the amount of liability exceeds the carryover state tax credit, then the taxpayer may apply the current year credit against the liability.

D. A taxpayer claiming a state tax credit shall not claim a state tax credit pursuant to another law for costs related to the same solar energy system costs.

[3.3.28.18 NMAC - N, 7-1-06; A, 1-31-08]

3.3.28.19 CONSUMER INFORMATION:

A. If a contractor installs the solar energy system, the contractor shall inform the taxpayer about system design, installation, performance, operation and maintenance by providing the following:

(1) prior to system installation, a summary of the specific system type that meets all 3.3.28 NMAC's requirements, the system's capacity or size, and the system's estimated annual energy production;

(2) upon completion of system installation, written operation and maintenance instructions, including how to conduct simple diagnostic observations and tests to determine if the solar energy system is working properly to produce energy;

(3) upon completion of system installation, a written summary of operation and maintenance instructions on one page, posted at an accessible location acceptable to the taxpayer and that is near or at the solar energy system's array or balance of system components; and

(4) upon completion of system installation, written warranties in effect for equipment and contractor's labor, including their start and end dates and telephone, address and website contact information, as applicable, for honoring or extending warranties.

B. If the solar energy system is a solar thermal system, the following information shall be displayed:

(1) pump or fan status by a visual indicator, as applicable;

(2) outlet temperature of the collector loop;

(3) if a liquid collector, the collector loop's pressure; and

(4) the solar storage tank's temperature, if applicable.

C. If the solar energy system is a photovoltaic system, the following information shall be displayed:

(1) for all photovoltaic systems, a visual indicator for operating status;

(2) for an electric utility interconnected system without batteries

(a) daily and cumulative energy production in kilowatt-hours alternating current of the inverter output; and

(b) instantaneous power output in kilowatts alternating current of the inverter output;

(3) for an electric utility interconnected system with batteries, a method to enable real-time evaluation of system power or energy production; and

(4) for a stand-alone system with battery storage

(a) voltage and amperes of module array; and

(b) battery storage level.

[3.3.28.19 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

3.3.28.20 INSPECTION OF SOLAR ENERGY SYSTEMS:

A. The inspections required through the application process for certification of a taxpayer's solar energy system are:

(1) inspection by the building code authority for building, electrical or mechanical code compliance, as applicable to the solar energy system type; and

(2) inspection for compliance with electric utility company requirements for photovoltaic systems that are interconnected to the distribution grid of that electric utility company, if applicable.

B. For purposes of inspecting the solar energy system's installation, the division or its authorized representative shall have the right to inspect a solar energy system an applicant owns and the department has certified, within three years after the

department's certification, upon the division providing a minimum of five days notice to the taxpayer.

[3.3.28.20 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

PART 29: SUSTAINABLE BUILDING TAX CREDIT FOR RESIDENTIAL BUILDINGS

3.3.29.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[3.3.29.1 NMAC - N, 10-31-07]

3.3.29.2 SCOPE:

3.3.29 NMAC applies to the application and certification procedures for administration of the sustainable building tax credit for sustainable residential buildings.

[3.3.29.2 NMAC - N, 10-31-07]

3.3.29.3 STATUTORY AUTHORITY:

3.3.29 NMAC is established under the authority of NMSA 1978, Section 7-2-18.19 and NMSA 1978, Section 9-1-5.

[3.3.29.3 NMAC - N, 10-31-07]

3.3.29.4 DURATION:

Permanent.

[3.3.29.4 NMAC - N, 10-31-07]

3.3.29.5 EFFECTIVE DATE:

October 31, 2007, unless a later date is cited at the end of a section.

[3.3.29.5 NMAC - N, 10-31-07]

3.3.29.6 OBJECTIVE:

3.3.29 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the sustainable building tax credit for sustainable residential buildings.

[3.3.29.6 NMAC - N, 10-31-07]

3.3.29.7 DEFINITIONS:

A. "Annual cap" means the annual total amount of the sustainable building tax credit available to taxpayers owning sustainable residential buildings.

B. "Applicant" means a taxpayer who owns a sustainable residential building in New Mexico and who desires to have the department issue a certificate of eligibility for a sustainable building tax credit.

C. "Application package" means the application documents an applicant submits to the division to receive a certificate of eligibility for a sustainable building tax credit.

D. "Build green New Mexico certification" means the verification by a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

E. "Build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico.

F. "Certification" means build green New Mexico certification, LEED certification or energy star qualified.

G. "Certificate of eligibility" means the document, with a unique identifying number that specifies the amount and taxable year for the approved sustainable building tax credit.

H. "Certification level" means one of the following:

(1) LEED-H silver or build green New Mexico silver;

(2) LEED-H gold or build green New Mexico gold; or

(3) LEED-H platinum or build green New Mexico emerald.

I. "Department" means the energy, minerals and natural resources department.

J. "Division" means the department’s energy conservation and management division.

K. "Energy reduction requirements" means has achieved a HERS index of 60 or lower.

L. "Energy star" means a joint program of the United States environmental protection agency and the United States department of energy that qualifies homes based on a predetermined threshold of energy efficiency.

M. "Energy star qualified manufactured home" means a home that an in state or out of state energy star certified plant has certified as being designed, produced and installed in accordance with energy star's guidelines.

N. "HERS" means home energy rating system as developed by RESNET.

O. "HERS index" means a relative energy use index, where 100 represents the energy use of a home built to a HERS reference house and zero indicates that the proposed home uses no net purchased energy.

P. "LEED" means the most current leadership in energy and environmental design green building rating system guidelines the U. S. green building council developed and adopted.

Q. "LEED certification" means the verification by the U.S. green building council, or a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the LEED-H rating system resulting in the issuance of a certification document.

R. "LEED-H" means the LEED rating system for homes.

S. "Manufactured housing" means a multisectioned home that is:

(1) a manufactured home or modular home;

(2) a single-family dwelling with a heated area of at least thirty-six feet by twenty feet and a total area of at least eight-hundred sixty-four square feet;

(3) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the housing and urban development zone code 2 or New Mexico construction codes up to the date of the unit's construction; and

(4) installed consistent with the Manufactured Housing Act and rules adopted pursuant to that act relating to permanent foundations.

T. "Person" does not include state, local government, public school district or tribal agencies.

U. "Qualified occupied square footage" means the occupied spaces of the building as determined by:

(1) the United States green building council for those buildings obtaining LEED certification;

(2) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; or

(3) the United States environmental protection agency for energy star certified manufactured homes.

V. "Rating system" means the LEED-H rating system, the build green New Mexico rating system or the energy star program for manufactured housing.

W. "RESNET" means the residential energy services network, an industry not-for-profit membership corporation and national standards making body for building energy efficiency rating systems.

X. "Solar market development tax credit" means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.

Y. "Sustainable building tax credit" means the personal income tax credit the state of New Mexico issues to an applicant for a sustainable residential building.

Z. "Sustainable residential building" means:

(1) a building used as a single-family residence that meets the energy reduction requirements and has been awarded:

(a) LEED-H certification at the certification level of silver, gold or platinum; or

(b) build green New Mexico certification at the silver, gold or emerald certification level; or

(2) an energy star qualified manufactured home.

AA. "Taxpayer" means any individual subject to the tax imposed by the Income Tax Act, NMSA 1978, Section 7-2-1 et seq.

BB. "Taxpayer identification number" means the taxpayer’s nine digit social security number.

CC. "Tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

DD. "Verifier" means an entity the department approves to provide certifications for homes under the build green New Mexico or LEED-H rating systems.

[3.3.29.7 NMAC - N, 10-31-07; A, 1-1-14]

3.3.29.8 GENERAL PROVISIONS:

A. A person who is the owner of a building in New Mexico that has been constructed, renovated or manufactured to be a sustainable residential building and that receives certification on or after January 1, 2007 may receive a certificate of eligibility for a sustainable building tax credit. A subsequent purchaser of a sustainable residential building may receive a certificate if no tax credit has previously been claimed for the building.

B. The annual total amount of the sustainable building tax credit available to taxpayers owning sustainable residential buildings is limited to $4,000,000. When the $4,000,000 cap for sustainable residential buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

(2) the department may issue certificates of eligibility to applicants who meet the requirements for the sustainable residential buildings tax credit in a taxable year when applications for the sustainable residential buildings tax credit exceed the annual cap and applications for the sustainable commercial buildings tax credit are under the annual cap for commercial buildings by April 30 of any year in which the tax credit is in effect; or

(3) if no sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the sustainable building tax credit is in effect.

C. No more than $1,250,000 of the $4,000,000 annual cap is for manufactured housing.

D. In the event of a discrepancy between a requirement of 3.3.29 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.3.29 NMAC’s adoption, the existing rule governs.

[3.3.29.8 NMAC - N, 10-31-07; A, 1-1-14]

3.3.29.9 VERIFIER ELIGIBILITY:

A. The division reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including:

(a) experience in green home building services;

(b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;

(c) a method of auditing the certification process to maintain adequate stringency; and

(d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;

(3) the verifier can identify the geographic area being served; and

(4) the verifier provides a statement that expresses a commitment to promoting energy-efficient green building with the highest standard of excellence.

B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

C. The verifier shall notify the division 30 calendar days prior to making changes to its certification process or rating systems.

D. The department may rescind an existing verifier's approval, if it determines that the above criteria are not being met. The department notifies the verifier of the reasons for disapproving or rescinding eligibility.

(1) The division shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the division's notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal

from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing concludes.

[3.3.29.9 NMAC - N, 10-31-07]

3.3.29.10 APPLICATION FOR THE SUSTAINABLE BUILDING TAX CREDIT:

A. In order to obtain the sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the division on a division-developed form. An applicant may obtain an application form from the division.

B. An application package shall include a completed application form and attachments as specified on the application form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable residential building. The applicant shall submit all material in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the application incomplete.

C. The completed application form shall consist of the following information:

(1) the applicant's name, mailing address, telephone number and taxpayer identification number;

(2) the name of the applicant's authorized representative;

(3) the ending date of the applicant's taxable year;

(4) the address of the sustainable residential building, including the property's legal description;

(5) whether the applicant was the building owner at time of certification or a subsequent purchaser;

(6) the qualified occupied square footage of the sustainable residential building;

(7) the rating system under which the sustainable residential building was certified;

(8) the certification level achieved, if applicable;

(9) the HERS index;

(10) the date of rating system certification;

(11) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, agreeing that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) applicant has read the requirements contained in 3.3.29 NMAC;

(c) if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market development tax credit;

(d) applicant understands that there are annual caps for the sustainable building tax credit;

(e) applicant understands that the division must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a sustainable building tax credit; and

(f) applicant understands that the department issues a certificate of eligibility for the taxable year in which the sustainable residential building was certified or, if the sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available; and

(12) a project number the division assigns to the tax credit application.

D. In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable residential building;

(2) a copy of the rating system certification form;

(3) a copy of the final certification review checklist that shows the points achieved, if applicable;

(4) a copy of a HERS certificate, from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software the internal revenue service lists as eligible for certification of the federal tax credit, showing the building has achieved a HERS index of sixty or lower; and

(5) other information the department needs to review the building project for the sustainable building tax credit.

[3.3.29.10 NMAC - N, 10-31-07; A, 1-1-14]

3.3.29.11 APPLICATION REVIEW PROCESS:

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package. The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application.

C. The division reviews the application package to calculate the maximum sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the sustainable building tax credit.

D. If an onsite solar system is used to meet the requirements of either the certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the division verifies that no person has applied for a solar market development tax credit for that solar system. If the division finds that a solar market development tax credit has been approved for that solar system, the division shall disapprove the application for the sustainable building tax credit. The applicant may submit a revised application package to the division. The division places the resubmitted application in the review schedule as if it were a new application.

E. If the division finds that the application package meets the requirements and a sustainable building tax credit is available, the department issues the certificate of eligibility for a sustainable building tax credit. If a sustainable building tax credit is partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year, until the last taxable year when the sustainable building tax credit is in effect. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, the sustainable building tax credit amount or amounts and the sustainable building tax credit's taxable year or years.

[3.3.29.11 NMAC - N, 10-31-07; A, 1-1-14]

3.3.29.12 CALCULATING THE TAX CREDIT:

A. The division calculates the maximum sustainable building tax credit based on the qualified occupied square footage of the sustainable residential building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

LEED-H silver or build green New Mexico silver:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by $5.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by $2.50
LEED-H gold or build green New Mexico gold:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by $6.85; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by $3.40
LEED-H platinum or build green New Mexico emerald:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by $9.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by $4.45
energy star manufactured housing:	
up to 3,000 square feet	equals the qualified square footage less than or equal to 3,000 multiplied by $3.00.

B. An applicant may receive both a sustainable building tax credit and a federal tax credit if the applicant is eligible for each tax credit.

C. The taxation and revenue department makes the final determination of the amount of the sustainable building tax credit.

[3.3.29.12 NMAC - N, 10-31-07; A, 1-1-14]

3.3.29.13 CLAIMING THE STATE TAX CREDIT:

A. To claim the sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department's issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.

B. If the amount of the sustainable building tax credit the applicant claims exceeds the applicant's income tax liability, the applicant may carry the excess forward for up to seven consecutive taxable years.

C. A taxpayer claiming a sustainable building tax credit shall not claim a tax credit pursuant to another law for the same sustainable residential building unless the other tax credit is applicable to systems that are unrelated to the sustainable building tax credit. In addition, a taxpayer claiming the sustainable building tax credit shall not claim the credit for the same sustainable building under both the Income Tax Act and the Corporate Income and Franchise Tax Act.

[3.3.29.13 NMAC - N, 10-31-07; A, 1-1-14]

PART 30: SUSTAINABLE BUILDING TAX CREDIT FOR COMMERCIAL BUILDINGS

3.3.30.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[3.3.30.1 NMAC - Rp, 3.3.30.1 NMAC, 1-1-14]

3.3.30.2 SCOPE:

3.3.30 NMAC applies to the application and certification procedures for administration of the sustainable building tax credit for sustainable commercial buildings.

[3.3.30.2 NMAC - Rp, 3.3.30.2 NMAC, 1-1-14]

3.3.30.3 STATUTORY AUTHORITY:

3.3.30 NMAC is established under the authority of NMSA 1978, Section 7-2-18.19 and NMSA 1978, Section 9-1-5.

[3.3.30.3 NMAC - Rp, 3.3.30.3 NMAC, 1-1-14]

3.3.30.4 DURATION:

Permanent.

[3.3.30.4 NMAC - Rp, 3.3.30.4 NMAC, 1-1-14]

3.3.30.5 EFFECTIVE DATE:

January 1, 2014, unless a later date is cited at the end of a section.

[3.3.30.5 NMAC - Rp, 3.3.30.5 NMAC, 1-1-14]

3.3.30.6 OBJECTIVE:

3.3.30 NMAC’s objective is to establish procedures for administering the program to issue a certificate of eligibility for the sustainable building tax credit for sustainable commercial buildings.

[3.3.30.6 NMAC - Rp, 3.3.30.6 NMAC, 1-1-14]

3.3.30.7 DEFINITIONS:

A. "Annual cap" means the annual aggregate amount of the sustainable building tax credit available to taxpayers owning sustainable commercial buildings.

B. "Applicant" means a taxpayer who owns a sustainable commercial building in New Mexico and who desires to have the department issue a certificate of eligibility for a sustainable building tax credit.

C. "Application package" means the application documents an applicant submits to the division to receive a certificate of eligibility for a sustainable building tax credit.

D. "Build green New Mexico certification" means the verification by a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

E. "Build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico.

F. "Building project" means a new construction or renovation project that will result in one or more sustainable commercial buildings.

G. "Building type" means the primary use of a building or section of a building as defined in target finder.

H. "Certificate of eligibility" means the document, with a unique identifying number that specifies the amount and taxable year for the approved sustainable building tax credit.

I. "Certification level" means one of the following:

(1) LEED-H silver or build green New Mexico silver;

(2) LEED-H gold or build green New Mexico gold; or

(3) LEED-H platinum or build green New Mexico emerald.

J. "Department" means the energy, minerals and natural resources department.

K. "Division" means the department’s energy conservation and management division.

L. "Energy reduction requirements":

(1) for a non-multi-family commercial building means beginning January 1, 2012, a 60 percent energy reduction based on the national average for that building type as published by the United States department of energy;

(2) for a multi-family dwelling unit means that it has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network.

M. "HERS" means home energy rating system as developed by RESNET.

N. "HERS index" means a relative energy use index, where 100 represents the energy use of a home built to a HERS reference house and zero indicates that the proposed home uses no net purchased energy.

O. "LEED" means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the U. S. green building council.

P. "LEED certification" means the U. S. green building council’s verification that a building project has met certain prerequisites and performance benchmarks or credits within each category of a LEED rating system resulting in the issuance of a certification document.

Q. "LEED-CI" means the LEED rating system for commercial interiors.

R. "LEED-CS" means the LEED rating system for the core and shell of buildings.

S. "LEED-EB" means the LEED rating system for existing buildings.

T. "LEED-NC" means the LEED rating system for new buildings and major renovations.

U. "LEED rating system" means one of the following:

(1) LEED-CI;

(2) LEED-CS;

(3) LEED-EB; or

(4) LEED-NC.

V. "LEED registration" means the notification to the U. S. green building council that a project is pursuing LEED certification.

W. "Most current" means the LEED rating system available and selected at the time of LEED registration.

X. "Person" does not include state, local government, public school district or tribal agencies.

Y. "Qualified occupied square footage" means the building's occupied spaces as determined by the U. S. green building council for those buildings obtaining LEED certification or the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification.

Z. "RESNET" means the residential energy services network, an industry not-for-profit membership corporation and national standards making body for building energy efficiency rating systems.

AA. "Solar market development tax credit" means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.

BB. "Sustainable building tax credit" means the personal income tax credit the state of New Mexico issues to an applicant for a sustainable commercial building.

CC. "Sustainable commercial building" means one of the following:

(1) a building that is registered with and certified by the U.S. green building council under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system at the certification level of silver, gold or platinum and that:

(a) achieves any prerequisite for and at least one point related to commissioning under the "energy and atmosphere" credits of LEED, if included in the applicable rating system; and

(b) has met the energy reduction requirements as substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development, or an alternative method the division approved pursuant to 3.3.30.12 NMAC;

(2) a building used as multi-family residences where all dwelling units have met the energy reduction requirements and the building has been awarded:

(a) LEED-H certification at the certification level of silver, gold or platinum; or

(b) build green New Mexico certification at the certification level of silver, gold or emerald.

DD. "Target finder" means the web-based program developed by the United States environmental protection agency to establish an energy goal in kilo British thermal units per square foot per year for predetermined building types.

EE. "Taxpayer" means an individual subject to the tax imposed by the Income Tax Act, NMSA 1978, Section 7-2-1 *et seq*.

FF. "Taxpayer identification number" means the taxpayer's nine digit social security number.

GG. "Tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

HH. "Verifier" means an entity the department approves to provide certification for homes under the build green New Mexico or LEED-H rating systems.

[3.3.30.7 NMAC - Rp, 3.3.30.7 NMAC, 1-1-14]

3.3.30.8 GENERAL PROVISIONS:

A. A person who is the owner of a building in New Mexico that has been constructed or renovated to be a sustainable commercial building and that receives certification on or after January 1, 2007 may receive a certificate of eligibility for a sustainable building tax credit.

B. The annual total amount of the sustainable building tax credit available to taxpayers owning sustainable commercial buildings is limited to $1,000,000. When the $1,000,000 limit for sustainable commercial buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

(2) if no sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the sustainable building tax credit is in effect.

C. The department may issue certificates of eligibility to applicants who meet the requirements for the sustainable residential buildings tax credit in a taxable year when applications for the sustainable residential buildings tax credit exceed the annual cap and applications for the sustainable commercial buildings tax credit are under the

annual cap for commercial buildings by April 30 of any year in which the tax credit is in effect.

D. In the event of a discrepancy between a requirement of 3.3.30 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.3.30 NMAC's adoption, the existing rule governs.

[3.3.30.8 NMAC - Rp, 3.3.30.8 NMAC, 1-1-14]

3.3.30.9 VERIFIERS'S ELIGIBILITY:

A. The division reviews the qualification for verifiers of the build green New Mexico or LEED-H certifications based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including;

(a) experience in green home building services;

(b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;

(c) a method of auditing the certification process to maintain adequate stringency; and

(d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;

(3) the verifier can identify the geographic area being served; and

(4) the verifier provides a statement that expresses a commitment to promoting energy efficient green building with the highest standard of excellence.

B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

C. The verifier shall notify the division 30 calendar days prior to making changes to its certification process or rating systems.

D. The department may rescind an existing verifier's approval, if it determines that the above criteria are not being met. The department notifies the verifier of the reasons for disapproving or rescinding eligibility.

(1) The division shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the division's notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing concludes.

[3.3.30.9 NMAC - N, 1-1-14]

3.3.30.10 APPLICATION FOR THE SUSTAINABLE BUILDING TAX CREDIT:

A. In order to receive a certificate of eligibility for the tax credit, the applicant must submit an application for the sustainable building tax credit after the building is completed, the applicant has fulfilled all other requirements and the total annual cap for the sustainable building tax credit has not been met. An applicant may obtain an application form from the division.

B. An application package shall include a completed application form and attachments as specified on the form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable commercial building. The applicant shall submit all material in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the application incomplete.

C. An applicant shall submit a complete application package to the division no later than April 30 of the calendar year for which the applicant seeks the sustainable building tax credit. If an applicant does not submit a complete application package by April 30, any remaining sustainable commercial building tax credit funds under the cap may be used in that taxable year for completed sustainable residential building applications. The division may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

D. The completed application form shall consist of the following information:

(1) the applicant's name, mailing address, telephone number and taxpayer identification number;

(2) the address of the sustainable commercial building, including the property's legal description;

(3) whether the applicant was the building owner at time of certification or a subsequent purchaser;

(4) the rating system under which the sustainable commercial building was certified;

(5) the certification level achieved;

(6) for non-multi-family commercial buildings, the kilo British thermal units per square foot per year anticipated as demonstrated in the energy model submitted for LEED certification, broken out by all energy sources and including the percent of use for each energy source;

(7) for non-multi-family commercial buildings, revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than 10 percent;

(8) the qualified occupied square footage of the sustainable commercial building;

(9) the date of certification;

(10) for multi-family commercial buildings, the HERS index; and

(11) a statement signed and dated by the applicant or an authorized representative of the applicant, which may be a form of electronic signature if approved by the department, asserting that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) all inputs for the energy reduction requirements are the same as the inputs for the energy model;

(c) if an onsite solar system is used to meet the requirements of either the certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market development tax credit;

(d) applicant understands that there are annual caps in place for the sustainable building tax credit;

(e) applicant understands that the division must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a sustainable building tax credit; and

(f) applicant understands that the department issues a certificate of eligibility for the tax year in which the sustainable commercial building was certified or if the applicant submitted the application after April 30 or the sustainable building tax credit's annual cap has been reached for the next tax year in which funds are available.

E. In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a current warranty deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable commercial building;

(2) a copy of the rating system certification form;

(3) a copy of the final LEED project info or project summary that shows the building's square footage;

(4) a copy of the final certification review LEED checklist that shows the LEED credits achieved;

(5) for non-multi-family commercial buildings, a copy of the final LEED optimize energy performance template or templates, signed by a New Mexico licensed design professional, that the applicant submitted for LEED certification including the results of the energy model that shows the kilo British thermal units per square foot per year for the sustainable commercial building;

(6) for non-multi-family commercial buildings, revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than 10 percent; and

(7) a copy of the final LEED enhanced commissioning template, if available under the applicable LEED rating system;

(8) for multi-family commercial buildings, a copy of a HERS certificate from a RESNET (or a rating network that has the same standards as RESNET accredited HERS provider, using software the internal revenue service lists as eligible for certification of the federal tax credit, showing the HERS index achieved, if applicable; and

(9) other information the department needs to review the building project for the sustainable building tax credit.

[3.3.30.10 NMAC - Rp, 3.3.30.11 NMAC, 1-1-14]

3.3.30.11 APPLICATION REVIEW PROCESS:

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package.

C. The division reviews the application package to calculate the maximum sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the sustainable building tax credit.

D. If an onsite solar system is used to meet the requirements of either the certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the division verifies that no person has applied for a solar market development tax credit for that solar system. If the division finds that a solar market development tax credit has been approved for that solar system, the division shall disapprove the application for the sustainable building tax credit. The applicant may submit a revised application package to the division. The division places the resubmitted application in the review schedule as if it were a new application.

E. If the division finds that the application package meets the requirements and funds for a sustainable building tax credit are available, the department issues the certificate of eligibility for a sustainable building tax credit. If funds for a sustainable building tax credit are partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year in which funds are available, until the last taxable year when the sustainable building tax credit is in effect. The department provides approval through written notification to the applicant upon the application's completed review. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the sustainable building tax credit amount or amounts and the sustainable building tax credit's taxable year or years.

F. The department shall disapprove an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application.

[3.3.30.11 NMAC - Rp, 3.3.30.12 NMAC, 1-1-14]

3.3.30.12 VERIFICATION OF THE ALTERNATIVE METHOD USED FOR THE ENERGY REDUCTION REQUIREMENT:

A. In the event the sustainable commercial building is a building type that is not available in target finder and the applicant uses an alternative method for the energy reduction requirement, the division reviews the submitted documentation. The following information shall be included:

(1) a narrative describing the methodology used;

(2) the kilo British thermal units per square foot per year for all buildings, real or modeled, used as a basis of comparison, broken out by all energy sources and including the percent of use for each energy source; and

(3) all formulas, assumptions and other explanation necessary to clarify how the kilo British thermal units per square foot per year for this project was derived.

B. The division uses the following criteria to evaluate the alternative method:

(1) clarity and completeness of the description of the alternative method;

(2) reasonableness of assumptions and comparisons; and

(3) thoroughness of justification of the method.

C. If the division rejects an alternative method it notifies the applicant of the reasons for the rejection.

D. The applicant may request that the division obtain the advice of a volunteer review committee of three or more New Mexico registered architects and New Mexico licensed professional mechanical and electrical engineers, chosen by the division, on their assessment of the alternative method, at which time the division may:

(1) reconsider the decision and accept the alternative method;

(2) recommend a revised alternative method; or

(3) reaffirm the rejection of the alternative method.

[3.3.30.12 NMAC - Rp, 3.3.30.13 NMAC, 1-1-14]

3.3.30.13 CALCULATING THE TAX CREDIT:

A. The division calculates the maximum sustainable building tax credit for non-multi-family commercial buildings based on the qualified occupied square footage of the sustainable commercial building, the LEED rating system under which the applicant achieved LEED certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

LEED-NC silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by $3.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.75; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.70
LEED-NC gold:	
first 10,000 square	equals the qualified square footage less than or equal to 10,000 multiplied by $4.75; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $2.00; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $1.00
LEED-NC platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by $6.25; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $3.25; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $2.00
LEED-EB OR LEED-CS silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by $2.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.25; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.50
LEED-EB OR LEED-CS gold:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by $3.35; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.40; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.70
LEED-EB OR LEED-CS platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by $4.40; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $2.30; plus

next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $1.40
LEED-CI silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by $1.40; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $.70; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.30
LEED-CI gold:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by $1.90; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $.80; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.40
LEED-CI platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by $2.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.30; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.80

B. The division calculates the maximum sustainable building tax credit for multi-family residences based on the qualified occupied square footage of the sustainable building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

LEED-H silver or build green New Mexico silver:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by $5.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by $2.50.
LEED-H gold or build green New Mexico gold:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by $6.85; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by $3.40.
LEED-H platinum or build green New Mexico emerald:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by $9.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by $4.45.

C. An applicant may receive both a sustainable building tax credit and a federal tax credit if the applicant is eligible for each tax credit.

D. The taxation and revenue department makes the final determination of the amount of the sustainable building tax credit.

[3.3.30.13 NMAC - Rp, 3.3.30.14 NMAC, 1-1-14]

3.3.30.14 CLAIMING THE STATE TAX CREDIT:

A. To claim the sustainable building tax credit for a given year, an applicant shall submit all certificates of eligibility to the taxation and revenue department prior to the end of that calendar year, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.

B. If the amount of the sustainable building tax credit the applicant claims exceeds the applicant's income tax liability, the applicant may carry the excess forward for up to seven consecutive taxable years.

C. A taxpayer claiming a sustainable building tax credit shall not claim a tax credit pursuant to another law for the same sustainable commercial building unless the other tax credit is applicable to systems that are unrelated to the sustainable building tax credit. In addition, a taxpayer claiming the sustainable building tax credit shall not claim the credit for the same sustainable building under both the Income Tax Act and the Corporate Income and Franchise Tax Act.

[3.3.30.14 NMAC - Rp, 3.3.30.15 NMAC, 1-1-14]

PART 31: APPLICATION AND CERTIFICATION PROCESS FOR THE ADMINISTRATION OF THE WATER CONSERVATION TAX CREDIT [EXPIRED]

[This part expired January 1, 2013.]

PART 32: CERTIFICATION FOR TAX CREDIT FOR GEOTHERMAL GROUND-COUPLED HEAT PUMPS

3.3.32.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[3.3.32.1 NMAC - N, 09/15/2010]

3.3.32.2 SCOPE:

3.3.32 NMAC applies to the application and certification procedures for administration of the tax credit for geothermal ground-coupled heat pumps.

[3.3.32.2 NMAC - N, 09/15/2010]

3.3.32.3 STATUTORY AUTHORITY:

3.3.32 NMAC is established under the authority of NMSA 1978, Section 7-2-18.24 and NMSA 1978, Section 9-1-5.

[3.3.32.3 NMAC - N, 09/15/2010]

3.3.32.4 DURATION:

Permanent.

[3.3.32.4 NMAC - N, 09/15/2010]

3.3.32.5 EFFECTIVE DATE:

09/15/2010, unless a later date is cited at the end of a section.

[3.3.32.5 NMAC - N, 09/15/2010]

3.3.32.6 OBJECTIVE:

3.3.32 NMAC’s objective is to establish procedures for administering the program to issue a certificate of eligibility for the tax credit for geothermal ground-coupled heat pumps.

[3.3.32.6 NMAC - N, 09/15/2010]

3.3.32.7 DEFINITIONS:

A. "Annual cap" means the annual aggregate amount of the geothermal ground-coupled heat pump tax credit available to individual and corporate taxpayers.

B. "Applicant" means an individual taxpayer or taxpayers who own a geothermal ground-coupled heat pump system in New Mexico and that desires to have the department issue a certificate of eligibility for the geothermal ground-coupled heat pump tax credit.

C. "Application package" means the application document and all attachments that an applicant submits to the division to receive a certificate of eligibility for a geothermal ground-coupled heat pump tax credit.

D. "Certificate of eligibility" means the document, with a unique system certification number, that specifies the amount and taxable year for the approved geothermal ground-coupled heat pump tax credit.

E. "Department" means the energy, minerals and natural resources department.

F. "Division" means the energy, minerals and natural resources department's energy conservation and management division.

G. "Geothermal ground-coupled heat pump system" means a system that uses energy from the ground, water or, ultimately, the sun for distribution of heating, cooling or domestic hot water; that has either a minimum coefficient of performance of three and four-tenths or an efficiency ratio of 16 or greater; and that is installed by an accredited installer certified by the international ground source heat pump association.

H. "Geothermal ground-coupled heat pump tax credit" means the personal income tax credit that the taxation and revenue department issues to an applicant for a geothermal ground-coupled heat pump system.

I. "Accredited installer" means a state of New Mexico licensed contractor who has documentation of successful completion, or has documentation of the installing employees' successful completion, of the "Accredited Installer Workshop" course provided by the international ground source heat pump association.

J. "IGSHPA" means the non-profit organization named the international ground source heat pump association, established in 1987 and as of January 1, 2010, headquartered on the campus of Oklahoma state university in Stillwater, Oklahoma.

K. "System certification number" means the unique number issued by the department that identifies the certified geothermal ground-coupled heat pump system.

L. "Taxpayer" means an individual subject to the tax imposed by the Income Tax Act, NMSA 1978, Section 7-2-1 *et seq*.

M. "Taxpayer identification number" means the taxpayer's nine digit social security number.

N. "Tax credit" means the New Mexico state tax credit for geothermal ground-coupled heat pumps as described in 3.3.32 NMAC.

[3.3.32.7 NMAC - N, 09/15/2010]

3.3.32.8 GENERAL PROVISIONS:

A. Only a taxpayer who is the owner of a geothermal ground-coupled heat pump system that is purchased and is installed in a residence, business or agricultural

enterprise in New Mexico on or after January 1, 2010, but before December 31, 2020 may receive a certificate of eligibility for a tax credit.

B. Only one application package shall be filed per geothermal ground-coupled heat pump system. If more than one taxpayer owns an interest in the property where the geothermal ground-coupled heat pump system is installed as a member of a partnership or other business association, a taxpayer may only claim a tax credit in proportion to that taxpayer's interest in the partnership or association. The application package shall specify the interest each taxpayer has in the property. In the event that there is more than one taxpayer that owns an interest in the property where the geothermal ground-coupled heat pump system is installed:

(1) each such taxpayer applying for a tax credit must be identified as an applicant on the application package;

(2) each such taxpayer applying for a tax credit must provide the required taxpayer information as required by 3.3.32.9 NMAC and the application form;

(3) each such taxpayer applying for a tax credit must sign the application; and

(4) the department shall issue one certificate of eligibility per taxpayer that reflects the amount of the tax credit to which the taxpayer is entitled in accordance with the taxpayer's interest in the property, as set forth in the application.

C. 3.3.32 NMAC applies to geothermal ground-coupled heat pump systems for personal income tax only; the rules for corporate income tax geothermal ground-coupled heat pump system tax credit are at 3.4.19 NMAC.

D. The tax credit certificate may be issued for up to 30 percent of the purchase and installation costs of the geothermal ground-coupled heat pump system but may not exceed $9,000.

E. The annual cap is $2,000,000. When the $2,000,000 annual cap is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the next subsequent tax year in which such tax credits are available; except

(2) if no tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which such credits are available, except for the last taxable year when the tax credit is in effect.

[3.3.32.8 NMAC - N, 09/15/2010]

3.3.32.9 APPLICATION:

A. To apply for the tax credit an applicant shall submit a complete application package to the division. An applicant may obtain the tax credit application form and system installation form from the division to submit as part of the package.

B. An application package shall include a completed tax credit application form and written attachments for a geothermal ground-coupled heat pump system. The applicant shall submit the tax credit application form together with all attachments required as a complete application package. An applicant shall submit one application package for each geothermal ground-coupled heat pump system. All material submitted in the application package shall be provided on 8½-inch x 11-inch paper.

C. The completed application form shall include the following information:

(1) the taxpayer's name, mailing address, telephone number and social security number;

(2) the address where the geothermal ground-coupled heat pump system is located;

(3) the geothermal ground-coupled heat pump system's type and description;

(4) the date the geothermal ground-coupled heat pump system started continuous operation;

(5) the accredited installer's name, address, telephone number, license category and license number;

(6) the accredited installer's documentation of IGSHPA "Accredited Installer Workshop" certification;

(7) the net cost of equipment, materials and labor of the geothermal ground-coupled heat pump system, excluding the expenses and income listed in 3.3.32.13 NMAC;

(8) a statement, signed and dated by the applicant, which signature may be electronic if approved by the department, agreeing that:

(a) all information provided in the application package is true and correct;

(b) applicant has read the certification requirements contained in 3.3.32 NMAC;

(c) applicant understands that there are annual aggregate tax credit limits in place for geothermal ground-coupled heat pump systems;

(d) applicant understands that the department must approve the application package before the applicant is eligible for a tax credit;

(e) applicant agrees to make changes the department requires to the geothermal ground-coupled heat pump system for compliance with 3.3.32 NMAC; and

(f) to ensure compliance with 3.3.32 NMAC, applicant agrees to allow the division or its authorized representative to inspect the geothermal ground-coupled heat pump system that is described in the application package at any time after the submission of the application package with not less than five business days notice to the applicant; and

(9) a system certification number the division assigns to the application.

D. The application package shall meet 3.3.32 NMAC's requirements and be materially complete.

E. The application package shall include the following information provided as attachments:

(1) a copy of the most recent property tax bill to the taxpayer for the residence where the geothermal ground-coupled heat pump system is located;

(2) a copy of the invoice of itemized equipment and labor costs for the geothermal ground-coupled heat pump system;

(3) a copy of the geothermal ground-coupled heat pump system's design schematic and technical specifications as described in 3.3.32 NMAC;

(4) a photograph of the geothermal ground-coupled heat pump system after installation is completed;

(5) a completed system installation form;

(6) a completed taxpayer and accredited installer statement, with information about the geothermal ground-coupled heat pump that includes:

(a) manufacturer or supplier of system components and the system compenents' model numbers;

(b) number of well borings (if applicable);

(c) a description of horizontal trenching (if applicable);

(d) a description of a water source system component (if applicable);

(7) if the system was installed using vertical or horizontal directional boreholes, the applicant shall provide the following information:

(a) drilling operator;

(b) office of the state engineer exploratory permit number and approval date (if required);

(c) drilling method;

(d) borehole diameter;

(e) number of boreholes drilled;

(f) general description of subsurface geology, or copies of drilling logs;

(g) depth of the boreholes;

(h) distance between boreholes;

(i) depth to ground water (indicate if ground water not encountered);

(j) whether the system is an "open" or "closed" loop design; and

(8) if the system was installed using horizontal trenching, the applicant shall provide the following information:

(a) length, width and depth of the trench or trenches; and

(b) general description of subsurface geology.

F. The completed system installation form shall include the following information:

(1) printed name of the taxpayer who is identified on the application form;

(2) printed name, title and telephone number of the accredited installer who signs the system installation form;

(3) printed name, title and telephone number of the building code authority’s authorized representative, if applicable, who approves the system installation form;

(4) date on which the geothermal ground-coupled heat pump system installation was complete and ready to operate;

(5) a statement that the accredited installer has signed and dated, which may be a form of electronic signature if approved by the department, certifying that:

(a) the geothermal ground-coupled heat pump system was installed in full compliance with all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time of installation;

(b) the accredited installer has read 3.3.32 NMAC's certification requirements;

(c) the installed geothermal ground-coupled heat pump system will work properly with regular maintenance; and

(d) the accredited installer provided written operations and maintenance instructions to the applicant and posted a one-page summary of these instructions in a sheltered accessible location acceptable to the taxpayer and that is near or at the geothermal ground-coupled heat pump system's components;

(6) documentation of the manufacturer's listed coefficient of performance or efficiency ratio for the heat pump equipment; and

(7) documentation of the total geothermal ground-coupled heat pump system size.

G. The application form shall request that the applicant provide the following optional information:

(1) taxpayer's email address; and

(2) contractor's email address.

H. The application form shall include optional selections where the applicant can indicate interest in allowing the department to take the following actions. Selection of such options by the applicant shall not create in the department an obligation to take such action:

(1) adding energy monitoring equipment to the geothermal ground-coupled heat pump system;

(2) conducting an analysis of geothermal ground-coupled heat pump system operation and performance; or

(3) conducting an analysis of taxpayer's utility bill records.

[3.3.32.9 NMAC - N, 09/15/2010]

3.3.32.10 APPLICATION REVIEW PROCESS:

A. The department shall consider applications in the order received, according to the day they are received, but not the time of day. If the department approves applications received on the same day and the applications would exceed the annual cap, then the department will divide the available tax credit among those applications on a prorated system cost basis.

B. The division shall review the application package to calculate the tax credit and check accuracy of the applicant's documentation and shall determine whether the department certifies the geothermal ground-coupled heat pump system.

C. If an application package fails to meet a requirement or is materially incomplete, the department shall disapprove the application. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division shall place the resubmitted application in the review schedule as if it were a new application.

D. If the division finds that the application package meets 3.3.32 NMAC's requirements and a tax credit is available, the department shall certify the applicant's geothermal ground-coupled heat pump system and documents the taxpayer as eligible for a tax credit. If a tax credit is not available in the taxable year of certification of the geothermal ground-coupled heat pump system submitted in the application package, the division shall place the taxpayer on a waiting list for inclusion in the following taxable year, if a tax credit remains available. The department shall provide approval through written notification to the applicant. The notification shall include the taxpayer's contact information, social security number, system certification number, net system cost eligible for the tax credit, the tax credit amount and, if applicable waiting list status.

E. The division shall report to the taxation and revenue department the information required to verify, process and distribute each tax credit by providing a copy of the department's approval notification.

[3.3.32.10 NMAC - N, 09/15/2010]

3.3.32.11 SAFETY, CODES AND STANDARDS:

A. Geothermal ground-coupled heat pump systems that the department may certify shall meet the following minimum requirements:

(1) compliance with the latest adopted version of all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time that the applicant submits the application package including design, permitting and installation in full compliance with all applicable provisions of the New Mexico Plumbing Code (14.8.2 NMAC), the New Mexico Mechanical Codes (14.9.2 - 5 NMAC), the New Mexico General Construction Building Codes (14.7.2 - 8 NMAC) and any amendments to these codes adopted by a

political subdivision that has validly exercised its planning and permitting authority under NMSA 1978, Sections 3-17-6 and 3-18-6; and

(2) compliance with all applicable utility company or heating fuel vendor requirements, if the system being served with a geothermal ground-coupled heat pump system is also served by utility electricity or a heating fuel.

B. The application package shall include the following information concerning building codes:

(1) a statement that the building code authority's authorized representative has signed and dated, which may be a form of electronic signature if approved by the department, that the geothermal ground-coupled heat pump system was installed in full compliance with all applicable codes; or

(2) if the applicant is unable to obtain a signed and dated statement from the building code authority's authorized representative on the system installation form, then the applicant may provide one of the following instead:

(a) a photograph or copy of the permit tag clearly identifying the building code authority's authorized representative's signature, the date and the permit number;

(b) an official document from the building code authority that includes the:

(i) agency's name;

(ii) authorized representative's name, title, telephone number and signature;

(iii) date of authorized representative's signature; and

(iv) permit number; or

(c) a web-based application the building code authority approves.

[3.3.32.11 NMAC - N, 09/15/2010]

3.3.32.12 SYSTEM APPLICATIONS AND LISTS OF ELIGIBLE COMPONENTS:

A. Geothermal ground-coupled heat pump systems that the department may certify shall meet the following requirements:

(1) be made of new equipment, components and materials;

(2) have a written minimum two year warranty provided by the contractor on parts, equipment and labor with the following exceptions:

(a) the warranty provided by the contractor on each specific piece of equipment shall not exceed the duration and conditions of the warranty provided by the manufacturer of the equipment against defects in materials and workmanship; and

(b) the owner of the geothermal ground-coupled heat pump system may bear the actual cost of shipping the product for the repair and replacement;

(3) be a complete system that collects and distributes geothermal energy to the residence, business or agricultural enterprise in New Mexico that it serves;

(4) have a minimum coefficient of performance of three and four-tenths or an efficiency ratio of 16 or greater; and

(5) be a minimum one-ton system size.

B. Geothermal ground-coupled heat pump systems or their portions that the department shall not certify are as follows:

(1) a system or portion of a system that would be present if the geothermal ground-coupled heat pump system was not installed;

(2) a system that is not connected to a structure or foundation and does not serve a permanent end use energy load or is not permanently located in New Mexico;

(3) a system not serving an end use energy load; or

(4) a system or portion of a system that replaces a system or portion of a system the department has certified in a previous application for a tax credit.

C. System components and installation processes that the department may include in the cost calculation and certify include:

(1) the system applications of geothermal space heating, geothermal air heating, geothermal process heating, geothermal space cooling or combinations of geothermal system applications;

(2) collectors;

(3) pumps;

(4) fans;

(5) storage tanks;

(6) buffer tanks;

(7) expansion tanks;

(8) expansion valves;

(9) valves;

(10) "txv" valves;

(11) three-way valves;

(12) refrigerant compressors;

(13) chill water tanks;

(14) refrigerant reversing valves;

(15) controllers;

(16) heat exchangers;

(17) compressors;

(18) compressor gas;

(19) flow center circulators;

(20) tubing;

(21) tubing u-bend connections;

(22) tubing connections and fittings;

(23) manifolds;

(24) supply headers;

(25) expansion metering devices;

(26) desuperheaters;

(27) hot water tanks;

(28) heat exchange refrigerant;

(29) reverse return headers;

(30) thermostats;

(31) evaporators;

(32) borehole grout;

(33) borehole backfill sand or other medium;

(34) turnarounds;

(35) air handlers;

(36) above-ground fluid coolers;

(37) thermal conductivity testing; and

(38) all materials and costs associated with vertical well drilling and horizontal trenching including well casing and tubing.

[3.3.32.12 NMAC - N, 09/15/2010]

3.3.32.13 CALCULATING THE GEOTHERMAL GROUND-COUPLED HEAT PUMP SYSTEM COST:

A. The cost of a geothermal ground-coupled heat pump system the department certifies shall be the cost of acquiring the system but shall not include the following:

(1) expenses, including but not limited to:

(a) unpaid labor or the applicant's labor;

(b) unpaid equipment or materials;

(c) land costs or property taxes;

(d) costs of structural, surface protection and other functions in building elements that would be included in building construction if a geothermal ground-coupled heat pump system were not installed;

(e) mortgage, lease or rental costs of the residence, business or agricultural enterprise;

(f) legal and court costs;

(g) research fees or patent search fees;

(h) fees for use permits or variances;

(i) membership fees;

(j) financing costs or loan interest;

(k) marketing, promotional or advertising costs;

(l) repair, operating or maintenance costs;

(m) extended warranty costs;

(n) system visual barrier costs;

(o) adjacent structure modification costs;

(p) vegetation maintenance costs; and

(2) income, including:

(a) payments the accredited installer or other parties provide that reduce the system cost, including rebates, discounts and refunds with the exception of federal, state and local government and utility company incentives;

(b) services, benefits or material goods the accredited installer or other parties provide by the same or separate contract, whether written or verbal; and

(c) other financial incentives provided for geothermal ground-coupled heat pump system installation, if applicable.

B. The division shall make the final determination of the net cost that the department certifies is eligible for a tax credit.

[3.3.32.13 NMAC - N, 09/15/2010]

3.3.32.14 CLAIMING THE TAX CREDIT:

A. To claim the tax credit, a taxpayer owning a geothermal ground-coupled heat pump system that the department has certified shall submit to the taxation and revenue department a claim, which shall consist of the certificate of eligibility the department issued to the taxpayer, a completed claim form the taxation and revenue department has approved and any other information the taxation and revenue department requires.

B. If the amount of tax credit claimed exceeds the taxpayer's individual income tax liability, the taxpayer may carry the excess forward for up to 10 consecutive taxable years.

[3.3.32.14 NMAC - N, 09/15/2010]

PART 33: CERTIFICATION FOR TAX CREDIT FOR AGRICULTURAL BIOMASS

3.3.33.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[3.3.33.1 NMAC - N, 02/29/2012]

3.3.33.2 SCOPE:

3.3.33 NMAC applies to the application and certification procedures for administration of the agricultural biomass personal income tax credit for dairy or feedlot operations.

[3.3.33.2 NMAC - N, 02/29/2012]

3.3.33.3 STATUTORY AUTHORITY:

3.3.33 NMAC is established under the authority of Subsection F of Section 7-2-18.26 NMSA 1978 and Section 9-1-5 NMSA 1978.

[3.3.33.3 NMAC - N, 02/29/2012]

3.3.33.4 DURATION:

Permanent.

[3.3.33.4 NMAC - N, 02/29/2012]

3.3.33.5 EFFECTIVE DATE:

February 12, 2012, unless a later date is cited at the end of a section.

[3.3.33.5 NMAC - N, 02/29/2012; A, 09/29/2020]

3.3.33.6 OBJECTIVE:

3.3.33 NMAC’s objective is to establish procedures to provide certification of transportation of agricultural biomass to a qualified facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use.

[3.3.33.6 NMAC - N, 02/29/2012]

3.3.33.7 DEFINITIONS:

A. "Agricultural biomass" means wet manure from either dairy or feedlot commercial operations that meets specifications established by the energy minerals and natural resources department.

B. "Agricultural biomass production facility" means a diary or feedlot that collects animal waste for the purpose of transporting that material to a facility where it will be used to generate electricity, make biocrude or other liquid or gaseous fuel for commercial use.

C. "Applicant" means a taxpayer that transports agricultural biomass to a qualified energy producing facility and who desires to have the department issue a certificate of transportation to be used in applying for an agricultural biomass personal income tax credit from the taxation and revenue department.

D. "Application package" means the application documents an applicant submits to the department to receive a certificate of transportation to support an agricultural biomass personal income tax credit application to the taxation and revenue department.

E. "Apron scrape" means biomass collected from concrete feeding aprons or bedding areas.

F. "Biocrude" means a non-fossil form of energy that can be transported and refined using existing petroleum refining facilities and that is made from biologically derived feedstocks and other agricultural biomass.

G. "Certificate of transportation" means a document issued by the department to the applicant and the taxation and revenue department, enumerated with a unique system certification number and certifying the number of wet tons of agricultural biomass transported to a qualified facility during a specified taxable year. The purpose of this document is to certify the number of wet tons of biomass qualifying for the biomass personal income tax credit.

H. "Corral scrape" means biomass collected from soil bedding or feed areas.

I. "Dairy" means a facility that raises livestock for milk production.

J. "Department" means the energy, minerals and natural resources department.

K "Dry cow" means a fully grown cow that is not currently being milked.

L. "Feedlot" means an operation that fattens livestock for market.

M. "Greenwater" means milking parlor washwater.

N. "Heifer" means a young replacement cow of at least 500 pounds that has not yet been milked.

O. "Livestock" means domestic animals that produce usable agricultural biomass.

P. "Milking cow" means a dairy cow that is lactating and which is milked on a daily basis.

Q. "Qualified facility" or **"qualified energy producing facility"** means a facility that the department has determined uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use.

R. "Transport" means to convey or arrange for conveyance of biomass by vehicle or pipe from dairy or feedlot to a qualified facility.

S. "Taxable year" means the annual accounting period for purposes of filing personal income tax returns as defined by the United States internal revenue service.

T. "Taxpayer" means a diary or feedlot operator or lessee who is liable for payment of gross receipts tax or personal income tax.

U. "Taxpayer identification number" means an applicant's social security number or 11 digit number issued to the applicant upon registration with the taxation and revenue department to pay gross receipts and individual taxes.

V. "Wet ton" means 2000 pounds of agricultural biomass qualifying for a certificate of transportation from the department. The number of wet tons qualifying for the certificate of transportation from a dairy during a specific time period is the amount in tons transported from the agricultural biomass production facility calculated by adding:

(1) the daily population of milking cows times 49 pounds of biomass per milking cow per day of apron scrape plus 70 pounds of biomass per day per milking cow of corral scrape; plus

(2) the daily population of dry cows times 30 pounds of biomass per dry cow per day of apron scrape plus 45 pounds of biomass per day per dry cow of corral scrape; plus

(3) the daily population of heifers times 17 pounds of biomass per heifer per day of apron scrape plus 26 pounds of biomass per day per heifer of corral scrape; plus

(4) 13 pounds of biomass per milking cow per day pumped from the agricultural biomass production facility as greenwater for each day of the time period. In the event that less than 100 percent of the biomass produced at the agricultural biomass production facility is transported to a qualified facility, the amount of calculated transported biomass qualifying for a certificate of transportation will be proportionally

reduced by the percentage of each of the three catagories (apron scrape, corral scrape and greenwater) of the biomass not transported to a qualifying facility during the time period.

[3.3.33.7 NMAC - N, 02/29/2012]

3.3.33.8 GENERAL PROVISIONS:

A. The agricultural biomass personal income tax credit is available to taxpayers filing a personal income tax return for taxable years beginning on or after January 1, 2011 and ending prior to January 1, 2030. Certificates of transportation pursuant to 3.3.33 NMAC may be issued by the department for agricultural biomass transported during taxable years beginning on or after January 1, 2011 and ending prior to January 1, 2030.

B. The amount of the agricultural biomass income tax credit is calculated at $5.00 per wet ton. The maximum amount of the annual combined total of all agricultural biomass income tax credits and all agricultural biomass corporate income tax credits allowed is $5,000,000.

[3.3.33.8 NMAC - N, 02/29/2012; A, 09/29/2020]

3.3.33.9 APPLICATION FOR CERTIFICATE OF TRANSPORTATION:

A. To apply for the certificate of transportation, an applicant shall submit a complete application package to the energy conservation and management division of the department within 30 days of the end of the taxable year for which certification is sought. An applicant may obtain the application form from the energy conservation and management division of the department.

B. A complete application package shall include a certificate of transportation application form and all required attachments. An applicant shall submit one application package for each dairy or feedlot operation. All material submitted in the application package shall be provided on 8½-inch x 11-inch paper.

C. The completed application form shall include the following information and documents:

(1) the applicant’s name, mailing address, telephone number, social security number or taxpayer identification number and the dates of the taxable year for which application is being made;

(2) the address or public land survey system description of the location of the dairy or feedlot operation, including the county;

(3) a description of the dairy or feedlot operation, descriptions and photographs of equipment used to collect and to transport agricultural biomass;

(4) daily data showing the number of milking cows, dry cows and heifers present at the dairy or feedlot during the specified time period;

(5) a description of the qualified facility to which the biomass was transported, including the name and address of the operator;

(6) dated weigh or volume tickets for each truckload of waste leaving the agricultural biomass production facility, the classification of each truckload as either apron scrape, corral scrape or greenwater, and the destination of each load beginning on the first day of the specified period and no later than the last day of the specified time period for which certification is sought;

(7) totalizing flow meter readings showing the amount of pumped waste or greenwater leaving the agricultural biomass production facility and the amount and destination of any waste diverted from delivery to the qualified facility beginning on the first day of the specified time period and no later than the last day of the specified time period for which certification is sought;

(8) a statement, signed and dated by the applicant, which signature may be electronic if approved by the department, stipulating that:

(a) all information provided in the application package is true and correct;

(b) applicant has read the certification requirements contained in 3.3.33 NMAC;

(c) applicant understands that there are annual aggregate limits to the amount of biomass that will qualify for the agricultural biomass income tax credit;

(d) applicant understands that the department must certify the transportation of the biomass before the applicant is eligible for a tax credit; and

(e) to ensure compliance with 3.3.33 NMAC, applicant agrees that the division or its authorized representative may inspect the dairy or feedlot operation that is described in the application package at any time after the submission of the application package with not less than five business days notice to the applicant; and

(9) a signed statement from the operator of the qualified facility specifying the amount of the biomass received and identifying the dairy or feedlot from which it was received.

D. The application package shall meet 3.3.33 NMAC’s requirements and be materially complete.

[3.3.33.9 NMAC - N, 02/29/2012]

3.3.33.10 APPLICATION REVIEW PROCESS AND CERTIFICATION:

A. The department shall review the application within 30 days of receipt. If the application package complies with 3.3.33 NMAC, the department will determine the number of wet tons of biomass transported, check accuracy of the applicant's documentation and determine whether the department is able to certify that the biomass was transported to a qualified facility.

B. If an application package fails to meet a requirement or is not materially complete, the department shall deny the application. The department shall also deny an application from which it is unable to determine from the materials presented in the application package the tonnage transported to or accepted at a qualified facility. The department's disapproval letter shall be issued within 30 days of the receipt of the application and shall state the reasons why the department denied the application.

C. If the department finds that the application package meets 3.3.33 NMAC's requirements, the department shall certify that the transportation of the biomass to a qualified facility did occur and so notify the taxpayer and the taxation and revenue department. The certificate shall include the taxpayer's contact information, social security number, taxpayer identification number, system certification number and the net amount of biomass eligible for the tax credit.

D. If the department denies the application, the applicant shall have 15 days from the date of denial to petition the department secretary for reconsideration. If no petition is received, the denial shall be considered final on the 15th day. If a petition for reconsideration is received, it shall contain a statement of reasons the secretary should reconsider the application and any additional or updated material necessary to support that petition. The secretary shall have 15 days to reconsider and approve the amended application, set the matter for an examiner hearing or deny the application. If the secretary has not acted within 15 days of receipt of the petition for reconsideration, the denial of the original application shall be considered final.

[3.3.33.10 NMAC - N, 02/29/2012]

PART 34: 2015 SUSTAINABLE BUILDING TAX CREDIT

3.3.34.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[3.3.34.1 NMAC - Rp, 3.3.34.1 NMAC, 02/08/2022]

3.3.34.2 SCOPE:

3.3.34 NMAC applies to the application and certification procedures for administration of the 2015 sustainable building tax credit for sustainable residential buildings, sustainable commercial buildings and manufactured housing.

[3.3.34.2 NMAC - Rp, 3.3.34.2 NMAC, 02/08/2022]

3.3.34.3 STATUTORY AUTHORITY:

3.3.34 NMAC is established under the authority of Sections 7-2-18.29 and Subsection E of Section 9-1-5 NMSA 1978.

[3.3.34.3 NMAC - Rp, 3.3.34.3 NMAC, 02/08/2022]

3.3.34.4 DURATION:

Permanent unless an earlier date is specified in a section.

[3.3.34.4 NMAC - Rp, 3.3.34.4 NMAC, 02/08/2022]

3.3.34.5 EFFECTIVE DATE:

February 8, 2022, unless a later date is cited at the end of a section.

[3.3.34.5 NMAC - Rp, 3.3.34.5 NMAC, 02/08/2022]

3.3.34.6 OBJECTIVE:

3.3.34 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the 2015 sustainable building tax credit for sustainable residential buildings, sustainable commercial buildings and manufactured homes.

[3.3.34.6 NMAC - Rp, 3.3.34.6 NMAC, 02/08/2022]

3.3.34.7 DEFINITIONS:

"2015 sustainable building tax credit" means the amendments passed by the legislature in 2021 to the new sustainable building tax credit in the Income Tax Act and the Corporate and Franchise Tax Act. The name of the new sustainable building tax credit was changed to the 2015 sustainable building tax credit.

A. "Annual cap" means the annual total amount of the 2015 sustainable building tax credit available to taxpayers owning sustainable buildings.

B. "Applicant" means a taxpayer who owns a sustainable residential or commercial building or manufactured home in New Mexico and who desires to have the department issue a certificate of eligibility for a 2015 sustainable building tax credit.

C. "Application package" means the documents an applicant submits to the department to apply for a certificate of eligibility for a 2015 sustainable building tax credit.

D. "Build green New Mexico certification" means the verification by a department-approved verifier that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

E. "Building type" means the primary use of a building or section of a building as defined in target finder.

F. "Certification" means build green New Mexico certification or LEED certification or energy star qualified for manufactured housing.

G. "Certificate of eligibility" means the document with a unique identifying number that specifies the amount and taxable year and specific physical address for the approved 2015 sustainable building tax credit, the system certification level awarded to the building, the amount of qualified occupied square footage, a calculation of the maximum amount of the 2015 sustainable building tax credit for which the owner would be eligible and the date of issuance.

H. "Certification level" means one of the following:

(1) LEED-H silver or build green New Mexico silver;

(2) LEED-H gold or build green New Mexico gold;

(3) LEED-H platinum or build green New Mexico emerald;

(4) LEED-NC silver or LEED-NC gold or LEED-NC platinum;

(5) LEED-EB (O&M) or LEED-CS silver;

(6) LEED-EB (O&M) or LEED-CS gold;

(7) LEED-EB (O&M) or LEED-CS platinum; or

(8) LEED-CI silver or LEED-CI gold or LEED-CI platinum.

I. "Code official" means the officer or other designated authority charged with the administration and enforcement of the building code.

J. "Department" means the energy, minerals and natural resources department.

K. "Division director" means the director of the department's energy conservation and management division.

L. "Energy reduction requirements means" means has achieved a HERS of 60 or lower for a sustainable residential building; or has reduced energy consumption beginning January 1, 2012, by sixty percent based on the national average for that building type as published by the United States department of energy as substantiated by the United States environmental protection agency target finder energy performance results form dated no sooner than the schematic design phase of development for a sustainable commercial building.

M. "Energy star" means a joint program of the United States environmental protection agency and the United States department of energy that qualifies homes based on a predetermined threshold of energy efficiency and other requirements.

N. "Energy star qualified manufactured home" means a home that an in state or out of state energy star certified plant has certified as being designed, produced and installed in accordance with energy star's guidelines.

O. "HERS" means home energy rating system as developed by RESNET.

P. "HERS index" means a relative energy use index, where 100 represents the energy use of a home built to a HERS reference house and zero indicates that the proposed home uses no net purchased energy.

Q. "LEED certification" means the verification by the United States green building council, or a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits.

R. "Multifamily" means more than one family dwelling such as two-family dwellings, multiple single-family dwellings such as townhouses and buildings three stories or less in height above grade plane.

S. "Not a multifamily dwelling unit that is commercial" mean a single-family unit occupied by a renter or leasee or a work-live unit.

T. "Notice of approval" means that the work complies in all respects with the latest building code and has been approved by the code official.

U. "O&M" means operation and maintenance.

V. "Project completion" means notice of approval of installation of project prior to April 1, 2023. New buildings and renovations of existing buildings and installations shall be completed before April 1, 2023.

W. "Rating system" means the LEED rating system, the build green New Mexico rating system or the energy star program for manufactured housing.

X. "RESNET" means the residential energy services network, an industry not-for-profit membership corporation and national standards making body for building energy efficiency rating systems.

Y. "Solar market development tax credit" means the personal income tax credit the state of New Mexico issued to a taxpayer between January 1, 2006, and December 31, 2016, for a solar energy system the department has certified.

Z. "Target finder" means the web-based program developed by the United States environmental protection agency to establish an energy goal in kilo british thermal units per square foot per year for predetermined building types.

AA. "Taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Income Tax Act, 7-2-1 et seq. NMSA 1978.

BB. "Taxpayer" means any individual subject to the tax imposed by the Income Tax Act, 7-2-1 et seq. NMSA 1978.

CC. "Taxpayer identification number" means the taxpayer's nine-digit social security number or employer identification number provided by a business enterprise.

DD. "Verifier" means an entity the department approves to provide certifications under the build green New Mexico or LEED rating systems.

[3.3.34.7 NMAC - Rp, 3.3.34.7 NMAC, 02/08/2022]

3.3.34.8 GENERAL PROVISIONS:

A. A person who is the owner of a building in New Mexico that has been constructed, renovated or manufactured or is a sustainable residential or sustainable commercial building and that receives certification on or after January 1, 2017, and prior to April 1, 2023, may receive a certificate of eligibility for a 2015 sustainable building tax credit. A subsequent purchaser of a sustainable residential building may receive a certificate if no tax credit has previously been claimed for the building.

B. The annual total amount in a calendar year of the 2015 sustainable building tax credit pursuant to the Income Tax Act and the Corporate Income and Franchise Tax Act available to taxpayers owning sustainable residential buildings is limited to $3,375,000 for sustainable residential buildings that are not manufactured housing. When the $3,375,000 cap for sustainable residential buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of an eligible 2015 sustainable residential building tax funds are within the annual residential cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year, except for the last taxable year when the 2015 sustainable building tax credit is in effect;

(2) if no 2015 sustainable residential building tax credit funds are available in a given taxable year, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the 2015 sustainable building tax credit is in effect; or

(3) the department may issue certificates of eligibility to applicants who meet the requirements for the 2015 sustainable residential buildings tax credit in a taxable year when applications for the 2015 sustainable residential buildings tax credit exceed the annual cap, but applications for the 2015 sustainable commercial buildings or manufactured housing tax credits are under the annual cap for that type of sustainable building by February 1 of any year in which the tax credit is in effect.

C. The total amount in a calendar year of the 2015 sustainable building tax credit available pursuant to the Income Tax Act and the Corporate Income and Franchise Tax Act to taxpayers owning sustainable commercial buildings is limited to $1,250,000. When the $1,250,000 limit for sustainable commercial buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible 2015 sustainable building tax credit is within the annual commercial buildings cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

(2) if no 2015 sustainable commercial building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the 2015 sustainable building tax credit is in effect; or

(3) the department may issue certificates of eligibility to applicants who meet the requirements for the 2015 sustainable building tax credit in a taxable year when applications for the 2015 sustainable commercial buildings tax credits exceed the annual cap and applications for the 2015 sustainable residential buildings or manufactured housing tax credits are under the annual cap for that type of sustainable building by February 1 of any year in which the tax credit is in effect.

D. In the event of a discrepancy between a requirement of 3.3.34 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.3.34 NMAC's adoption, the existing rule governs.

E. All notices and applications required to be submitted to the department under 3.3.34 NMAC shall be submitted to the energy conservation and management division of the department.

F. There is a $375,000 annual cap for sustainable residential buildings that are manufactured housing.

[3.3.34.8 NMAC - Rp, 3.3.34.8 NMAC, 02/08/2022]

3.3.34.9 VERIFIER ELIGIBILITY FOR ALL BUILDINGS:

A. The department reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications or LEED commercial buildings, which shall be provided annually to the department, based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners or commercial building owner that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including:

(a) experience in green building services;

(b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;

(c) a method of auditing the certification process to maintain adequate stringency; and

(d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;

(3) the verifier can identify the geographic area being served; and

(4) the verifier provides a statement that expresses a commitment to promoting energy-efficient green building with the highest standard of excellence.

B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

C. The verifier shall notify the department 30 calendar days prior to making changes to its certification process or rating systems.

D. The department may rescind an existing verifier's approval if it determines that the above criteria are not being met.

E. The department notifies the verifier of the reasons for disapproving or rescinding eligibility as follows.

(1) The department shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the department's notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing concludes.

[3.3.34.9 NMAC - Rp, 3.3.34.9 NMAC, 02/08/2022]

3.3.34.10 APPLICATION FOR THE 2015 SUSTAINABLE BUILDING TAX CREDIT:

A. To obtain the 2015 sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the department using either a department-developed application form or approved electronic application system as directed by the division director. An applicant may obtain the department-developed application form or access to the electronic application system from the department.

B. An application package shall include a completed application form and attachments as specified on the application form or by the electronic application system. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application package for each sustainable building. The applicant shall submit all material in the application package on 8½ inch by 11-inch paper or using any approved electronic application system provided by the department as directed by the division director. If the applicant fails to submit the application form and required attachments at the same time as required by the division director the department may consider the application incomplete.

C. An applicant shall submit a complete application package to the department no later than February 1 of the taxable year for which the applicant seeks the 2015 sustainable building tax credit. If an applicant does not submit a complete application

package by February 1, any remaining 2015 sustainable building tax credit funds under the cap may be used in that taxable year for completed 2015 sustainable building applications in another category. The department may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

D. The completed application form shall consist of the following information:

(1) the applicant's name, mailing address, telephone number and taxpayer identification number;

(2) the name of the applicant's authorized representative;

(3) the ending date of the applicant's taxable year;

(4) the address of the sustainable building, including the property's legal description;

(5) whether the applicant was the building owner at time of certification or a subsequent purchaser;

(6) the qualified occupied square footage of the sustainable residential or commercial buildings for projects eligible under LEED or build green New Mexico;

(7) the rating system under which the sustainable residential or commercial building was certified for projects eligible under LEED or build green New Mexico;

(8) the certification level achieved, if applicable;

(9) the HERS index; if applicable;

(10) documentation that applicant meets water efficiency standards to comply with water efficiency requirements of LEED and build green New Mexico programs;

(11) the date of rating system certification;

(12) project completion date;

(13) notice of approval from a code official shall be provided to document that construction, renovation or installation of project was completed before April 1, 2023; and

(14) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, agreeing that

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) applicant has read the requirements contained in 3.3.34 NMAC;

(c) if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the 2015 sustainable building tax credit or the energy reduction requirement achieved, the applicant did not claim a solar market development tax credit;

(d) applicant understands that there are annual caps for the 2015 sustainable building tax credit;

(e) applicant understands that the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a 2015 sustainable building tax credit; and

(f) applicant understands that the department issues a certificate of eligibility for the taxable year in which the sustainable building was certified or, if the 2015 sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available.

E. In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable building;

(2) a copy of the rating system certification form;

(3) a copy of the final certification review checklist that shows the points achieved, if applicable;

(4) a copy of a HERS certificate, from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software RESNET lists as eligible for certification of the federal tax credit, showing the building has achieved a HERS index of 60 or lower;

(5) for sustainable commercial buildings that are not multifamily dwelling units, a copy of the final LEED optimized energy performance template or templates, signed by a New Mexico licensed design professional, that the applicant submitted for LEED certification including the results of the energy model that shows the kilo british thermal units per square foot per year for the sustainable commercial building;

(6) for sustainable commercial buildings that are not multifamily dwelling units, revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than ten percent;

(7) a copy of the final LEED enhanced commissioning template, if available under the applicable LEED rating system;

(8) for multifamily dwelling units, a copy of a HERS certificate from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software the internal revenue service lists as eligible for certification of the federal tax credit, showing the building has achieved a HERS index of 60 or lower;

(9) documentation to show project completion date such as a copy of a notice of approval from a building official; and

(10) other information the department needs to review the building project for the 2015 sustainable building tax credit.

F. If the requirements established by the department have been complied with, the department shall issue to the building owner a document granting a 2015 sustainable building tax credit with an identification number, date of issuance, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and a calculation of the maximum amount of the 2015 sustainable building tax credit for which the building owner would be eligible.

[3.3.34.10 NMAC - Rp, 3.3.34.10 NMAC, 02/08/2022]

3.3.34.11 VERIFICATION OF THE ALTERNATIVE METHOD USED FOR THE ENERGY REDUCTION REQUIREMENT:

A. In the event the sustainable commercial building is a building type that is not available in target finder and the applicant uses an alternative method to establish the energy reduction requirement, the applicant shall include the following information in addition to the other application requirements:

(1) a narrative describing the methodology used;

(2) the kilo british thermal units per square foot per year for all buildings, real or modeled, used as a basis of comparison, broken out by all energy sources, and including the percent of use for each energy source; and

(3) all formulas, assumptions and other explanation necessary to clarify how the kilo british thermal units per square foot per year for this project was derived.

B. The department will use the following criteria to evaluate the alternative method:

(1) clarity and completeness of the description of the alternative method;

(2) reasonableness of assumptions and comparisons; and

(3) thoroughness of justification of the method.

C. If the department rejects an alternative method, it notifies the applicant of the reasons for the rejection.

D. The applicant may request that the department obtain the advice of a volunteer review committee of three or more New Mexico registered architects or New Mexico licensed professional mechanical or electrical engineers, chosen by the division, on their assessment of the alternative method, at which time the department may:

(1) reconsider the decision and accept the alternative method;

(2) recommend a revised alternative method; or

(3) reaffirm the rejection of the alternative method.

[3.3.34.11 NMAC - N, 02/08/2022]

3.3.34.12 APPLICATION REVIEW PROCESS:

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package. The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The department places the resubmitted application in the review schedule as if it were a new application.

C. The department reviews the application package to calculate the maximum 2015 sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the 2015 sustainable building tax credit.

D. If an applicant has claimed a solar market development tax credit (in effect January 1, 2006, through December 31, 2016) that solar system cannot be used to meet the requirements of either the certification level applied for, or the energy reduction achieved. If an applicant has received a solar market development tax credit for a system that is used to meet the requirements of the certification level applied for or the energy reduction achieved, the department shall disapprove the application for the 2015 sustainable building tax credit. The applicant may submit a revised application

package to the department that does not include the electricity projected to be generated by the solar system. The department places the resubmitted application in the review schedule as if it were a new application.

E. If the department finds that the application package meets the requirements and a 2015 sustainable building tax credit is available, the department issues the certificate of eligibility for a 2015 sustainable building tax credit. If a 2015 sustainable building tax credit is partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year except in the last year that the tax credit is in effect. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and calculation of the maximum amount of the 2015 sustainable building tax credit for which the owner would be eligible.

[3.3.34.12 NMAC - Rp, 3.3.34.11 NMAC, 02/08/2022]

3.3.34.13 CALCULATING THE TAX CREDIT:

A. The department calculates the maximum 2015 sustainable building tax credit for sustainable residential and sustainable commercial buildings that are not multifamily dwelling units based on the qualified occupied square footage of the sustainable commercial building, the LEED rating system under which the applicant achieved LEED certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below.

LEED-NC silver:	
first 10,000 square feet	equals the qualified occupied square footage less than or equal to 10,000 multiplied by $3.50; plus
next 40,000 square feet	the qualified occupied square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.75; plus
next 450,000 square feet	the qualified occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.70
LEED-NC gold:	
first 10,000 square feet	equals the qualified occupied square footage less than or equal to 10,000 multiplied by $4.75; plus
next 40,000 square feet	the qualified occupied square footage greater than 10,000 and less than or equal to 50,000 multiplied by $2.00; plus
next 450,000 square feet	the qualified occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $1.00
LEED-NC platinum:	
first 10,000 square feet	equals the qualified occupied square footage less than or equal to 10,000 multiplied by $6.25; plus
next 40,000 square feet	the qualified occupied square footage greater than 10,000 and less than or equal to 50,000 multiplied by $3.25; plus

next 450,000 square feet	the qualified occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $2.00
LEED-EB OR LEED-CS silver:	
first 10,000 square feet	equals the qualified occupied square footage less than or equal to 10,000 multiplied by $2.50; plus
next 40,000 square feet	the qualified occupied square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.25; plus
next 450,000 square feet	the qualified occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.50
LEED-EB OR LEED-CS gold:	
first 10,000 square feet	equals the qualified occupied square footage less than or equal to 10,000 multiplied by $3.35; plus
next 40,000 square feet	the qualified occupied square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.40; plus
next 450,000 square feet	the qualified occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.70
LEED-EB OR LEED-CS platinum:	
first 10,000 square feet	equals the qualified occupied square footage less than or equal to 10,000 multiplied by $4.40; plus
next 40,000 square feet	the qualified occupied square footage greater than 10,000 and less than or equal to 50,000 multiplied by $2.30; plus
next 450,000 square feet	the qualified occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $1.40
LEED-CI silver:	
first 10,000 square feet	equals the qualified occupied square footage less than or equal to 10,000 multiplied by $1.40; plus
next 40,000 square feet	the qualified occupied square footage greater than 10,000 and less than or equal to 50,000 multiplied by $.70; plus
next 450,000 square feet	the qualified occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.30
LEED-CI gold:	
first 10,000 square feet	equals the qualified occupied square footage less than or equal to 10,000 multiplied by $1.90; plus
next 40,000 square feet	the qualified occupied square footage greater than 10,000 and less than or equal to 50,000 multiplied by $.80; plus
next 450,000 square feet	the qualified occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.40
LEED-CI platinum:	
first 10,000 square feet	equals the qualified occupied square footage less than or equal to 10,000 multiplied by $2.50; plus
next 40,000 square feet	the qualified occupied square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.30; plus
next 450,000 square feet	the qualified occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.80

B. The department calculates the maximum 2015 sustainable building tax credit for residential (single family or multifamily) dwelling units based on the qualified occupied square footage of the sustainable building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below.

LEED-H silver or build green New Mexico silver:	
up to 2,000 square feet	equals the qualified occupied square footage less than or equal to 2,000 multiplied by $3.00
LEED-H gold or build green New Mexico gold:	
up to 2,000 square feet	equals the qualified occupied square footage less than or equal to 2,000 multiplied by $4.50
LEED-H platinum or build green New Mexico emerald:	
up to 2,000 square feet	equals the qualified occupied square footage less than or equal to 2,000 multiplied by $6.50
energy star manufactured housing:	
up to 2,000 square feet	equals the qualified occupied square footage less than or equal to 2,000 multiplied by $3.00

C. The taxation and revenue department makes the final determination of the amount of the 2015 sustainable building tax credit.

[3.3.34.13 NMAC - Rp, 3.3.34.12 NMAC, 02/08/2022]

3.3.34.14 CLAIMING THE STATE TAX CREDIT:

To claim the 2015 sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department's issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires. The applicant shall submit the certificate to the taxation and revenue department no later than December 31, 2024.

[3.3.34.14 NMAC - Rp, 3.3.34.13 NMAC, 02/08/2022]

PART 35: 2021 SUSTAINABLE BUILDING TAX CREDIT

3.3.35.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[3.3.35.1 NMAC - Rp, 3.3.35.1 NMAC, 07/12/2022]

3.3.35.2 SCOPE:

3.3.35 NMAC applies to the application and certification procedures for administration of the 2021 sustainable building tax credit for sustainable residential buildings, sustainable commercial buildings, the renovation of existing buildings, the permanent installation of manufactured housing or the installation of energy-conserving products to existing buildings.

[3.3.35.2 NMAC - Rp, 3.3.35.2 NMAC, 07/12/2022]

3.3.35.3 STATUTORY AUTHORITY:

3.3.35 NMAC is established under the authority of Section 7-2-18.32 and Subsection E of 9-1-5 NMSA 1978.

[3.3.35.3 NMAC - Rp, 3.3.35.3 NMAC, 07/12/2022]

3.3.35.4 DURATION:

Permanent unless an earlier date is specified in a section.

[3.3.35.4 NMAC - Rp, 3.3.35.4 NMAC, 07/12/2022]

3.3.35.5 EFFECTIVE DATE:

July 12, 2022, unless a later date is cited at the end of a section.

[3.3.35.5 NMAC - Rp, 3.3.35.5 NMAC, 07/12/2022]

3.3.35.6 OBJECTIVE:

3.3.35 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the 2021 sustainable building tax credit for sustainable residential and commercial buildings, renovation of existing buildings or the installation of energy-conserving products to existing buildings.

[3.3.35.6 NMAC - Rp, 3.3.35.6 NMAC, 07/12/2022]

3.3.35.7 DEFINITIONS:

For additional definitions refer to Sections 7-2-18.32 NMSA 1978.

A. "Annual cap" means the annual total amount of the 2021 sustainable building tax credit available to taxpayers owning sustainable buildings.

B. "Applicant" means a taxpayer who owns a sustainable residential or commercial building or manufactured housing or who has renovated an existing building or installed energy-conserving products in New Mexico and who desires to have the department issue a certificate of eligibility for a 2021 sustainable building tax credit.

C. "Application package" means the documents an applicant submits to the department to apply for a certificate of eligibility for a 2021 sustainable building tax credit.

D. "Build green New Mexico certification" means the verification by a department-approved verifier that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

E. "Build green New Mexico rating system" means the certification standards adopted by build green New Mexico in November 2014, which includes water conservation standards.

F. "Building project" means a new construction of a sustainable commercial or residential building, installation of manufactured housing, renovation of an existing building or installation of energy conserving products to existing buildings.

G. "Building type" means the primary use of a building or section of a building as defined in target finder.

H. "Certificate of eligibility" means the document with a unique identifying number that specifies the specific physical address for the approved 2021 sustainable building tax credit, the rating system certification level awarded to the building, the amount of qualified occupied square footage, a calculation of the maximum amount of the 2021 sustainable building tax credit for which the owner would be eligible, the date of issuance and the first taxable year the credit shall be claimed.

I. "Certification level" means one of the following:

(1) LEED-H gold or build green New Mexico gold;

(2) LEED-H platinum or build green New Mexico emerald;

(3) LEED-NC gold;

(4) LEED-NC platinum;

(5) LEED-EB (O&M) or LEED-CS gold;

(6) LEED-EB (O&M) or LEED-CS platinum;

(7) LEED-CI gold or LEED-CI platinum; and

(8) manufactured housing.

J. "Code official" means the officer or other designated authority charged with the administration and enforcement of the building codes.

K. "Department" means the energy, minerals and natural resources department.

L. "Division director" means the director of the department's energy conservation and management division.

M. "Insulation" is a material that contains properties to significantly control heat flow caused by radiation, convection and conduction. It is essential for controlling heat gain and loss through the building enclosure. Insulation is rated by R-value, the material's resistance to heat flow.

N. "Install" or **"installation"** means the direct work of placing an energy conservation product into service to operate and reduce energy at the expected level for window, doors and insulation and contribute to electrification of commercial and residential buildings with energy star rated equipment.

O. "LEED certification" means the verification by the United States green building council, or a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within the applicable LEED rating system resulting in the issuance of a certification document.

P. "LEED registration" means the notification to the United States green building council that a project is pursuing LEED certification.

Q. "Most current" means the most recent date of the latest approved edition of a standard LEED rating system or the most recent date of an approved energy code adopted by the construction industries division of the regulation and licensing department.

R. "O&M" means operation and maintenance.

S. "2021 sustainable building tax credit" for the purposes of 3.3.35 NMAC means the personal income tax credit the state of New Mexico issues to an applicant for a sustainable residential or commercial building, manufactured home, renovation of an existing building or installation of energy-conserving products.

T. "New solar market development income tax credit" means the personal income tax credit enacted in 2020 issued to a taxpayer for a solar energy system the department has certified.

U. "Notice of approval" means the work complies in all respects with the latest building codes and has been approved by the code official.

V. "Project completion" means notice of approval by code officials for construction or renovation projects. New buildings must be completed after January 1, 2022. Renovation of existing buildings or installation of energy-conserving products must be completed after January 1, 2021.

W. "Rating system" means the LEED rating systems previously defined, the build green New Mexico rating system or the energy star program for manufactured housing.

X. "RESNET" means the residential energy services network, an industry not-for-profit membership corporation and national standards-making body for building energy efficiency rating systems.

Y. "Sustainable affordable buildings" means housing that serves the needs of low-income persons with an annual household adjusted gross income equal to or less than two hundred percent of the federal poverty level guidelines published by the United States department of health and human services.

Z. "Target finder" means the web-based program developed by the United States environmental protection agency to establish an energy goal in kilo british thermal units per square foot per year for predetermined building types.

AA. "Taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Income Tax Act, 7-2-1 *et seq*. NMSA 1978.

BB. "Taxpayer" means any individual subject to the tax imposed by the Income Tax Act, 7-2-1 *et seq*. NMSA 1978.

CC. "Taxpayer identification number" means the taxpayer's nine-digit social security number or employer identification number provided by a business enterprise.

DD. "Verifier" means an entity the department approves to provide certifications under the build green New Mexico or LEED rating systems.

[3.3.35.7 NMAC - Rp, 3.3.35.7 NMAC, 07/12/2022]

3.3.35.8 GENERAL PROVISIONS:

A. The 2021 sustainable building tax credit may be claimed for taxable years prior to January 1, 2028.

B. A tax credit provided in 3.3.35.8 NMAC may not be claimed with respect to the same sustainable building under the 2021 sustainable building tax credit provided in the Corporate Income and Franchise Tax Act, for which a credit under the 2015 sustainable building tax credit pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act has already been claimed.

C. A person who is the owner of a building in New Mexico constructed to be a sustainable building or permanently installed manufactured housing and receives certification on or after January 1, 2022, may receive a certificate of eligibility for a sustainable building tax credit. A subsequent purchaser of a sustainable residential building may receive a certificate if no tax credit has previously been claimed for the building.

D. A person who is the owner of a commercial building having more than 20,000 square feet of temperature-controlled space and was built at least 10 years prior to the renovation or a building owner who has installed energy conservation products in an existing commercial or residential building having less than 20,000 square feet of temperature-controlled space on or after January 1, 2021, may receive a certificate of eligibility for a 2021 sustainable building tax credit.

E. The annual total amounts in a calendar year of the 2021 sustainable building tax credit pursuant to the Income Tax Act and Corporate Income and Franchise Tax Act available to taxpayers owning sustainable residential buildings is $2,000,000, for sustainable commercial buildings is $1,000,000 and for sustainable manufactured housing is $250,000. Any excess funds not used in a taxable year shall not be carried forward to subsequent years. When the cap is reached in any category in a given year based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible 2021 sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance in a subsequent tax year, except for the last taxable year when the 2021 sustainable building tax credit is in effect;

(2) issue certificates of eligibility to applicants who meet the requirements for the 2021 sustainable building tax credit in a taxable year when applications in one sustainable building category exceed the annual cap in another sustainable building category and other categories are under the annual cap as determined by February 1 of any year in which the tax credit is in effect; or

(3) if no 2021 sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the 2021 sustainable building tax credit is in effect.

F. Funding for renovation of commercial buildings is $1,000,000 and for energy conservation products $2,900,000.

G. In the event of a discrepancy between a requirement of 3.3.35 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.3.35 NMAC's adoption, the existing rule governs.

H. All notices and applications required to be submitted to the department under 3.3.35 NMAC shall be submitted to the energy conservation and management division of the department.

I. New Mexico general requirements.

(1) Sustainable buildings shall have the internet connections capable of connecting to a broadband provider.

(2) New sustainable residential buildings shall be electric vehicle ready. The parking space shall be equipped with one 40 ampere, 208 volt or 240 volt dedicated branch circuit for charging electric vehicles. The termination point can be a receptacle or junction box and shall be near where electric vehicles can easily be charged. The extension cord shall be long enough to reach to a vehicle and meet electric code and electric vehicle manufacturing requirements.

(3) New sustainable commercial buildings shall be electric vehicle ready with at least ten percent of the parking spaces capable of charging electric vehicles and for residential buildings at least one parking space. All parking spaces required to be capable of charging electric vehicles shall be equipped with one 40 ampere, 208 volt or 240 volt dedicated branch circuit for charging electric vehicles. The termination point can be a receptacle or junction box and shall be near where electric vehicles can easily be charged. The extension cord shall be long enough to reach to a vehicle and meet electric code and electric vehicle manufacturing requirements.

(4) A fully electric new building shall have a permanent supply of only electricity for space heating, water heating, cooking appliances, clothes washing, clothes drying, dish washing, pools and spas. No natural gas or propane plumbing shall be installed. This is only required to obtain the 2021 sustainable building tax credit for fully electric new buildings.

(5) A fully electric existing building shall have a permanent supply of only electricity for space heating, water heating, cooking appliances, clothes washing, clothes drying, pools and spas. The existing building shall not be connected to natural gas or propane energy supplies. Existing natural gas or propane plumbing does not need to be removed for purpose of this provision, so long as it is disconnected. This is only required to obtain the 2021 sustainable building tax credit for fully electric new buildings.

(6) Sustainable building projects shall follow the latest LEED rating system requirements as established by the United States green building council or the latest build green New Mexico requirements.

J. Build green New Mexico sustainable single-family residential requirements.

(1) Build green emerald shall:

(a) comply with watersense standards for indoor plumbing fixtures and water using appliances that, on average, have flow rates equal to or lower than the flow rates required for certification;

(b) include one waterline in the front and one waterline in the back, below the frost line, that can be connected to a drip irrigation system if landscaping area is available; and

(c) use forty percent less energy than is required by following the prescriptive path of the most current residential energy conservation code adopted by the construction industries division of the regulation and licensing department.

(2) Build green gold shall:

(a) comply with watersense standards for indoor plumbing fixtures and water using appliances that, on average, have flow rates equal to or lower than the flow rates required for certification;

(b) include one waterline in the front and one waterline in the back, below the frost line, that can be connected to a drip irrigation system if landscaping area is available; and

(c) use thirty percent less energy than is required by following the prescriptive path of the most current residential energy conservation code adopted by the construction industries division of the regulation and licensing department.

(3) Build green New Mexico shall use department approved verifiers to determine a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

K. Net zero homes shall be determined using an energy rating system index that gives a numerical score to a building where 100 represents the energy use of a home relative to the 2006 International Energy Conservation Code and 0 is equivalent to a net zero home.

[3.3.35.8 NMAC - Rp, 3.3.35.8 NMAC, 07/12/2022]

3.3.35.9 VERIFIER ELIGIBILITY FOR ALL BUILDINGS:

A. The department reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications or LEED commercial buildings, which shall be provided annually to the department, based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners or commercial building owners that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including:

(a) experience in green home building and commercial building services;

(b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;

(c) a method of auditing the certification process to maintain adequate stringency; and

(d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;

(3) the verifier can identify the geographic area being served; and

(4) the verifier provides a statement that expresses a commitment to promoting energy-efficient green building with the highest standard of excellence.

B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

C. The verifier shall notify the department 30 calendar days prior to making any changes to its certification process or rating systems on which its prior approval by the department was based.

D. The department may rescind an existing verifier's approval at any time if it determines the above criteria are not being met.

E. The department notifies the verifier of the reasons for disapproving or rescinding eligibility as follows.

(1) The department shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the department's notice is sent. The verifier shall address the request to the division director and include the reasons the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold, at his or her discretion, a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier on the later of 20 calendar days after receiving the request or five calendar days after a hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal

from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing, at his or her sole discretion, and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within the latter of 20 calendar days after receiving the request or five calendar days after the date the hearing concludes.

[3.3.35.9 NMAC – Rp, 3.3.35.9 NMAC, 07/12/2022]

3.3.35.10 APPLICATION FOR THE 2021 SUSTAINABLE BUILDING TAX CREDIT:

A. To obtain the 2021 sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the department using either a department-developed application form or approved electronic application system as directed by the division director. An applicant may obtain the department-developed application form or access to the electronic application system from the department.

B. An application package shall include a completed application form and attachments as specified on the application form or by the electronic application system. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application package for each sustainable residential or commercial building or manufactured house. An applicant for a multiuse building shall submit one residential application and one commercial application. The applicant shall submit all material in the application package on 8½ inch by 11-inch paper or using any approved electronic application system provided by the department as directed by the division director. If the applicant fails to submit the application form and required attachments at the same time as directed by the division director, the department may consider the application incomplete.

C. An applicant shall submit a complete sustainable building application package to the department no later than February 1 of the taxable year for which the applicant seeks the 2021 sustainable building tax credit. If an applicant does not submit a complete application package by February 1, any remaining funds in any other sustainable building category in the 2021 sustainable building tax credit funds, under the cap, may be used in that taxable year for completed 2021 sustainable building or manufactured housing applications. The department may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

D. The completed application form shall consist of the following information:

(1) the applicant's name, mailing address, telephone number and taxpayer identification number;

(2) the name of the applicant's authorized representative;

(3) the ending date of the applicant's taxable year;

(4) the address of the sustainable commercial or residential building or manufactured housing, or the address where the renovations were done including the applicable property's legal description;

(5) whether the applicant was the building owner at time of certification or a subsequent purchaser;

(6) the qualified occupied square footage of the sustainable residential or commercial building for projects eligible under LEED or build green New Mexico and for renovations of commercial buildings built at least ten years prior to the renovation and having at least 20,000 square feet;

(7) the rating system under which the sustainable residential or commercial building was certified for projects eligible under LEED or build green New Mexico;

(8) the certification level achieved, if applicable;

(9) the energy rating system index, if applicable;

(10) documentation applicant meets water efficiency standards to comply with water efficiency requirements of LEED and build green New Mexico programs;

(11) the date of rating system certification, if applicable;

(12) project completion date;

(13) if applicable, the low-income taxpayer declaration confirming an applicant's annual household adjusted gross income is equal to or less than two hundred percent of the federal poverty level guidelines published by the United States department of health and human services;

(a) the annual update of the poverty guideline of the United States department of health and human services as published in the federal register shall be the basis for determining eligibility;

(b) the taxable year prior to the calendar year in which the energy-conserving products were purchased and installed shall be used to determine eligibility of the low-income taxpayer;

(14) if applicable, a statement from the building owner that the occupants of the commercial or residential building are low-income persons as defined in Paragraph (13) of Subsection D of 3.3.35.10 NMAC;

(15) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, certifying:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) applicant has read the requirements contained in 3.3.35 NMAC;

(c) if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the 2021 sustainable building tax credit or the energy reduction requirement achieved, the applicant did not claim a new solar market development income tax credit and will not do so;

(d) applicant understands there are annual caps for the 2021 sustainable building tax credit;

(e) applicant understands the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a 2021 sustainable building tax credit; and

(f) energy conservation products installed on or after January 1, 2021, may be certified for the 2021 sustainable building tax credit.

E. In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable building;

(2) a copy of the rating system certification form;

(3) a copy of the final certification review checklist showing the points achieved, if applicable;

(4) a copy of the energy rating index system certificate from an approved rating network or an equivalent rating system to the home energy rating system developed by RESNET showing the building has achieved the energy reduction requirements for build green New Mexico gold and emerald energy reduction levels;

(5) documentation showing compliance with the thirty and forty percent reduction requirements including:

(a) an analysis establishing the energy per square foot per year level that complies with the prescriptive path of the latest adopted residential energy code; the energy level established by meeting the energy code shall be compared to the energy

consumption level of the final sustainable residential constructed design to demonstrate that the building consumes forty percent less energy or thirty percent less energy depending on the certification requested; and

(b) renewables can be used to meet the forty or thirty percent energy requirements if calculation results show the annual energy contribution of renewables, in consistent units, of energy per square foot per year demonstrate the forty or thirty percent requirement is met; results from the national renewable energy laboratory PV calculator or equivalent evaluation systems shall be used to determine the annual energy output of photovoltaic systems;

(6) documentation showing a renovation of a commercial building having 20,000 square feet or more reduces total energy and power costs by fifty percent when compared to the most current energy standard for buildings titled energy standard for buildings except low-rise residential buildings, as developed by the american society of heating, refrigerating and air-conditioning engineers;

(7) documentation showing project completion date; and

(8) a copy of a notice of approval such as a certificate of occupancy from the building official for the renovation of a commercial building showing it was built at least 10 years prior to the project completion date.

F. The applicant shall provide the following attachments, as applicable;

(1) fully electric building certification;

(2) electric vehicle ready certification;

(3) broadband ready certification; and

(4) any other information the department determines it needs to review the building project for the 2021 sustainable building tax credit.

[3.3.35.10 NMAC – Rp, 3.3.35.10 NMAC, 07/12/2022]

3.3.35.11 APPLICATIONS FOR ENERGY-CONSERVING PRODUCTS:

A. Energy-conserving products shall be energy star rated for the location installed and meet the insulation requirements in 3.3.35.14 NMAC to be eligible for the 2021 sustainable building tax credit.

B. Energy-conserving products installed under the 2021 sustainable building tax credit shall reduce the energy consumption of a residential or commercial building with energy star windows and doors and insulation or contribute towards electrification of sustainable buildings with energy star heat pump furnaces and water heaters.

C. To obtain the 2021 sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the department using either a department-developed application form or approved electronic application system as directed by the division director. An applicant may obtain the department-developed application form or access to the electronic application system from the department.

D. An application package shall include a completed application form and attachments as specified on the application form or by the electronic application system. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application package for each project. The applicant shall submit all material in the application package on 8½ inch by 11-inch paper or using any approved electronic application system provided by the department as directed by the division director. If the applicant fails to submit the application form and required attachments as directed by the division director, the department may consider the application incomplete.

E. An applicant shall submit a complete application package to the department no later than February 1 of the year following the taxable year for which the applicant seeks the 2021 sustainable building tax credit. An applicant may submit an application for energy-conserving products installed in 2021 after February 1, 2022. The department may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

F. The completed application form shall consist of the following information:

(1) the applicant's name, mailing address, telephone number, email address and taxpayer identification number;

(2) the name of the applicant's authorized representative, if any;

(3) the ending date of the applicant's taxable year;

(4) the address of the building where the energy-conserving products have been installed, including the property's legal description;

(5) if applicable, a low-income taxpayer declaration confirming annual household adjusted gross income equal to or less than two hundred percent of the federal poverty level guidelines published by the United States department of health and human services;

(a) the annual update of the poverty guideline of the United States department of health and human services as published in the federal register shall be the bases for determining eligibility;

(b) the taxable year prior to the calendar year in which the energy-conserving products were purchased and installed shall be used to determine eligibility of the low-income taxpayer;

(6) if applicable, a statement from the building owner certifying the occupants of the commercial or residential building are low-income persons and low-income persons, as defined in Paragraph (5) of Subsection F of 3.3.35.11 NMAC, continue to reside in the building;

(7) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, certifying:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) applicant has read the requirements contained in 3.3.35 NMAC;

(c) applicant understands there are annual caps for the 2021 sustainable building tax credit;

(d) applicant understands the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a 2021 sustainable building tax credit; and

(e) applicant understands the department issues a certificate of eligibility for the taxable year in which the energy-conserving products were installed; or if the 2021 sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available;

(8) a statement verifying when the installation was complete; and

(9) a statement verifying that the application is for an affordable or non-affordable commercial or residential sustainable building tax credit.

G. The following attachments are required for applications for installation of energy star equipment:

(1) equipment specification sheet showing complete model number and copy of energy star certification for specific model of installed items;

(2) documentation that energy star certification is for the climate zone where the unit is installed;

(3) itemized invoice showing the quantity of product, cost of the energy-conserving product and cost for installation incurred within the tax year for which the application is submitted;

(4) proof of inspection and approval of installation; if applicable; and

(5) a copy of a deed, property tax bill or legal description of the building.

H. The following attachments are required for applications for installation of insulation:

(1) material specification sheet showing the R-value or U-value of insulation;

(2) material flame spread index and smoke development index specifications;

(3) a certification provided by the contractor showing the installed thickness of insulation following the manufacturer's installation instructions for blown-in or sprayed-on insulation;

(4) itemized invoice showing quantity, product and installation costs of the insulation project;

(5) proof of inspection and approval of installation; if applicable and

(6) a copy of a deed, property tax bill or legal description of the building.

I. The following attachments are required for electric vehicle ready equipment:

(1) a specification sheet for the electric vehicle charging unit; and

(2) a one-line diagram showing the ampere and voltage rating of the dedicated branch circuit for each charging unit.

J. In addition to the foregoing, the applicant shall submit any other information the department determines it needs to review the building project for the 2021 sustainable building tax credit.

K. If the requirements established by the department have been complied with, the department shall issue to the building owner a document granting a 2021 sustainable building tax credit with an identification number, date of issuance, a calculation of the maximum amount of the 2021 sustainable building tax credit for which the building owner would be eligible and the first taxable year the credit shall be claimed.

L. To ensure compliance with 3.3.35 NMAC applicant agrees to allow the department or its authorized representative to inspect the energy conservation product installation described in the application package at any time after the date of submittal of the application package until three years after the department has certified the energy conservation product installation, upon the department providing a minimum of five days' notice to the applicant.

[3.3.35.11 NMAC – N, 07/12/2022]

3.3.35.12 APPLICATION REVIEW PROCESS:

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package. The department disapproves an incomplete or incorrect application. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The department places the resubmitted application in the review schedule as if it were a new application.

C. The department reviews the application package to calculate the maximum 2021 sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the 2021sustainable building tax credit.

D. If an applicant has claimed a new solar market development income tax credit that solar system cannot be used to meet the requirements of either the certification level applied for, or the energy reduction achieved. If an applicant has received a new solar market development tax income credit for a system is used to meet the requirements of the certification level applied for or the energy reduction achieved, the department shall disapprove the application for the 2021 sustainable building tax credit. The applicant may submit a revised application package to the department that does not include the electricity projected to be generated by the solar system. The department places the resubmitted application in the review schedule as if it were a new application.

E. If the department finds the application package meets the requirements and a 2021 sustainable building tax credit is available, the department issues the certificate of eligibility for a 2021 sustainable building tax credit as provided in 3.3.35.8 NMAC. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, a calculation of the maximum amount of 2021 sustainable building tax credit for which the owner would be eligible, date of issuance and the first and any subsequent taxable year(s) the credit shall be claimed.

F. If the department finds the application package for energy conservation products meets the requirements and a 2021 sustainable building tax credit is available, the department issues the certificate of eligibility for a 2021 sustainable building tax credit as provided in 3.3.35.8 NMAC. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, energy-conserving product certified, a calculation of the maximum amount of 2021

sustainable building tax credit for which the owner would be eligible, date of issuance and the first and any subsequent taxable year(s) the credit shall be claimed.

G. The certificate shall state the energy conservation product that is certified and that the certificate is for an affordable or non-affordable sustainable building project.

[3.3.35.12 NMAC - Rp, 3.3.35.11 NMAC, 07/12/2022]

3.3.35.13 CALCULATING THE TAX CREDIT FOR THE 2021 SUSTAINABLE BUILDING TAX CREDIT:

A. The department calculates the maximum 2021 sustainable building tax credit based on the qualified occupied square footage of the sustainable building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below.

Sustainable commercial building that is broadband ready and electric vehicle ready and is completed after January 1, 2022:	
LEED-NC platinum first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $5.25
LEED-NC platinum next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $2.25
LEED-NC platinum over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $1.00
LEED-EB (O&M) or CS platinum first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $3.40
LEED-EB (O&M) or CS platinum next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $1.30

LEED-EB (O&M) or CS platinum over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.35
LEED-CI platinum first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $1.50
LEED-CI platinum next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $0.40
LEED-CI platinum over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.30
LEED-NC gold first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $3.00
LEED-NC gold next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $1.00
LEED-NC gold over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.25
LEED-EB (O&M) or CS gold first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $2.00
LEED-EB (O&M) or CS gold next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $1.00
LEED-EB (O&M) or CS gold over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.25

LEED-CI gold first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $0.90
LEED-CI gold next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $0.40
LEED-CI gold over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.10
Additional criteria	
fully electric buildings first 50,000 square feet	equals the qualified square footage up to 50,000 multiplied by $1.00
fully electric buildings over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.50
zero carbon, energy, waste or water certified first 50,000 square feet	equals the qualified square footage up to 50,000 multiplied by $0.25
zero carbon, energy, waste or water certified over 50,000 square feet up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.10
Renovation of commercial building at least 10 years old with at least 20,000 square feet of qualified occupied square footage in which temperature is controlled and is broadband and electric vehicle ready effective January 1, 2021:	
renovation that reduces total energy consumption by 50% when compared to the most current energy standard for buildings except low-rise	equals qualified square footage multiplied by $2.25 up to a maximum of $150,000 per renovation

residential buildings as developed by American society of heating, refrigerating and air-conditioning engineers	
Sustainable commercial building that is broadband ready and electric vehicle ready and is completed after January 1, 2022:	
LEED-NC platinum first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $5.25
LEED-NC platinum next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $2.25
LEED-NC platinum over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $1.00
LEED-EB (O&M) or CS platinum first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $3.40
LEED-EB (O&M) or CS platinum next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $1.30
LEED-EB (O&M) or CS platinum over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.35
LEED-CI platinum first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $1.50
LEED-CI platinum next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $0.40

LEED-CI platinum over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.30
LEED-NC gold first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $3.00
LEED-NC gold next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $1.00
LEED-NC gold over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.25
LEED-EB (O&M) or CS gold first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $2.00
LEED-EB (O&M) or CS gold next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $1.00
LEED-EB (O&M) or CS gold over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.25
LEED-CI gold first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $0.90
LEED-CI gold next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $0.40
LEED-CI gold over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.10
Additional criteria	

fully electric buildings first 50,000 square feet	equals the qualified square footage up to 50,000 multiplied by $1.00
fully electric buildings over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.50
zero carbon, energy, waste or water certified first 50,000 square feet	equals the qualified square footage up to 50,000 multiplied by $0.25
zero carbon, energy, waste or water certified over 50,000 square feet up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.10
Renovation of commercial building at least 10 years old with at least 20,000 square feet of qualified occupied square footage in which temperature is controlled and is broadband and electric vehicle ready effective January 1, 2021:	
renovation that reduces total energy consumption by 50% when compared to the most current energy standard for buildings except low-rise residential buildings as developed by American society of heating, refrigerating and air-conditioning engineers	equals qualified square footage multiplied by $2.25 up to a maximum of $150,000 per renovation

For the installation of these energy conserving products for renovation of sustainable affordable and non-affordable commercial buildings less than 20,000 square feet of space in which temperature is controlled and is broadband ready effective January 1, 2021:

Product	affordable housing	non-affordable housing
energy star air source heat pump	$2,000 including product and installation costs and associated electrical connection costs	$1,000 including product and installation costs and associated electrical connection costs
energy star ground source heat pump	$2,000 including product and installation costs and associated electrical connection costs	$1,000 including product and installation costs per product installed and associated electrical connection costs
energy star windows and doors	one hundred percent of product and installation costs up to $1,000	fifty percent of product and installation costs up to $500 per product installed
insulation improvements that meet department's rules	one hundred percent of product and installation costs up to $2,000	fifty percent of product and installation costs up to $1,000 per product installed
energy star heat pump water heater	$700 including product and installation costs and associated electrical connection costs	$350 including product and installation costs per product installed and associated electrical connection costs
electric vehicle ready	one hundred percent of product and installation costs up to $3,000 and associated electrical connection costs	fifty percent of product and installation costs up to $1,500 per product installed and associated electrical connection costs

For construction of a new sustainable residential building that is broadband ready and electric vehicle ready and completed after January 1, 2022:

LEED-H platinum	equals the qualified square footage up to 2,000 multiplied by $5.50
LEED-H gold	equals the qualified square footage up to 2,000 multiplied by $3.80
build green emerald	equals the qualified square footage up to 2,000 multiplied by $5.50
build green gold	equals the qualified square footage up to 2,000 multiplied by $3.80
manufactured housing	equals the qualified square footage up to 2,000 multiplied by $2.00
Additional criteria	
fully electric building	equals the qualified square footage up to 2,000 multiplied by $1.00
zero carbon, energy, waste or water certified	equals the qualified square footage up to 2,000 multiplied by $0.25

For installation of energy conserving products for renovation of affordable and non-affordable existing residential buildings effective January 1, 2021:		
Product	affordable housing and low income	non-affordable housing and non-low income
energy star air source heat pump	$2,000 including product and installation costs (per product installed if the applicant is a low- income taxpayer)	$1,000 including product and installation costs per product installed

energy star ground source heat pump	$2,000 including product and installation costs (per product installed if the applicant is a low-income taxpayer)	$1,000 including product and installation costs per product installed
energy star windows and doors	one hundred percent of product and installation costs up to $1,000 (per product installed if the applicant is a low-income taxpayer)	fifty percent of product and installation costs up to $500 per product installed
insulation improvements that meet department's rules	one hundred percent of product and installation costs up to $2,000 (per product installed if the applicant is a low-income taxpayer)	fifty percent of product and installation costs up to $1,000 per product installed
energy star heat pump water heaters	$700 including product and installation costs (per product installed if the applicant is a low-income taxpayer)	$350 including product and installation costs per product installed
electric vehicle ready	$1,000 including product and installation costs (per product installed if the applicant is a low-income taxpayer)	$500 including product and installations costs per product installed

B. Energy conservation products shall meet the specified energy star rating performance requirements at the installed location.

energy star zones for New Mexico	
south-central zone	Chavez, Dona Ana, Eddy, Hidalgo, Lea, Luna and Otero counties

north-central zone	Bernalillo, Cibola, Curry, De Baca, Grant, Guadalupe, Lincoln, Quay, Roosevelt, Sierra, Socorro, Union and Valencia counties
northern	Catron, Colfax, Harding, Los Alamos, McKinley, Mora, Rio Arriba, San Juan, San Miguel, Sandoval, Santa Fe, Taos and Torrance counties

[3.3.35.13 NMAC - Rp, 3.3.35.13 NMAC, 07/12/2022]

3.3.35.14 REQUIREMENTS FOR ENERGY CONSERVING PRODUCTS:

A. Energy-conserving products shall be energy star rated for the location installed and meet the insulation requirements in 3.3.35.14 NMAC to be eligible for the 2021 sustainable building tax credit. Energy conserving products and insulation improvements eligible for the 2021 sustainable building tax credit shall meet the applicable requirements of the most current New Mexico commercial building code, the New Mexico residential building code, the New Mexico electrical code, the New Mexico mechanical code and the New Mexico plumbing code and shall be installed under a construction permit and shall be inspected by the code official having jurisdiction.

B. Insulation products and installation eligible for consideration for a tax credit are

(1) batts and blankets made of mineral fiber and mineral wool such as fiberglass, rock, slag, wool, cotton or cellulose materials; they are available with facings that serve as vapor retarders and without facings; some products have flanges to aid in installation to framed assemblies;

(2) loose-fill insulation that uses a blown installation process for cellulose, fiberglass, mineral wool and natural wools; the R-value of the blown wall insulation material installed in closed cavities is determined by the installed thickness and density; the installed density shall meet manufactured specifications; open horizontal applications, such as for attic and floors, the R-value is verified by thickness and rated coverage; in open vertical applications the R-value shall be thickness and rated coverage as per manufacture specifications;

(3) spray polyurethane foam having an open cellular structure having a nominal density of 0.4 to 1.5 pounds per cubic foot shall have a minimum R-value of 3.6 per inch for compliance; a spray applied polyurethane foam having a closed cellular structure having a nominal density of 1.5 to less than 2.5 pounds per cubic foot shall have a minimum R-value of 5.8 per inch for compliance; the weatherproof seal placed on top of spray polyurethane foam shall protect from degradation caused by ultraviolet

light, water and other normal weathering hazards; surfaces to receive the roof covering system must comply with applicable building codes and manufacturers installation recommendations;

(4) rigid insulation sheathing made from fiberglass, mineral wool, expanded polystyrene, extruded polystyrene, polyisocyanurate or polyurethane; this type of insulation may be used for roof decks, exterior walls, ceilings, basement walls, perimeter insulation or to cover window and door headers; fastening shall follow manufacturer requirements;

(5) wet insulation systems are roofing systems where insulation is installed above the waterproof membrane of a roof; installation shall meet New Mexico building code water sealing requirements;

(6) structural form wall systems made of closed cell spray foam placed in the cavity bonded to wood framing and continuous rigid board insulation on the exterior of the frame;

(7) structural insulated panels that are non-framed advanced construction system that consists of ridged foam insulation sandwiched between two sheets of board; the insulation can be expanded polystyrene foam, extruded polystyrene foam, polyurethane or polyisocyanurate foam; and

(8) insulated concrete forms (ICF) that are a system of formwork for concrete that stays in place as permanent building insulation and can be used for cast-in-place reinforced above-and below-grade concrete walls, floors and roofs; they are interlocking modular units that can be dry stacked (without mortar) and filled with concrete as a single concrete masonry unit; ICFs lock together externally and have internal metal or plastic ties to hold the outer layers of insulation to create a concrete form.

C. Eligible insulation installations shall to the extent possible, without structural framing modification, be installed in the building cavity to the R-factor listed in the prescriptive method of the latest New Mexico energy conservation code adopted by the construction industries division of the regulation and licensing department for the applicable building cavity and construction site climate zone. In no instance shall an increase in insulating R-factor less than 10 be considered for the 2021 sustainable building tax credit. Reframing involving basic structural framing of a building is not required.

D. Mandatory requirements for insulation products.

(1) R-value identification marks shall be applied by the manufacturer to each piece of insulation 12 inches or wider. Alternatively, the insulation installer shall provide a certification listing the type, manufacturer and R-value of the insulation install in each element of the building thermal envelope.

(2) For blown in or sprayed fiberglass and cellulose insulation, the initial installed thickness, settled thickness, settled R value, installed density, coverage area and number of bags installed shall be listed on the certification.

(3) For sprayed polyurethane foam insulation, the installed thickness shall be listed on the certification. The thickness of sprayed insulation shall be marked in inches and markers showing the thickness shall be installed every 300 square feet and attached to trusses or joists in attics. The numbers in the markers shall be at least one inch high and visible from the attic access opening.

(4) Fire rating of products shall follow the New Mexico commercial building code and New Mexico residential code.

(5) Foam plastic insulation shall be tested to demonstrate a flame-spread index of not more than 75 and a smoke-developed index of not more than 450.

(6) Exposed facing on insulation materials shall be fire resistant and tested and certified not to exceed a flame spread index of 25 and a smoke development index of 450. These indexes shall be shown on the insulation or packaging material or supplied by the manufacturer.

(7) Exposed foundation insulation shall have a protective rigid, opaque and weather-resistant protective covering to prevent the degradation of the insulation.

(8) Slab insulation must be suitable for applications in direct contact with soil and have a water absorption rate less than 0.3 percent when tested and a vapor permeance not greater than 2.0 perm/inch when tested.

(9) All insulation shall be properly sealed to prevent air leakage.

(10) To qualify for the 2021 sustainable building tax credit, insulation products installed shall meet the most current New Mexico energy code insulation requirements adopted by the construction industries division of the regulation and licensing department.

E. Retrofits with the following construction material or methods are not eligible for the 2021 sustainable building tax credit:

(1) logs, strawbales, adobe and rammed earth;

(2) spray-in-place polyurethane foam for interior walls or ceilings;

(3) urea formaldehyde foam insulation; and

(4) passive solar technologies using direct gain, trombe walls or mass energy storage.

F. The following are mandatory requirements for fenestration products.

(1) Fenestration products shall meet energy star requirements.

(2) The temporary label on windows shall not be removed until after inspection by the code official.

(3) All fenestration products shall be properly sealed to prevent air leakage.

G. Windows and skylights.

(1) Windows are considered part of an exterior wall when the slope is 60 degrees or more as measured from the horizontal. Where the slope of the fenestration is less than 60 degrees, the glazing is considered a skylight. Skylights are not eligible for the 2021 sustainable building tax credit.

(2) Site built fenestration or field-fabricated fenestration are not eligible for the 2021 sustainable building tax credit.

H. To qualify for an electric vehicle ready 2021 sustainable building tax credit, a commercial building shall have at least ten percent of parking spaces and for residential buildings at least one parking space with one 40 ampere, 208 volt or 240 volt dedicated branch circuit for charging electric vehicles. The termination point can be a receptacle or junction box and shall be near where electric vehicles can easily be charged. The extension cord shall be long enough to reach a vehicle and meet code and electric vehicle manufacturing requirements.

[3.3.35.14 NMAC - N, 07/12/2022]

3.3.35.15 CLAIMING THE STATE TAX CREDIT:

To claim the 2021 sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department's issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department may require.

[3.3.35.15 NMAC – Rp, 3.3.35.14 NMAC, 07/12/2022]

PART 36 CLEAN CAR PERSONAL INCOME TAX CREDIT

3.3.36.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Energy, Conservation and Management Division.

[3.3.36.1 NMAC - N, 9/24/2024]

3.3.36.2 SCOPE:

3.3.36 NMAC applies to the application and certification procedures for administration of the clean car personal income tax credit.

[3.3.36.2 NMAC - N, 9/24/2024]

3.3.36.3 STATUTORY AUTHORITY:

3.3.36 NMAC is established under the authority of Section 7-2-18.36 NMSA 1978.

[3.3.36.3 NMAC - N, 9/24/2024]

3.3.36.4 DURATION:

Permanent.

[3.3.36.4 NMAC - N, 9/24/2024]

3.3.36.5 EFFECTIVE DATE:

September 24,2024, unless a later date is cited at the end of a section.

[3.3.36.5 NMAC - N, 9/24/2024]

3.3.36.6 OBJECTIVE:

3.3.36 NMAC objective is to establish procedures for administering the certification program for the clean car personal income tax credit.

[3.3.36.6 NMAC - N, 9/24/2024]

3.3.36.7 DEFINITIONS:

For additional definitions refer to Section 7-2-18.36 NMSA 1978.

A. "Applicant" means a New Mexico taxpayer that has purchased an electric vehicle, plug-in hybrid electric vehicle or fuel cell vehicle or enters into a new lease of at least three years for one of these vehicles.

B. "Application package" means the application documents an applicant submits to the department for certification to receive a state tax credit.

C. "Certified" or **"certification"** means department approval of an applicant's eligible purchase of an electric vehicle, plug-in hybrid electric vehicle or fuel cell vehicle,

or an applicant's new lease of at least three years for one of these vehicles, either of which makes the applicant owning or leasing the vehicle eligible for a state tax credit.

D. "Department" means the energy, minerals, and natural resources department.

E. "Division" means the department's energy conservation and management division.

F. "Extended warranty" means a dealership-provided one-year extended warranty against defects and repairs on a previously owned vehicle.

G. "Licensed dealer" means a dealer licensed by the motor vehicle division of the taxation revenue department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico.

H. "New lease" means when a taxpayer enters into a new lease agreement of at least three years for a clean car vehicle.

I. "State tax credit" or **"tax credit"** means the clean car personal income tax credit.

[3.3.36.7 NMAC - N, 9/24/2024]

3.3.36.8 GENERAL PROVISIONS:

A. The state tax credit may be claimed for taxable years after January 1, 2024, and prior to January 1, 2030.

B. The tax credit provided by this section may be referred to as the clean car personal income tax credit.

C. One tax credit may be certified per taxpayer, per taxable year; only one tax credit shall be certified per new motor vehicle, and only one tax credit shall be certified per previously owned motor vehicle.

D. A taxpayer who is not a dependent of another individual and who, beginning on May 15, 2024, and prior to January 1, 2030, purchases an electric vehicle, plug-in hybrid electric vehicle, fuel cell vehicle or enters a new lease of at least three years for one of these vehicles is eligible to apply for certification for the tax credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act.

E. If a New Mexico taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all the requirements to be eligible for the credit, that taxpayer may be allocated the right to claim the tax credit in proportion to the taxpayer's ownership interest.

F. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit the department has certified.

G. The state tax credit is available for the tax year in which the vehicle was purchased or leased. The tax year of vehicle purchase date determines tax year eligibility.

H. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the tax credit that would have been claimed on a joint return.

I. A vehicle purchase or lease must be through a motor vehicle dealer licensed by the New Mexico motor vehicle division. A vehicle purchased through an unlicensed dealer is not eligible for the clean car personal income tax credit.

J. A lessee of a vehicle must have entered into a new lease for at least three years.

K. A previously owned motor vehicle must have a minimum one-year extended warranty against defects and repairs.

L. The department shall report to the taxation and revenue department the information required to verify, process, and distribute each state tax credit.

M. In the event of a discrepancy between a requirement of 3.3.36 NMAC and an existing New Mexico taxation and revenue department rule promulgated prior to the adoption of 3.3.36 NMAC, the existing rule shall govern.

[3.3.36.8 NMAC - N, 9/24/2024]

3.3.36.9 TAX CREDIT ADMINISTRATION:

A. A taxpayer may apply for certification for a clean car personal income tax credit from the energy, minerals, and natural resources department on electronic forms and in the manner prescribed by that department. The department will not accept paper applications or applications submitted by e-mail unless specifically authorized by the division.

B. An application package for a new clean car or previously owned clean car shall include a completed state tax credit electronic application and all required attachments. Partial applications will not be accepted. After the department has certified an application, applicants may not amend the certified application package to seek additional credits for that vehicle. If there are multiple owners on a clean car vehicle registration, a joint application must be submitted.

C. If the energy, minerals, and natural resources department determines that the taxpayer meets the clean car tax credit requirements, the department shall issue a

certificate of eligibility to the taxpayer providing the amount of tax credit and the taxable year in which the credit may be claimed.

[3.3.36.9 NMAC – N, 9/24/2024]

3.3.36.10 APPLICATION REQUIREMENTS:

A. The state tax credit is available for purchases of an electric vehicle, plug-in hybrid electric vehicle or fuel cell vehicle, or new leases of at least three years for one of these vehicles.

B. Applications for certification of the state tax credit shall be made no later than one year from the date on which the vehicle is purchased or the lease is entered into.

C. The application package shall meet the requirements of 3.3.36 NMAC. If an application package fails to meet a requirement, the department shall disapprove the application.

[3.3.36.10 NMAC - N, 9/24/2024]

3.3.36.11 APPLICATION:

A. To apply for a state tax credit, an applicant shall submit an application for a certificate of eligibility to the division using a department-developed application or an approved electronic application system.

B. To be considered complete, an application must include the state tax credit application and all required attachments.

C. If there are multiple owners of the clean car, a joint application must be submitted.

D. A completed application shall consist of the following information:

(1) The applicant's name, mailing address, e-mail address, telephone number, vehicle identification number (VIN) and the last four digits of the applicant's social security number or employer identification number (EIN) provided by a business applicant.

(2) A detailed description of the clean car, including year, make and model.

(3) A statement the applicant signed and dated, which signature may be a form of electronic signature if approved by the department, agreeing that all information provided in the application package is true and correct to the best of the applicant's knowledge.

(4) The vehicle's weight, battery capacity, and VIN as listed on the vehicle's window sticker.

E. A statement the applicant signed and dated, which may be a form of electronic signature if approved by the department, agreeing:

(1) applicant has read the certification requirements contained in 3.3.36 NMAC;

(2) applicant understands that the department must certify the clean car documents in the application package before becoming eligible for a state tax credit.

[3.3.36.11 NMAC – N, 9/24/2024]

3.3.36.12 APPLICATION ATTACHMENTS:

A. An application for new vehicle shall contain the following information as attachments:

(1) purchase agreement, vehicle proof of purchase from or proof of new lease through a dealer licensed by the motor vehicle division of the department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico;

(2) the vehicle's registration in New Mexico;

(3) vehicle purchase sticker or vehicle specification sheet;

(4) any additional information the energy, minerals, and natural resources department may require determining eligibility for the credit.

B. An application for previously owned motor vehicle certification of eligibility shall include:

(1) proof of vehicle purchase from or lease through a dealer licensed by the motor vehicle division of the department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico;

(2) the vehicle's registration in New Mexico;

(3) vehicle purchase sticker or vehicle specification sheet;

(4) proof that the dealer provided at least a one-year extended warranty against defects and repairs for the previously owned vehicle;

(5) any additional information the energy, minerals and natural resources department may require in determining eligibility for the credit.

[3.3.36.12 NMAC - N, 9/24/2024]

3.3.36.13 APPLICATION REVIEW PROCESS:

A. The department shall consider complete applications in the order received.

B. The department shall review the application package to calculate the state tax credit; check the accuracy of the applicant's documentation and determine whether the department shall certify the clean car personal income tax credit. The department shall disapprove an application that is not complete, correct, or does not meet the approval criteria.

C. If the department finds the application package meets the requirements of 3.3.36 NMAC, and a state tax credit is available, the department shall certify the applicant's clean car personal income tax credit.

D. If applicable, the department's disapproval notification shall state the reasons why the department disapproved the application. The applicant may resubmit the electronic application package for a disapproved project, but it shall be placed back at the beginning of the queue and reviewed as if it were a new application.

[3.3.36.13 NMAC - N, 9/24/2024]

3.3.36.14 WARRANTIES AND LEASES:

A. Clean car tax credit warranties that the department may accept for previously owned motor vehicles shall be provided by the dealer and shall cover a minimum of one-year extended warranty against defects and repairs.

(1) Auto warranties accepted by the department must cover both the failed part and the labor to replace or repair it. The warranty types that the department may accept include the following:

(a) an auto warranty that covers repairs for parts that fail due to defects or errors in how a vehicle was built;

(b) a bumper-to-bumper warranty, which may also be called a comprehensive or limited warranty, that covers nearly all a vehicle's systems;

(c) a certified pre-owned warranty that carries the balance of the original bumper-to-bumper and powertrain warranties;

(d) an extended warranty that covers a vehicle's problems after the original new vehicle warranty expires and which covers mechanical breakdowns and electrical failures;

(e) extended length warranty;

(f) factory warranty;

(g) new vehicle warranty;

(h) manufacturer warranty;

(i) any other warranty deemed eligible by the department.

(2) The warranty types that the department will not accept include the following:

(a) aftermarket accessories warranty;

(b) a basic used warranty for a car "as is," or for a period less than a year;

(c) corrosion and perforation warranties;

(d) emissions system warranty;

(e) hybrid and electric car battery warranties. The department will not accept a warranty covering only the high-voltage batteries installed in hybrids, plug-in hybrids and battery-electric vehicles;

(f) implied warranty;

(g) powertrain warranty. The department will not accept a warranty covering only the engine, transmission, and drivetrain components, even if it includes coverage of components in drive systems for electric vehicles and gas-electric hybrids;

(h) replacement parts warranty;

(i) restraint system warranty. The department will not accept a warranty covering only a vehicle's seat belts or restraint stem;

(j) roadside assistance warranty;

(k) tire warranty;

(l) any other warranty deemed ineligible by the department.

B. The following new lease agreement types that the department will accept include the following:

(1) closed-end lease where the applicant agrees to lease the car from a licensed dealer for a set term and certain mileage limits, and then return it at the end of the leasing period.

(2) open-end lease where the terms are flexible, and the applicant takes the depreciation risk of the vehicle.

(3) single payment lease where the applicant pays the entire amount for the lease upfront.

(4) long-term lease.

(5) used vehicle lease if it is longer than three years.

(6) any other type of lease deemed eligible by the department.

C. The lease agreement types that the department will not accept include the following:

(1) sub-vented or subsidized lease. The department will not accept a lease type that is offered with special incentives to make it more enticing to consumers. These incentives can include lower base interest rates, higher residual values, and manufacturer discounts.

(2) a lease shorter than three years.

[3.3.36.14 NMAC - N, 9/24/2024]

3.3.36.15 CALCULATING THE STATE TAX CREDIT:

A. The amount of the tax credit shall be:

(1) for taxable years beginning January 1, 2024, and prior to January 1, 2027:

(a) $3,000 for a new electric vehicle.

(b) $2,500 for a new plug-in hybrid electric vehicle or fuel cell vehicle.

(c) $2,500 for a previously owned electric vehicle.

(d) $2,000 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

(2) for a taxable year beginning January 1, 2027, and prior to January 1, 2028:

(a) $2,220 for a new electric vehicle.

(b) $1,850 for a new plug-in hybrid electric vehicle or fuel cell vehicle.

(c) $1,850 for a previously owned electric vehicle.

(d) $1,480 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

(3) for a taxable year beginning on January 1, 2028, and prior to January 1, 2029:

(a) $1,470 for a new electric vehicle.

(b) $1,225 for a new plug-in hybrid electric vehicle or fuel cell vehicle.

(c) $1,225 for a previously owned electric vehicle.

(d) $980 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

(4) for the taxable year beginning January 1, 2029:

(a) $960 for a new electric vehicle.

(b) $800 for a new plug-in hybrid electric vehicle or fuel cell vehicle.

(c) $800 for a previously owned electric vehicle.

(d) $640 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

B. A state tax credit to an applicant for a clean car the department has certified shall not exceed:

(1) $3000 for a new clean car.

(2) $2500 for a previously owned clean car.

[3.3.36.15 NMAC - N, 9/24/2024]

3.3.36.16 CERTIFICATION:

A. The energy, minerals and natural resources department shall provide the applicant with the certificates of eligibility in an electronic format.

B. The department shall provide certification through electronic notification to the applicant. The notification shall include the applicant's contact information, the last four digits of the social security number, or EIN, the clean car tax credit certification number and the tax credit amount.

C. If, after the department has issued a certification, any of the requirements are found to be insufficient, the department may rescind the certification.

[3.3.36.16 NMAC - N, 9/24/2024]

3.3.36.17 CLAIMING THE STATE TAX CREDIT:

A. A taxpayer who has received a certificate of eligibility from the energy minerals and natural resources department shall claim the credit with the taxation and revenue department as required in statute and outlined in the income tax form instructions.

B. A certificate of eligibility for the tax credit may be sold, exchanged or otherwise transferred to another taxpayer for the full value of the credit. The parties to such a transaction shall notify the taxation and revenue department of the sale, exchange or transfer within 10 days of the sale, exchange or transfer in an electronic format prescribed by the taxation and revenue department.

[3.3.36.17 NMAC - N, 9/24/2024]

PART 37 CLEAN CAR CHARGING UNIT PERSONAL INCOME TAX CREDIT

3.3.37.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Energy, Conservation and Management Division.

[3.3.37.1 NMAC - N, 9/10/2024]

3.3.37.2 SCOPE:

3.3.37 NMAC applies to the application and certification procedures for administration of the clean car charging unit personal income tax credit.

[3.3.37.2 NMAC - N, 9/10/2024]

3.3.37.3 STATUTORY AUTHORITY:

3.3.37 NMAC is established under the authority of Section 7-2-18.37 NMSA 1978.

[3.3.37.3 NMAC - N, 9/10/2024]

3.3.37.4 DURATION:

Permanent.

[3.3.37.4 NMAC - N, 9/10/2024]

3.3.37.5 EFFECTIVE DATE:

September 10, 2024, unless a later date is cited at the end of a section.

[3.3.37.5 NMAC - N, 9/10/2024]

3.3.37.6 OBJECTIVE:

3.3.37 NMAC's objective is to establish procedures for administering the certification program for the clean car charging unit personal income tax credit.

[3.3.37.6 NMAC - N, 9/10/2024]

3.3.37.7 DEFINITIONS:

For additional definitions see Section 7-2-18.37 NMSA 1978.

A. "Applicant" means a New Mexico taxpayer that has purchased and installed an electric vehicle charging unit or fuel cell charging unit in New Mexico.

B. "Application package" means the application documents an applicant submits to the department for certification to receive a state tax credit.

C. "Certified" or **"certification"** means department approval of an electric vehicle charging unit or fuel cell charging unit, which makes the applicant owning the system eligible for a state tax credit.

D. "Department" means the energy, minerals and natural resources department.

E. "Division" means the department's energy conservation and management division.

F. "National Electrical Code" (NEC), or NFPA 70, is a regionally adoptable standard for the safe installation of electrical wiring and equipment in the United States.

G. "NRTL" means nationally recognized testing laboratory which is an independent third-party organization recognized by the occupational safety & health administration (OSHA) that provides evaluation, testing and certification of products to ensure they meet the requirements of both the construction and general industry OSHA electrical standards.

H. "OpenADR" means open automated demand response, a highly secure, and two-way information exchange model and smart grid standard.

I. "Open charge point protocol" (OCPP) is an open-source communication standard for electric vehicle charging stations and network software companies.

J. "Wi-Fi" is a wireless networking technology that uses radio waves to provide wireless high-speed internet access.

[3.3.37.7 NMAC - N, 9/10/2024]

3.3.37.8 GENERAL PROVISIONS:

A. The state tax credit may be claimed for taxable years after January 1, 2024, and prior to January 1, 2030.

B. The tax credit provided by this section may be referred to as the clean car charging unit personal income tax credit.

C. One tax credit shall be certified per taxpayer per taxable year for a direct current fast charger or a fuel cell charging unit.

D. A taxpayer who claimed the 2021 sustainable building tax credit for expenses of purchasing or installing an electric vehicle charging unit or fuel cell charging unit shall not be eligible to claim the tax credit.

E. A taxpayer who is not a dependent of another individual and who, beginning on May 15, 2024, and prior to January 1, 2030, purchases and installs an electric vehicle charging unit or fuel cell charging unit in New Mexico may be eligible to claim a clean car charging unit personal income tax credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act.

F. A taxpayer may be allocated the right to claim the tax credit in proportion to the taxpayer's ownership.

G. If a New Mexico taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all requirements to be eligible for the credit, that taxpayer may be allocated the right to claim the tax credit in proportion to the taxpayer ownership interest.

H. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit the department has certified.

I. In the event of a discrepancy between a requirement of 3.3.37 NMAC and an existing New Mexico regulation and licensing department or New Mexico taxation and

revenue department rule promulgated prior to the adoption of 3.3.37 NMAC, the existing rule shall govern.

[3.3.37.8 NMAC - N, 9/10/2024]

3.3.37.9 TAX CREDIT ADMINISTRATION:

A. A taxpayer may apply for a clean car income tax credit from the energy, minerals, and natural resources department on an electronic form and in the manner prescribed by that department. The department will not accept paper applications or applications submitted by e-mail unless specifically authorized by the division.

B. An application package for a clean car charging unit shall include a completed clean car charging unit personal income tax credit electronic application and all required documents attachments.

(1) Partial applications will not be accepted.

(2) After the department has certified an application, applicants may not amend the certified application package to seek additional credits for that charging unit.

(3) If there are multiple owners of a clean car motor vehicle charging unit, they must submit a joint application.

C. If the energy, minerals, and natural resources department determines that the taxpayer meets the requirements for a clean car charging unit tax credit, the department shall issue a certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable year in which the credit may be claimed.

(1) If an inspection is required for the charger, the final passing inspection date will determine tax year eligibility.

(2) If an inspection is not required for the charger, the date of purchase or installation will determine tax year eligibility, whichever comes later.

[3.3.37.9 NMAC - N, 9/10/2024]

3.3.37.10 APPLICATION REQUIREMENTS:

A. The state tax credit is available for purchase and installation of a clean car charging unit designed for charging electric vehicles, plug-in hybrid electric vehicles or fuel cell vehicles purchased and installed between May 15, 2024, and January 1, 2030.

B. Applications for the state tax credit shall be made no later than one year from the date the charging unit is purchased or, if the unit is installed, the installation date.

C. The application package shall meet 3.3.37 requirements. If an application package fails to meet a requirement, the department shall disapprove the application.

[3.3.37.10 NMAC - N, 9/10/2024]

3.3.37.11 APPLICATION:

A. An applicant may apply for a New Mexico clean car charging unit personal income tax credit by submitting an application for a certificate of eligibility to the division using a department-developed application or an approved electronic application system.

B. To be considered complete, an application must include the state tax credit application and any required attachments.

C. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the tax credit that would have been claimed on a joint return.

D. The completed application shall consist of the following:

(1) The applicant's name, mailing address, e-mail address, county of installation, telephone number and last four of applicant's social security number or employer identification number (EIN) provided by a business applicant.

(2) The address where the clean car charging unit is located.

(3) Name of the electric utility service provider for that address.

(4) Whether the clean car charging unit is for private or public use.

(5) Total purchase price and price of any labor to install the operating clean car charging unit.

(6) If applicable, the date the charging unit received a successful electrical inspection.

(7) The charging unit specification sheet and description.

(a) A charging unit specification sheet must specify the connector type(s), plug type(s), manufacturer, model, serial number, voltage, and amperage, of the electric vehicle charging unit, and whether the current is alternating or direct.

(b) For a fuel cell charging unit, technical specifications on the fuel dispensing unit and fuel storage system, including information about operational pressures of the fuel cell charging unit.

(8) A statement the applicant signed and dated, which may be a form of electronic signature if approved by the department, agreeing:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge;

(b) the applicant has read the certification requirements contained in 3.3.37 NMAC;

(c) the applicant understands that the department must certify the clean car charging unit documents in the application package before the applicant becomes eligible for a state tax credit;

(d) a taxpayer who received the 2021 sustainable building tax credit for expenses of purchasing or installing an electric vehicle charging unit or fuel cell charging unit shall not be eligible to claim the tax credit;

(e) the clean car charging unit was installed in full compliance with all applicable federal, state, and local government statutes, ordinances, rules, regulations, codes and standards that were in effect at the time of installation.

[3.3.37.11 NMAC - N, 9/10/2024]

3.3.37.12 APPLICATION ATTACHMENTS:

A. An application for a clean car charging unit personal income tax credit shall contain the following information as attachments:

(1) proof of clean car charging unit purchase;

(2) post-installation digital photo of operating clean car charging unit;

(3) clean car charging unit specification sheet;

(a) a charging unit data sheet must specify the connector type(s), plug type(s), manufacturer, model, serial number, voltage, and amperage of the electric vehicle charging unit, and whether the electrical current is alternating or direct;

(b) a fuel cell charging unit must specify technical specifications on the fuel dispensing unit and fuel storage system, including information about operational pressures of the fuel cell charging unit;

(c) the specification sheet must match the charging unit submitted for the tax credit;

(4) A copy of any applicable building code authority inspections, including permit number, issuance date, and date of inspection, noted on a physical form, or a photo of inspection sticker or a web-based report approved by the applicable building code authority, or similar document if applicable;

(5) Any additional information the energy, minerals and natural resources department may require to determine tax credit eligibility.

[3.3.37.12 NMAC - N, 9/10/2024]

3.3.37.13 APPLICATION REVIEW PROCESS:

A. The department shall consider complete applications in the order received.

B. The department shall review the application package to check the accuracy of the applicant's documentation, determine whether the department shall certify the clean car charging unit and calculate the amount of the state tax credit.

(1) The department shall disapprove an application that is not complete, correct, or does not meet the approval criteria.

(2) Duplicate applications or multiple submissions for the same project will be rejected.

C. If the department finds the application package meets the requirements of 3.3.37, and a state tax credit is available, the department shall certify the applicant's claim for clean car charging unit.

D. If applicable, the department's disapproval notification shall state the reasons why the department disapproved the application. The applicant may resubmit a corrected electronic application package for a disapproved project, and it shall be placed at the beginning of the queue and reviewed as if it were a new application.

[3.3.37.13 NMAC - N, 9/10/2024]

3.3.37.14 CLEAN CAR CHARGING UNIT REQUIREMENTS:

A. A direct current fast charger must provide at least 50 kilowatts of direct current electrical power for charging an electric vehicle through a connector based on fast charging equipment standards and is approved for installation for that purpose under the National Electrical Code through an underwriter's laboratories certification or an equivalent certifying organization.

B. An electrical vehicle charger used to provide electricity to an electric vehicle or plug-in hybrid electric vehicle must be designed to create a connection between an electricity source and the electric vehicle or plug-in hybrid vehicle; and uses the electric

vehicles or plug-in hybrid electric vehicle's control system to ensure that electricity flows at an appropriate voltage and current level.

C. A fuel cell charging unit is a facility or unit that dispenses liquefied or compressed hydrogen for fuel cell vehicle refueling and is approved for installation for that purpose under applicable codes and compliant with the requirements of applicable certifying organizations.

D. The clean car charging unit must be made of new equipment, components, and materials to be eligible for a tax credit.

E. Charging unit equipment must meet the following requirements:

(1) Charging software is able to connect to OpenADR or OCPP.

(2) Charging unit can connect to Wi-Fi or wireless networking technology.

(3) Charging unit is a 'Listed' or 'Recognized' product under the production control of the issuing NRTL.

[3.3.37.14 NMAC - N, 9/10/2024]

3.3.37.15 CALCULATING THE STATE TAX CREDIT:

A. The tax credit is limited to the purchase and the installation labor cost for the clean car charging unit, whichever is less.

B. The amount of tax credit shall be:

(1) for a direct current fast charger or fuel cell charging unit, $25,000 or the cost to purchase and install the direct current fast charger or fuel cell charging unit, whichever is less;

(2) for all other electric vehicle charging units, $400 or the cost to purchase and install the electric vehicle charging unit, whichever is less.

[3.3.37.15 NMAC - N, 9/10/2024]

3.3.37.16 CERTIFICATION:

A. The energy, minerals and natural resources department shall provide the applicant with the certificate of eligibility in an electronic format.

B. The department provides certification through electronic notification to the applicant. The notification shall include the applicant's contact information, last four

digits of the social security number or EIN, clean car charging unit certification number and the state tax credit amount.

C. If, after the department has issued a certification, any of the requirements are found to be insufficient, the department may rescind the certification.

[3.3.37.16 NMAC - N, 9/10/2024]

3.3.37.17 CLAIMING THE STATE TAX CREDIT:

A taxpayer who has received certificate of eligibility to claim the tax credit must apply to the taxation and revenue department and shall provide the taxation and revenue department with a copy of the certification of eligibility in manner and within a timeframe prescribed by the taxation and revenue department.

[3.3.37.17 NMAC - N, 9/10/2024]

CHAPTER 4: CORPORATE INCOME TAXES

PART 1: GENERAL PROVISIONS

3.4.1.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.4.1.1 NMAC - Rp, 3. 4.1.1 NMAC, 3/23/2021]

3.4.1.2 SCOPE:

This part applies to every domestic corporation and to every foreign corporation employed or engaged in the transaction of business in, into or from New Mexico or deriving any income from any property or employment in New Mexico.

[3.4.1.2 NMAC - Rp, 3. 4.1.2 NMAC, 3/23/2021]

3.4.1.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.4.1.3 NMAC - Rp, 3. 4.1.3 NMAC, 3/23/2021]

3.4.1.4 DURATION:

Permanent.

[3.4.1.4 NMAC - Rp, 3. 4.1.4 NMAC, 3/23/2021]

3.4.1.5 EFFECTIVE DATE:

March 23, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.4.1.5 NMAC - Rp, 3. 4.1.5 NMAC, 3/23/2021]

3.4.1.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Corporate Income and Franchise Tax Act.

[3.4.1.6 NMAC - Rp, 3. 4.1.6 NMAC, 3/23/2021]

3.4.1.7 DEFINITIONS:

[RESERVED]

[3.4.1.7 NMAC - Repealed, 3/23/2021]

3.4.1.8 CITATION OF REGULATIONS:

Unless otherwise stated, all citations of statutes in Title 3, Chapter 4 NMAC pertaining to the Corporate Income and Franchise Tax Act are to the New Mexico Statutes Annotated, 1978 (NMSA 1978).

[3.4.1.8 NMAC - Rp, 3. 4.1.8 NMAC, 3/23/2021]

3.4.1.9 [RESERVED]

[3.4.1.9 NMAC - Repealed, 3/23/2021]

3.4.1.10 INCOME FROM OBLIGATIONS OF GOVERNMENTS:

A. Income from United States government obligations.

(1) Income from obligations issued by the United States are not includable in net income.

(2) Because they are not obligations of the United States, income from investment in the following is includable in net income:

(a) financial instruments guaranteed by the federal national mortgage association ("Fannie Maes"), the government national mortgage association ("Ginnie Maes"), the federal national home loan association ("Freddie Macs") and any similar

organization whose income states are not prohibited by federal law from subjecting to income taxation;

(b) financial instruments issued by the college construction loan insurance corporation or the national consumer cooperative bank;

(c) agreements ("repo's") to sell and repurchase United States government obligations; and

(d) agreements ("reverse repo's") to purchase and resell United States government obligations.

B. Income from obligations of Puerto Rico and territories and possessions of the United States. Income from obligations of the commonwealth of Puerto Rico and of Guam, the Virgin Islands, American Samoa, Northern Mariana Islands and other territories or possessions of the United States are includable in net income only to the extent that inclusion is not prohibited by federal law. Income from such obligations which New Mexico is prohibited from taxing by the laws of the United States may be deducted from net income.

C. Exclusion of certain income from mutual funds or trusts.

(1) Income from investments in mutual funds, unit investment trusts or simple trusts which are invested in obligations of the United States, obligations of the state of New Mexico or its agencies, institutions, instrumentalities or political subdivisions or obligations of the commonwealth of Puerto Rico or territories or possessions of the United States may be deducted from net income to the extent that such investment income is nontaxable income provided that:

(a) for the purposes of Subsection C of 3.4.1.10C NMAC, "nontaxable income" means income from investments in obligations of:

(i) the United States;

(ii) the state of New Mexico or any of its agencies, institutions, instrumentalities or political subdivisions;

(iii) the commonwealth of Puerto Rico, the income from which obligations states are prohibited from taxing by the laws of the United States; and

(iv) Guam, the Virgin Islands, American Samoa, Northern Mariana Islands or other territories or possessions of the United States, the income from which obligations states are prohibited from taxing by the laws of the United States; and

(b) the mutual fund, unit investment trust or simple trust provides to the investor an annual statement of the income, by source, which was distributed to the individual investor.

(2) Only that amount of income may be deducted which is shown on the statement as flowing through to the investor from obligations of the United States, of the commonwealth of Puerto Rico, of Guam, the Virgin Islands, American Samoa, Northern Mariana Islands or other territories or possessions of the United States or of the state of New Mexico or any of its agencies, institutions, instrumentalities or political subdivisions.

D. Expenses related to certain investment income.

(1) Because this investment income is exempt from income taxation by New Mexico, expenses of the taxpayer related to the earning of income from investments, directly or through mutual funds, unit investment trusts or simple trusts, in obligations of the United States, obligations of the state of New Mexico or its agencies, institutions, instrumentalities or political subdivisions or obligations of the commonwealth of Puerto Rico or territories or possessions of the United States may not be deducted from net income. To the extent that such expenses have been deducted in determining federal taxable income, the amount must be added back to net income.

(2) Income from investment in state and local bonds is subject to New Mexico income taxation. Expenses of the taxpayer related to the earning of income from investments, directly or through mutual funds, unit investment trusts or simple trusts, in state or local bonds are deductible in determining net income. To the extent that such expenses have not been deducted in determining federal taxable income, these amounts may be subtracted from net income.

E. Income earned on "state or local bonds".

(1) Not included in the term "state or local bond" is any obligation of the commonwealth of Puerto Rico or of territories or possessions of the United States the income from which New Mexico is prohibited from taxing by the laws of the United States.

(2) For taxable years beginning on or after January 1, 1991, income from investing in any state or local bond, as that term is defined in Section 7-2A-2 NMSA 1978, is includable in base income.

(3) Income from investing in state or local bonds is to be included in base income in the year it is actually received without regard to federal tax treatment of the income, except that:

(a) the taxpayer may elect to report this income for New Mexico purposes on an accrual basis; and

(b) income from investing in state or local bonds earned or accrued before the first taxable year beginning on or after January 1, 1991, but which is received after that date is not includable in base income. Income is earned or accrued ratably, by assigning an equal amount of income to each day of the accrual period.

(4) Example 1: A, a New Mexico corporation, purchases a state of California municipal bond in 20X0 and receives semi-annual interest payments. A does not elect to report to New Mexico on an accrual basis. All income from this bond is included in base income. This income is included only as the interest payments are received.

(5) Example 2: B, a New Mexico corporation and calendar year filer, purchases a city of Los Angeles municipal bond in 20X0. This bond pays interest semi-annually on April 1 and October 1. B does not elect to report to New Mexico on an accrual basis. On April 10, 20X1, B receives $1,000 of interest. Since this payment includes interest earned or accrued before January 1, 20X1, this income is to be allocated between the period prior to the taxable year and the period following December 31, 20X0. The income accrual period is 182 days in length (October 1, 20X0, through March 31, 20X1), of which 90 days are in B's first taxable year beginning on or after January 1, 20X1. B's 20X1 base income includes $494.51 ($1,000 x 90/182). The remaining $505.49 is not subject to New Mexico corporate income tax.

(6) Example 3: C, a New Mexico corporation and calendar year filer, purchased a city of San Francisco municipal bond on January 1, 1981 for $1,400. C does not elect to report accrued income on this bond for New Mexico corporate income tax purposes. Although this bond pays interest semi-annually, C bought it stripped and at a discount, C has no right to the interest. On January 1, 1995, C receives the bond principal of $5,000. This is C's first and only payment on the bond. Since this payment includes income earned or accrued before January 1, 1991, the income is allocated between the period prior to January 1, 1991, and the period following December 31, 1990. The income accrual period is 5112 days, of which 1461 are after December 31, 1990. C's 1995 base income includes $1,028.87 ((1461/5112) x ($5,000 - $1,400)). The remaining $2,571.13 of income is not subject to New Mexico corporate income tax.

[3.4.1.10 NMAC - Rp, 3. 4.1.10 NMAC, 3/23/2021]

3.4.1.11 BASE INCOME FOR FILING AS A SEPARATE CORPORATE ENTITY:

For a corporation filing a separate return for taxable years beginning before January 1, 2020 and for a corporation that is not part of a unitary group or is required to file a separate return under Regulation 3.4.10.16 for taxable years beginning on or after January 1, 2020, that corporation's base income base income shall be determined by completing a simulated federal corporate income tax return for the separate corporation. In completing the simulated federal return, only the income and expenses of the separate corporation will be allowed. The simulated return shall be prepared as if the corporate entity were filing a federal return as a separate corporation and not as a

corporation included in a consolidated return. All provisions of the Internal Revenue Code which would apply to the filing as a separate corporation shall apply to the completion of the simulated return. Procedures and adjustments allowed by the Internal Revenue Code which apply to the filing of a federal consolidated return concerning the elimination of intercompany transactions or the sale or dissolution of one of the corporations within the federal consolidated group shall not be allowed when completing the simulated federal return for New Mexico income tax purposes. In no case shall a net operating loss established for the corporation reporting on a separate corporation basis be excluded from the base income of any other corporation or from the base income reported on any combined or consolidated return for any group of corporations except as a net operation loss carryover deduction to the extent allowable under Section 7-2A-2 NMSA 1978, and applicable federal limitations.

[3.4.1.11 NMAC - Rp, 3. 4.1.11 NMAC, 3/23/2021]

3.4.1.12 FOREIGN SOURCE DIVIDENDS - PRIOR TO JANUARY 1, 2020:

A. Foreign source dividends, as the term is used under federal law, received by a corporation reporting to New Mexico as a separate entity are wholly or partially excludable from the corporation's base income as follows:

(1) Seventy percent of the dividends included on lines 13 and 14, schedule C, federal form 1120 received from corporations owned less than twenty percent by the reporting corporation but only if those dividends would have been subject to the seventy percent deduction under 26 U.S.C. Section 243(a)(1) had the payor of the dividends been a domestic corporation.

(2) Eighty percent of the dividends included on lines 13 and 14, schedule C, federal form 1120 received from corporations owned twenty percent to eighty percent by the reporting corporation but only if those dividends would have been subject to the eighty percent deduction under 26 U.S.C. Section 243(c) had the payor of the dividends been a domestic corporation.

(3) One hundred percent of the dividends included on lines 13 and 14, schedule C, federal form 1120 received from corporations owned more than eighty percent by the reporting corporation but only if those dividends would have been subject to the one hundred percent deduction under 26 U.S.C. Section 243(a)(3) had the payor of the dividends been a domestic corporation.

B. The exclusion of foreign source dividends set forth in 3.4.1.12 NMAC applies only so long as New Mexico's method of taxing foreign source dividends is unconstitutional.

C. Section 3.4.1.12 NMAC applies to taxable years beginning on or after January 1, 1997 but prior to January 1, 2020.

[3.4.1.12 NMAC - Rp, 3. 4.1.12 NMAC, 3/23/2021]

3.4.1.13 FOREIGN SOURCE DIVIDENDS AFTER JANUARY 1, 2020:

For tax years beginning on or after January 1, 2020, "base income" under Section 7-2A-2 NMSA 1978 includes special deductions allowed under the Internal Revenue Code Sections 241 through 249 including the deduction for foreign source dividends under Section 245A.

[3.4.1.13 NMAC - N, 3/23/2021]

3.4.1.14 UNITARY BUSINESS:

The definition of a "unitary group" under Section 7-2A-2 NMA1978 rests on the underlying concept of "unitary business", which reflects the general constitutional principles that have been set out by the U.S. Supreme Court and is meant to be applied consistent with those constitutional principals. See, in particular, *Mobil Oil Corp. v. Comm'r of Taxes of Vt.*, 455 U.S. 425, 438 (1980) where the court noted that a "separate accounting, while it purports to isolate portions of income received in various states, may fail to account for contributions to income resulting from functional integration, centralization of management, and economies of scale." The court then characterized these as "factors of profitability" which "arise from the operation of the business as a whole." See also, *MeadWestvaco Corp. v. Ill. Dep't of Revenue*, 553 U.S. 16, 18 (2008). There, the court reiterated past holdings that the unitary business principle as articulated applies generally to entities, not assets, and that "an asset can be a part of a taxpayer's unitary business even without a 'unitary relationship' between the 'payor and payee.'" The court went on to review its precedent saying, "where the asset is another business, a unitary relationship's 'hallmarks' are functional integration, centralized management, and economies of scale." When a portion of a unitary business is conducted in New Mexico, the state has the constitutional authority to impose tax on that portion of the income derived from that business, provided that the tax is not discriminatory and is fairly apportioned. The primary factors indicating an economically interdependent business include centralized management, functional integration, and economies of scale, which may be demonstrated by substantial flows of value between components of the business as well as other similar indicia.

[3.4.1.14 NMAC - N, 3/23/2021]

PART 2: [RESERVED]

PART 3: IMPOSITION AND LEVY OF TAXES

3.4.3.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.4.3.1 NMAC - Rn, 3 NMAC 4.3.1, 12/14/00]

3.4.3.2 SCOPE:

This part applies to every domestic corporation and to every foreign corporation employed or engaged in the transaction of business in, into or from New Mexico or deriving any income from any property or employment in New Mexico.

[1/15/97; 3.4.3.2 NMAC - Rn, 3 NMAC 4.3.2, 12/14/00]

3.4.3.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.4.3.3 NMAC - Rn, 3 NMAC 4.3.3, 12/14/00]

3.4.3.4 DURATION:

Permanent.

[1/15/97; 3.4.3.4 NMAC - Rn, 3 NMAC 4.3.4, 12/14/00]

3.4.3.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.4.3.5 NMAC - Rn & A, 3 NMAC 4.3.5, 12/14/00]

3.4.3.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Corporate Income and Franchise Tax Act.

[1/15/97; 3.4.3.6 NMAC - Rn, 3 NMAC 4.3.6, 12/14/00]

3.4.3.7 DEFINITIONS:

A. Domestic corporation defined. For the purposes of the Corporate Income and Franchise Tax Act the term "domestic corporation" means any entity organized under the laws of New Mexico and subject to tax as a corporation under the provisions of the Internal Revenue Code. For the purposes of this subsection (3.4.3.7A NMAC), a partnership or similar entity, which is taxed as a corporation under the provisions of the Internal Revenue Code, is "organized under the laws of New Mexico" if the partnership agreement or similar instrument has been filed in the records of the county clerk of any

county in New Mexico or if the entity maintains its principal place of business in New Mexico.

B. Foreign corporation defined. A "foreign corporation" is any entity which was organized under the provisions of the laws of any other state or foreign country and which is subject to tax as a corporation under the provisions of the Internal Revenue Code.

[12/29/89, 1/7/92, 1/15/97; 3.4.3.7 NMAC - Rn & A, 3 NMAC 4.3.7, 12/14/00]

PART 4: EXEMPTIONS [RESERVED]

PART 5: CORPORATE INCOME TAX RATES [RESERVED]

PART 6: TAX COMPUTATION - ALTERNATIVE METHOD [RESERVED]

PART 7: TAXES APPLIED TO CORPORATIONS ON FEDERAL AREAS [RESERVED]

PART 8: INCOME ALLOCATION AND APPORTIONMENT AND RETURNS [RESERVED]

PART 9: PAYMENT OF TAX

3.4.9.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[7/15/96; 3.4.9.1 NMAC - Rn, 3 NMAC 4.9.1, 12/14/00]

3.4.9.2 SCOPE:

This part applies to every domestic corporation and to every foreign corporation employed or engaged in the transaction of business in, into or from New Mexico or deriving any income from any property or employment in New Mexico.

[7/15/96, 1/15/97; 3.4.9.2 NMAC - Rn, 3 NMAC 4.9.2, 12/14/00]

3.4.9.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[7/15/96; 3.4.9.3 NMAC - Rn, 3 NMAC 4.9.3, 12/14/00]

3.4.9.4 DURATION:

Permanent.

[7/15/96; 3.4.9.4 NMAC - Rn, 3 NMAC 4.9.4, 12/14/00]

3.4.9.5 EFFECTIVE DATE:

7/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[7/15/96, 1/15/97; 3.4.9.5 NMAC - Rn & A, 3 NMAC 4.9.5, 12/14/00]

3.4.9.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Corporate Income and Franchise Tax Act.

[7/15/96; 3.4.9.6 NMAC - Rn, 3 NMAC 4.9.6, 12/14/00]

3.4.9.7 DEFINITIONS:

[RESERVED]

[7/15/96; 3.4.9.7 NMAC - Rn, 3 NMAC 4.9.7, 12/14/00]

3.4.9.8 REPORTING METHODS:

[RESERVED]

[6/2/87, 9/16/88, 1/7/92, 7/15/96; Repealed - 12/14/00]

3.4.9.9 PREVIOUS TAXABLE YEAR DEFINED:

For purposes of Section 7-2A-9 NMSA 1978 the term "previous taxable year" shall not mean any period of time less than a full twelve month or 52/53 week year for calendar or fiscal year filers.

[11/18/86, 9/16/88, 7/15/96; 3.4.9.9 NMAC - Rn & A, 3 NMAC 4.9.9, 12/14/00]

3.4.9.10 [RESERVED]

[1/15/98; 3.4.9.10 NMAC - Rn, 3 NMAC 4.9.10, 12/14/00; Repealed, 9/15/08]

3.4.9.11 ESTIMATED TAX; APPLICATION TO FRACTIONAL YEARS:

Unless the secretary prescribes instructions requiring estimated payments with respect to fractional years, Section 7-2A-9.1 NMSA 1978 does not apply to fractional years.

[3.4.9.11 NMAC, N - 12/14/00]

3.4.9.12 WHEN WITHHELD TAX NOT CONSIDERED ESTIMATED TAX:

Payment pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act by an oil and gas proceeds remitter or pass-through entity of withholding tax required to be withheld from payments to a remittee or an owner relate to the remittee's or owner's income tax or corporate income tax liability, not to the remitter's or pass-through entity's. Accordingly, when a remitter or pass-through entity is a corporation that also has an obligation to pay estimated tax pursuant to Section 7-2A-9.1 NMSA 1978, the corporation may not credit the amounts it withheld under Section 7-3A-3 NMSA 1978 from payments the corporation owes to remittees or owners against the corporation's own estimated tax liability. See 3.3.5.17 NMAC for treatment of withholding owed by remitter or pass-through entity but paid by remittee or owner pursuant to an agreement.

[3.4.9.12 NMAC - N, 12/15/10]

PART 10: RETURNS AND REPORTING METHODS

3.4.10.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.4.10.1 NMAC - Rp, 3.4.10.1 NMAC, 3/23/2021]

3.4.10.2 SCOPE:

This part applies to every domestic corporation and to every foreign corporation employed or engaged in the transaction of business in, into or from New Mexico or deriving any income from any property or employment in New Mexico.

[3.4.10.2 NMAC - Rp, 3.4.10.2 NMAC, 3/23/2021]

3.4.10.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.4.10.3 NMAC - Rp, 3.4.10.3 NMAC, 3/23/2021]

3.4.10.4 DURATION:

Permanent.

[3.4.10.4 NMAC - Rp, 3.4.10.4 NMAC, 3/23/2021]

3.4.10.5 EFFECTIVE DATE:

March 23, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.4.10.5 NMAC - Rp, 3.4.10.5 NMAC, 3/23/2021]

3.4.10.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Corporate Income and Franchise Tax Act.

[3.4.10.6 NMAC - Rp, 3.4.10.6 NMAC, 3/23/2021]

3.4.10.7 DEFINITIONS:

[RESERVED]

[3.4.10.1 NMAC - Repealed 3/23/2021]

3.4.10.8 [RESERVED]

[3.4.10.8 NMAC - Repealed, 3/23/2021]

3.4.10.9 [RESERVED]

[3.4.10.9 NMAC - Repealed, 3/23/2021]

3.4.10.10 SEPARATE CORPORATE ENTITY:

[RESERVED]

3.4.10.11 COMBINED RETURNS - PRIOR TO JANUARY 1, 2020:

A. Members of a combined group: A group of unitary corporations may include both domestic corporations and foreign corporations other than foreign corporations which are incorporated in a foreign country and are not engaged in trade or business in the United States during the taxable year. Such a group may file a state corporate income and franchise tax return using the combination of unitary corporations method if it otherwise meets the requirements of the Corporate Income and Franchise Tax Act and regulations thereunder.

B. Base income for members of a combined group.

(1) When a group of unitary corporations files a New Mexico corporate income and franchise tax return using the combination of unitary corporations method, the base income for the combined group of unitary corporations shall be determined by completing a simulated federal corporate income tax return. In completing the simulated federal return, only the income and expenses of the combined corporations will be allowed. The simulated return shall be prepared as if the combined group was filing a federal consolidated return including only the corporations in the unitary (combined) group.

(2) When completing the simulated federal return for New Mexico income tax purposes, all procedures and adjustments allowed by the Internal Revenue Code which apply to the filing of a federal consolidated return concerning the elimination of intercompany transactions or the sale or dissolution of one of the corporations within the federal consolidated group shall be allowed, but only for those transactions between members of the combined group of unitary corporations. No adjustments shall be made or allowed for transactions with any corporation that is not a member of the combined group of unitary corporations. Otherwise, all provisions of the Internal Revenue Code which would apply to the filing of a consolidated return shall apply to the completion of the simulated return for the combined group of unitary corporations.

C. This Regulation 3.4.10.11 NMAC is retroactively applicable to taxable years beginning on or after January 1, 1992 but before January 1, 2020. For returns for taxable years beginning on or after January 1, 2020, see 3.4.10.14 NMAC.

[3.4.10.11 NMAC - Rp, 3.4.10.11 NMAC, 3/23/2021]

3.4.10.12 CONSOLIDATED FILING ELECTION:

When a group of corporations has properly made an election to file on a consolidated basis for New Mexico corporate income tax purposes, the filing group must include all of the members of the group properly included in the filed federal consolidated return.

[3.4.10.12 NMAC - N, 3/23/2021]

3.4.10.13 INFORMATION RETURNS; RENTS AND ROYALTIES:

A. Persons paying rents and royalties from oil and gas properties located in New Mexico, who are required to file internal revenue service information return form 1099-MISC on such payments, shall file the rent and royalty information with the department in the manner stated below.

(1) Persons paying such rents and royalties on properties located in New Mexico are required to segregate the New Mexico rents and royalties paid from the rents and royalties paid everywhere and report only those rents and royalties from New Mexico properties to the department. The department will accept the information on

magnetic media in lieu of paper returns. he magnetic media must comply with the internal revenue service reporting requirements for filing information returns.

(2) A person who has entered into an agreement with the internal revenue service identified as "consent for internal revenue service to release tax information" will be deemed to have complied with the filing requirements of this 3.4.10.13 NMAC.

B. The due date for information returns required to be filed with the department shall be June 15 of each year following the close of the previous calendar year.

C. This section is applicable to taxable years beginning on or after January 1, 1983.

[3.4.10.13 NMAC - Rp, 3.4.10.13 NMAC 3/23/2021]

3.4.10.14 COMPUTATION OF BASE AND NET INCOME - APPLICABLE TO PERIODS BEGINNING ON OR AFTER JANUARY 1, 2020:

A. Each corporate member of a unitary filing group computes its "base income" by determining the federal taxable income or federal net operating loss of the corporation on a separate corporate basis as though the member was a separate domestic entity for the taxable year, applying the Internal Revenue Code and applicable regulations. This base income is computed after deductions provided for in Sections 241 through 249 of the Internal Revenue Code but before any deduction for net operating losses. Then, before the base income of the unitary group is determined, the members make the following adjustments to federal taxable income or net operating loss:

(1) adding to that income:

(a) interest received on a state or local bond exempt under the Internal Revenue Code;

(b) the amount of any deduction claimed in calculating taxable income for all expenses and costs directly or indirectly paid, accrued or incurred to a captive real estate investment trust; and

(c) the amount of any deduction, other than for premiums, for amounts paid directly or indirectly to a commonly controlled entity that is exempt from corporate income tax pursuant to Section 7-2A-4 NMSA 1978; and

(2) subtracting from that income:

(a) income from obligations of the United States net of expenses incurred to earn that income;

(b) other amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States net of any related expenses;

(c) an amount equal to one hundred percent of the Subpart F income, as that term is defined in Section 952 of the Internal Revenue Code, as that section may be amended or renumbered, included in the income of the corporation; and

(d) an amount equal to one hundred percent of the income of the corporation under Section 951A of the Internal Revenue Code, after allowing the deduction provided in Section 250 of the Internal Revenue Code; and

(3) making other adjustments deemed necessary to properly reflect income of the unitary group, including attribution of income or expense related to unitary assets held by related corporations that are not part of the filing group.

B. The filing group's net income is computed by combining the member's base income, whether positive or negative, eliminating or deferring intercompany income and expense of the filing group members in a manner consistent with the consolidated filing requirements of the Internal Revenue Code and the Corporate Income and Franchise Tax Act; and without deducting any amount of net operating loss carryover.

[3.4.10.14 NMAC - N, 3/23/2021]

3.4.10.15 NET OPERATING LOSSES OF FILING GROUPS - APPLICABLE TO TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2020:

A. In general, for taxable years beginning on or after January 1, 2020, New Mexico provides that net operating loss carryovers be computed on a post-apportioned basis and that the carryover be treated as an attribute of the unitary group, subject to the limitations under the Internal Revenue Code, including the consolidated filing regulations applied to the New Mexico unitary filing group as though it was the federal consolidated group.

B. A unitary filing group calculates its net operating loss carryover as follows:

(1) determining the amount of "grandfathered net operating loss carryover," if any, by:

(a) identifying the amount of net loss properly reported to New Mexico for taxable years beginning January 1, 2013 and prior to January 1, 2020 as part of a timely filed original return, or an amended return for those taxable years filed prior to January 1, 2020, that can be attributed to a corporation or corporations which are properly included in the taxpayer's return for the first taxable year beginning on or after January 1, 2020;

(b) reducing each loss identified by:

(i) adding back deductions for royalties or interest paid to any related corporation or group of corporations in computing the loss, but only to the extent that such adjustment would not create a net loss for that related corporation or group; and

(ii) subtracting net operating loss deductions taken prior to January 1, 2020 that would be properly charged against those losses consistent with the Internal Revenue Code and provisions of the Corporate Income and Franchise Tax Act applicable to the year of the deduction; and.

(c) apportioning any remaining loss to New Mexico using the apportionment factors that can properly be attributed to the corporation or corporations for the year of the net loss.

(2) Computing the "net operating loss carryover" as follows:

(a) add:

(i) the apportioned net loss properly reported on an original or amended tax return for taxable years beginning on or after January 1, 2020 by the taxpayer, including a filing group as properly determined under the Corporate Income and Franchise Tax Act;

(ii) the portion of an apportioned net loss properly reported to New Mexico for a taxable year beginning on or after January 1, 2020, on a separate year return, to the extent the taxpayer would have been entitled to include the portion of such apportioned net loss in the taxpayer's consolidated net operating loss carryforward under the Internal Revenue Code and consolidated filing rules if the taxpayer filed a consolidated federal return; and

(iii) the taxpayer's grandfathered net operating loss carryover; and.

(b) subtract:

(i) the amount of the net operating loss carryover attributed to an entity that has left the unitary filing group, computed in a manner consistent with the consolidated filing requirements of the Internal Revenue Code and applicable regulations, as if the taxpayer were filing a consolidated return; and

(ii) the amount of net operating loss deductions properly taken by the taxpayer.

C. For taxable years after January 1, 2020, a taxpayer may take a "net operating loss deduction" to the extent allowed under the Internal Revenue Code as of January 1, 2018 for the taxable year in which the deduction is taken, including the eighty percent limitation of Section 172(a) of the Internal Revenue Code as of January 1, 2018, calculated on the basis of the taxpayer's apportioned net income. In no case may the

taxpayer's net operating loss deduction exceed eighty percent of the taxpayer's apportioned net income for the year in which the deductions taken.

[3.4.10.15 NMAC - N; 3/23/2021]

3.4.10.16 OBLIGATION OF EXCLUDED CORPORATIONS TO FILE A RETURN:

When a unitary group of corporations files a return, whether it is a worldwide, water's edge, or consolidated group return, if that return properly excludes one or more related corporations, those corporations are not relieved of the obligation to file tax returns and pay any tax owed on a separate entity basis. These corporations may separately elect to file a worldwide or water's edge return as a unitary group only if that return will include all corporations that are properly a part of that unitary group. In computing base income and net income, the corporation or corporations that properly file in a separate return from related corporations will not eliminate or defer intercompany transactions with those related corporations.

[3.4.10.16 NMAC - N, 3/23/2021]

PART 11: ACCOUNTING METHODS [RESERVED]

PART 12: FISCAL YEARS PERMITTED [RESERVED]

PART 13: ADMINISTRATION [RESERVED]

PART 14: TAX CREDITS

3.4.14.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.4.14.1 NMAC - Rn, 3 NMAC 4.14.1, 12/14/00]

3.4.14.2 SCOPE:

This part applies to every domestic corporation and to every foreign corporation employed or engaged in the transaction of business in, into or from New Mexico or deriving any income from any property or employment in New Mexico.

[1/15/97; 3.4.14.2 NMAC - Rn, 3 NMAC 4.14.2, 12/14/00]

3.4.14.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.4.14.3 NMAC - Rn, 3 NMAC 4.14.3, 12/14/00]

3.4.14.4 DURATION:

Permanent.

[1/15/97; 3.4.14.4 NMAC - Rn, 3 NMAC 4.14.4, 12/14/00]

3.4.14.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.4.14.5 NMAC - Rn & A, 3 NMAC 4.14.5, 12/14/00]

3.4.14.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Corporate Income and Franchise Tax Act.

[1/15/97; 3.4.14.6 NMAC - Rn, 3 NMAC 4.14.6, 12/14/00]

3.4.14.7 DEFINITIONS:

[RESERVED]

[1/15/97; 3.4.14.7 NMAC - Rn, 3 NMAC 4.14.7, 12/14/00]

3.4.14.8 CREDIT FOR PRESERVATION OF CULTURAL PROPERTY:

A. Cultural property credit defined. The preservation of cultural property credit is a credit against a taxpayer's New Mexico corporate income tax due for amounts expended in the restoration, rehabilitation and preservation of cultural property owned by the taxpayer and listed on the official New Mexico register of cultural properties; see Part 4.10.9 NMAC. A corporation that files a New Mexico corporate income tax return may claim a credit against New Mexico corporate income tax due in an amount equal to one-half of the cost of the restoration, rehabilitation or preservation of the cultural property, not to exceed a maximum of twenty-five thousand dollars ($25,000).

B. Filing requirements.

(1) The claim for the cultural property credit shall consist of a copy of the letter of certification, a copy of Form B, part 2 from the cultural properties review committee and a copy of the invoices or a statement from the contractor(s) showing the cost incurred for the year of the claim.

(2) The claim must be submitted with and attached to the New Mexico corporate income tax return for the year or years in which the restoration, rehabilitation or preservation is carried out.

C. Partnership claim for cultural property credit.

(1) A corporation which is a partner in a partnership or in a joint venture may claim its pro rata share of the cultural property credit against its New Mexico corporate income tax due. The total aggregate credit for all partners shall not exceed an amount equal to the lesser of one-half the cost of the restoration, rehabilitation or preservation or twenty-five thousand dollars ($25,000) for a single restoration, rehabilitation or preservation project for any cultural property.

(2) A corporate partner shall claim the cultural property credit in the same manner as specified in Subsection 3.4.14.8B NMAC and shall, in addition, provide a schedule listing the names, addresses and social security numbers or federal employer identification numbers of all partners in the partnership or joint venture, the pro rata share of the credit of each partner and the New Mexico tax identification number under which the partnership or joint venture is filing CRS-1 forms.

[5/17/88, 9/16/88, 1/7/92, 1/15/97; 3.4.14.8 NMAC - Rn & A, 3 NMAC 4.14.8, 12/14/00]

3.4.14.9 CORPORATE-SUPPORTED DAY CARE CREDIT:

A. Dependent defined. Dependent for purposes of Section 7-2A-14 NMSA 1978 is a child under the age of twelve years who is a dependent as defined in Section 152 of the Internal Revenue Code, as amended or renumbered, and also includes a child of divorced or legally separated parents where the parents meet all the requirements of Section 44A(f)5 of the Internal Revenue Code, as amended or renumbered.

B. Allowable credit; partial offset.

(1) Any receipts of a corporation from an employee for the use of the child care facility shall be considered as a reduction of the allowable expenses for computing the child care credit.

(2) Example: The Spruce corporation receives from employees a nominal fee for use of the child care facility provided by the corporation. The total expenses incurred by the corporation in this taxable year were $12,000. The receipts from the employees amount to $600. Therefore, the allowable tax credit to the corporation is $3,420 computed as follows:

Total expenses incurred	$ 12,000
Less: Receipts from employees	- 600

Net expenses paid	$ 11,400
At 30%, Allowable credit	$ 3,420

[10/16/84, 9/16/88, 1/7/92, 1/15/97; 3.4.14.9 NMAC - Rn & A, 3 NMAC 4.14.9, 12/14/00]

3.4.14.10 QUALIFIED BUSINESS FACILITY REHABILITATION CREDIT:

A. **No qualified business facility rehabilitation credit allowed for cultural or historic properties.** No qualified business facility rehabilitation credit will be allowed for any qualified business facility that is also:

(1) a building listed on the official New Mexico register of cultural properties; see Part 4.10.9 NMAC; or

(2) a building listed on the national register or determined to be contributing to a national register district.

B. **No qualified business facility rehabilitation credit allowed for costs qualifying for credit under Investment Credit Act.** Any expenditure by an owner of a qualified business facility that would qualify for the investment credit provided by the Investment Credit Act may not also be used as the basis for claiming the credit provided in Section 7-2A-15 NMSA 1978.

C. **Costs qualifying for the credit.** The following costs may be included in determining the qualified building rehabilitation credit:

(1) architectural and engineering services related directly to the restoration, rehabilitation or renovation project;

(2) inspection reports, such as structural conditions or environmental inspections;

(3) building permits and fees;

(4) abatement programs, such as asbestos abatement or lead-based paint abatement;

(5) all direct materials costs used in the project, including energy upgrading materials such as insulation or interior storm windows;

(6) all direct labor costs used in the project, except for salary paid to the owner for the owner's own labor;

(7) all direct materials and labor costs incurred for compliance with the Americans With Disabilities Act;

(8) rental of equipment necessary for project completion, such as tools and machinery;

(9) purchase of tools where the life expectancy of the tool is not longer than the life of the project, such as paint brushes and drop cloths;

(10) upgrade of utilities to meet current codes, including plumbing, mechanical and electrical;

(11) upgrade of utilities connections, including water, gas, electricity and telecommunications;

(12) exterior lighting, security lighting, light fixtures, and alarm systems;

(13) repair or replacement of existing bathroom plumbing fixtures;

(14) New Mexico gross receipts and compensating taxes; and

(15) liability, fire, and workers' compensation insurance premiums during the time of work on the project.

D. **Costs not qualifying for the credit.** The following costs may not be included in determining the qualified business facility rehabilitation credit:

(1) all acquisition costs of the qualified business facility, such as surveys, appraisals, loan fees, commissions, legal fees;

(2) architectural, engineering and planning services related to expansion of or additions to a building if the expansion or addition increases the usable square footage of the building by more than ten percent;

(3) accounting fees;

(4) office supplies, bank fees and charges, film and similar expenditures;

(5) automotive repairs, maintenance and gasoline;

(6) furnishings, including furniture, floor coverings and carpeting, wall coverings, window coverings, and linens;

(7) purchase of tools where the life expectancy of the tool is longer than the life of the project, such as ladders, drills, and saws;

(8) landscaping;

(9) bathroom accessories;

(10) kitchen appliances, cabinets, and accessories;

(11) meals and food;

(12) membership fees or dues;

(13) property damaged at or stolen from a project site; and

(14) routine maintenance including, but not limited to, cleaning, painting, minor repairs and periodic upkeep except where these items are part of an initial overall restoration, rehabilitation or renovation project.

E. **"Single project" defined.**

(1) Except as otherwise provided in this subsection, credit for restoring, rehabilitating or renovating a qualified business facility may be claimed only once for a building, although the actual period of time during which that restoration, rehabilitation or renovation occurs may be as long as three consecutive, calendar years.

(2) If a qualified business facility has been restored, rehabilitated, or renovated and has been put into service by a person in the manufacturing, distribution or service industry immediately following the restoration, rehabilitation or renovation, the person claims and is granted a credit under either Section 7-2-18.4 NMSA 1978 or Section 7-2A-15 NMSA 1978 and the qualified business facility is subsequently taken out of service by that person and remains vacant for twenty-four consecutive calendar months, a credit may be claimed for additional costs of restoration, rehabilitation or renovation for that building, provided all other requirements of Section 7-2A-15 NMSA 1978 are met.

F. **Prior approval required to qualify for credit.**

(1) No qualified business facility rehabilitation credit will be allowed unless the taxpayer has submitted a plan and specifications for the restoration, rehabilitation or renovation of a qualified business facility to the New Mexico enterprise zone program officer of the economic development department and received approval from the New Mexico enterprise zone program officer for the plan and specifications prior to commencement of the restoration, rehabilitation or renovation.

(2) In addition, the taxpayer must receive certification from the New Mexico enterprise zone program officer after completing the restoration, rehabilitation or renovation that it conformed to the plan and specifications.

G. **Filing requirements.**

(1) The claim for the qualified business facility rehabilitation credit shall consist of the certification from the New Mexico enterprise zone program officer and a completed claim form provided by the department.

(2) The certification and claim form must be submitted with and attached to the New Mexico corporation income and franchise tax return (CIT-1) or the New Mexico income and franchise tax return for "S" corporations (CIT-2) for the year or years in which the restoration, rehabilitation or renovation is carried out.

(3) The credit may be claimed only against the New Mexico corporate income tax due, and not against New Mexico franchise tax due.

H. **Record retention requirements.**

(1) The original contracts, invoices, bills, statements and other documents showing the costs incurred for the year or years in which a qualified business facility rehabilitation credit is claimed must be retained for three calendar years following the close of the calendar year in which the credit is claimed.

(2) Copies of the original contracts, invoices, bills, statements and other documents must be provided to the department on written request or during the course of an audit.

I. **Claim for qualified business facility rehabilitation credit deriving from partnership, joint venture or limited liability company.**

(1) A corporation that is a partner in a partnership or joint venture or who is a shareholder in a limited liability company that is not required to file and pay income taxes as a corporation under the Internal Revenue Code may claim a credit against the corporation's New Mexico corporate income tax due in an amount equal to the corporation's pro rata share of the qualified business facility rehabilitation credit of the partnership, joint venture or limited liability company. The total aggregate credit for all partners or shareholders shall not exceed an amount equal to one half the cost of restoration, rehabilitation or renovation or fifty thousand dollars ($50,000), whichever is less, for a single restoration, rehabilitation or renovation project for any qualified business facility.

(2) A corporation claiming the qualified business facility rehabilitation credit derived from a partnership, joint venture or limited liability company shall claim the credit in the same manner as specified in Subsections F and G of Section 3.4.14.10 NMAC but shall also provide a schedule listing the names, addresses and social security numbers or federal employer identification numbers of all partners in the partnership or joint venture or the shareholders in the limited liability company, the pro rata share of the credit of each partner or shareholder and the federal employer identification number and New Mexico CRS identification number, if any, of the partnership, joint venture or limited liability company.

J. **Total claimable in a year may exceed $50,000.**

(1) No corporation may claim nor may the department allow a credit in excess of $50,000 for any single project. A corporation, however, may be involved in several different approved projects. If the corporation's share of allowable credits from the several projects exceeds $50,000, the corporation may claim and the department may allow an aggregate credit amount which exceeds $50,000.

(2) Example: A corporation owns a qualified business facility and is also a partner in a partnership and a shareholder in a limited liability company, both of which also own qualified business facilities. All three undertake restoration, renovation or rehabilitation projects on their respective buildings within the same year. The corporation earns credits of $40,000 from the corporation's own building, and $20,000 and $12,000 shares from the other two. The corporation may claim a credit equal to the sum of the corporation's share from the three projects, or $72,000. If, however, the $72,000 exceeded the corporation's income tax liability before application of this credit, then the excess would have to be carried into succeeding taxable years.

K. **Priority in claiming.** A corporation that has both an amount of carryover credit from a prior taxable year and a new credit amount derived from a qualifying restoration, rehabilitation or renovation project in the taxable year for which the return is being filed shall first apply the amount of carryover credit against the corporation's income tax liability. If the amount of the liability exceeds the amount of the carryover credit, then the current year credit may be applied against the liability.

[2/9/95, 1/15/97; 3.4.14.10 NMAC - Rn & A, 3 NMAC 4.14.10, 12/14/00]

3.4.14.11 TAX CREDITS; APPLICATION TO UNITARY GROUPS:

With respect to taxable years beginning on or after January 1, 2020, when any corporation properly files as part of a worldwide, water’s edge or consolidated return, if that corporation has qualified for and continues to hold an unused amount of New Mexico tax credit that it could properly take against its tax liability in a particular taxable year, then that unused amount of tax credit may be applied against the tax liability of the unitary group in accordance with the law applicable to that credit. Any other limitations on the credit apply in the same manner to the unitary group as they would apply to the corporation that holds the credit.

[3.4.14.11 NMAC - N, 3/23/2021]

PART 15: BUSINESS FACILITY REHABILITATION CREDIT [RESERVED]

PART 16: SUSTAINABLE BUILDING TAX CREDIT FOR RESIDENTIAL BUILDINGS

3.4.16.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[3.4.16.1 NMAC - N, 10-31-07]

3.4.16.2 SCOPE:

3.4.16 NMAC applies to the application and certification procedures for administration of the sustainable building tax credit for sustainable residential buildings.

[3.4.16.2 NMAC - N, 10-31-07]

3.4.16.3 STATUTORY AUTHORITY:

3.4.16 NMAC is established under the authority of NMSA 1978, Section 7-2A-21 and NMSA 1978, Section 9-1-5.

[3.4.16.3 NMAC - N, 10-31-07]

3.4.16.4 DURATION:

Permanent.

[3.4.16.4 NMAC - N, 10-31-07]

3.4.16.5 EFFECTIVE DATE:

October 31, 2007, unless a later date is cited at the end of a section.

[3.4.16.5 NMAC - N, 10-31-07]

3.4.16.6 OBJECTIVE:

3.4.16 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the sustainable building tax credit for sustainable residential buildings.

[3.4.16.6 NMAC - N, 10-31-07]

3.4.16.7 DEFINITIONS:

A. "Annual cap" means the annual total amount of the sustainable building tax credit available to taxpayers owning sustainable residential buildings.

B. "Applicant" means a taxpayer that owns a sustainable residential building in New Mexico and who desires to have the department issue a certificate of eligibility for a sustainable building tax credit.

C. "Application package" means the application documents an applicant submits to the division to receive a certificate of eligibility for a sustainable building tax credit.

D. "Build green New Mexico certification" means the verification by a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

E. "Build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico.

F. "Certification" means build green New Mexico certification, LEED certification or energy star qualified.

G. "Certificate of eligibility" means the document, with a unique identifying number that specifies the amount and taxable year for the approved sustainable building tax credit.

H. "Certification level" means one of the following:

(1) LEED-H silver or build green New Mexico silver;

(2) LEED-H gold or build green New Mexico gold; or

(3) LEED-H platinum or build green New Mexico emerald.

I. "Department" means the energy, minerals and natural resources department.

J. "Division" means the department’s energy conservation and management division.

K. "Energy reduction requirements" means the sustainable residential building has achieved a HERS index of 60 or lower.

L. "Energy star" means a joint program of the United States environmental protection agency and the United States department of energy that qualifies homes based on a predetermined threshold of energy efficiency.

M. "Energy star qualified manufactured home" means a home that an in state or out of state energy star certified plant has certified as being designed, produced and installed in accordance with energy star’s guidelines.

N. "HERS" means home energy rating system as developed by RESNET.

O. "HERS index" means a relative energy use index, where 100 represents the energy use of a home built to a HERS reference house and zero indicates that the proposed home uses no net purchased energy.

P. "LEED" means the most current leadership in energy and environmental design green building rating system guidelines the U. S. green building council developed and adopted.

Q. "LEED certification" means the verification by the U. S. green building council, or a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the LEED-H rating system resulting in the issuance of a certification document.

R. "LEED-H" means the LEED rating system for homes.

S. "Manufactured housing" means a multisectioned home that is:

(1) a manufactured home or modular home;

(2) a single-family dwelling with a heated area of at least thirty-six feet by twenty feet and a total area of at least eight-hundred sixty-four square feet;

(3) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the housing and urban development zone code 2 or New Mexico construction codes up to the date of the unit’s construction; and

(4) installed consistent with the Manufactured Housing Act and rules adopted pursuant to that act relating to permanent foundations.

T. "Person" does not include state, local government, public school district or tribal agencies.

U. "Qualified occupied square footage" means the occupied spaces of the building as determined by:

(1) the United States green building council for those buildings obtaining LEED certification;

(2) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; or

(3) the United States environmental protection agency for energy star certified manufactured homes.

V. "Rating system" means the LEED-H rating system, the build green New Mexico rating system or the energy star program for manufactured housing.

W. "RESNET" means the residential energy services network, an industry not-for-profit membership corporation and national standards making body for building energy efficiency rating systems.

X. "Solar market development tax credit" means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.

Y. "Sustainable building tax credit" means the corporate income tax credit the state of New Mexico issues to an applicant for a sustainable residential building.

Z. "Sustainable residential building" means:

(1) a building used as a single-family residence that meets the energy reduction requirements and has been awarded:

(a) LEED-H certification at the certification level of silver, gold or platinum; or

(b) build green New Mexico certification at the gold certification level; or

(2) an energy star qualified manufactured home.

AA. "Taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act, NMSA 1978, 7-2A-1 *et seq*.

BB. "Taxpayer" means a corporation subject to the taxes imposed by the Corporate Income and Franchise Tax Act, NMSA 1978, Section 7-2A-1 *et seq*.

CC. "Tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

DD. "Verifier" means an entity the department approves to provide certifications for homes under the build green New Mexico or LEED-H rating systems.

[3.4.16.7 NMAC - N, 10-31-07; A, 1-1-14]

3.4.16.8 GENERAL PROVISIONS:

A. A person is the owner of a building in New Mexico that has been constructed, renovated or manufactured to be a sustainable residential building and that receives certification on or after January 1, 2007 may receive a certificate of eligibility for a sustainable building tax credit. A subsequent purchaser of a sustainable residential

building may receive a certificate if no tax credit has previously been claimed for the building.

B. The annual total amount of the sustainable building tax credit available to taxpayers owning sustainable residential buildings is limited to $4,000,000. When the $4,000,000 cap for sustainable residential buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

(2) the department may issue certificates of eligibility to applicants who meet the requirements for the sustainable residential buildings tax credit in a taxable year when applications for the sustainable residential buildings tax credit exceed the annual cap and applications for the sustainable commercial buildings tax credit are under the annual cap for commercial buildings by April 30 of any year in which the tax credit is in effect; or

(3) if no sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the sustainable building tax credit is in effect.

C. No more than $1,250,000 of the $4,000,000 annual cap is for manufactured housing.

D. In the event of a discrepancy between a requirement of 3.4.16 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.4.16 NMAC's adoption, the existing rule governs.

[3.4.16.8 NMAC - N, 10-31-07; A, 1-1-14]

3.4.16.9 VERIFIER ELIGIBILITY:

A. The division reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including:

(a) experience in green home building services;

(b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;

(c) a method of auditing the certification process to maintain adequate stringency; and

(d) ability to administer the program and report on the certifications, audits and other relevant information the department may request; and

(3) the verifier can identify the geographic area being served; and

(4) the verifier provides a statement that expresses a commitment to promoting energy-efficient green building with the highest standard of excellence.

B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

C. The verifier shall notify the division 30 calendar days prior to making changes to its certification process or rating systems.

D. The department may rescind an existing verifier's approval, if it determines that the above criteria are not being met.

(1) The division shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the division's notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing concludes.

[3.4.16.9 NMAC - N, 10-31-07]

3.4.16.10 APPLICATION FOR THE SUSTAINABLE BUILDING TAX CREDIT:

A. In order to obtain the sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the division on a division-developed form. An applicant may obtain an application form from the division.

B. An application package shall include a completed application form and attachments as specified on the application form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable residential building. The applicant shall submit all material submitted in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the application incomplete.

C. The completed application form shall consist of the following information:

(1) the applicant's name, mailing address, telephone number and taxpayer identification number;

(2) the name of the applicant's authorized representative;

(3) the ending date of the applicant's taxable year;

(4) the address of the sustainable residential building, including the property's legal description;

(5) whether the applicant was the building owner at time of certification or a subsequent purchaser;

(6) the qualified occupied square footage of the sustainable residential building;

(7) the rating system under which the sustainable residential building was certified;

(8) the certification level achieved, if applicable;

(9) the HERS index;

(10) the date of rating system certification;

(11) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, agreeing that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) applicant has read the requirements contained in 3.4.16 NMAC;

(c) if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market development tax credit;

(d) applicant understands that there are annual caps for the sustainable building tax credit;

(e) applicant understands that the division must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a sustainable building tax credit; and

(f) applicant understands that the department issues a certificate of eligibility for the taxable year in which the sustainable residential building was certified or, if the sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available; and

(12) a project number the division assigns to the tax credit application.

D. In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable residential building;

(2) a copy of the rating system certification form;

(3) a copy of the final certification review checklist that shows the points achieved, if applicable;

(4) a copy of a HERS certificate, from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software the internal revenue service lists as eligible for certification of the federal tax credit, showing the building has achieved a HERS index of sixty or lower; and

(5) other information the department needs to review the building project for the sustainable building tax credit.

[3.4.16.10 NMAC - N, 10-31-07; A, 1-1-14]

3.4.16.11 APPLICATION REVIEW PROCESS:

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package. The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application.

C. The division reviews the application package to calculate the maximum sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the sustainable building tax credit.

D. If an onsite solar system is used to meet the requirements of either the certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the division verifies that no person has applied for a solar market development tax credit for that solar system. If the division finds that a solar market development tax credit has been approved for that solar system, the division shall disapprove the application for the sustainable building tax credit. The applicant may submit a revised application package to the division. The division places the resubmitted application in the review schedule as if it were a new application.

E. If the division finds that the application package meets the requirements and a sustainable building tax credit is available, the department issues the certificate of eligibility for a sustainable building tax credit. If a sustainable building tax credit is partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year, until the last taxable year when the sustainable building tax credit is in effect. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, the sustainable building tax credit amount or amounts and the sustainable building tax credit's taxable year or years.

[3.4.16.11 NMAC - N, 10-31-07; A, 1-1-14]

3.4.16.12 CALCULATING THE TAX CREDIT:

A. The division calculates the sustainable building tax credit based on the qualified occupied square footage of the sustainable residential building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

LEED-H silver or build green New Mexico silver:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by $5.00; plus

next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by $2.50
LEED-H gold or build green New Mexico gold:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by $6.85; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by $3.40
LEED-H platinum or build green New Mexico emerald:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by $9.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by $4.45
energy star manufactured housing:	
up to 3,000 square feet	equals the qualified square footage less than or equal to 3,000 multiplied by $3.00.

B. An applicant may receive both a sustainable building tax credit and a federal tax credit if the applicant is eligible for each tax credit.

C. The taxation and revenue department makes the final determination of the amount of the sustainable building tax credit.

[3.4.16.12 NMAC - N, 10-31-07; A, 1-1-14]

3.4.16.13 CLAIMING THE STATE TAX CREDIT:

A. To claim the sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department's issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.

B. If the amount of the sustainable building tax credit the applicant claims exceeds the applicant's income tax liability, the applicant may carry the excess forward for up to seven consecutive taxable years.

C. A taxpayer claiming a sustainable building tax credit shall not claim a tax credit pursuant to another law for the same sustainable residential building unless the other tax credit is applicable to systems that are unrelated to the sustainable building tax credit. In addition, a taxpayer claiming the sustainable building tax credit shall not claim the credit for the same sustainable building under both the Income Tax Act and the Corporate Income and Franchise Tax Act.

[3.4.16.13 NMAC - N, 10-31-07; A, 1-1-14]

PART 17: SUSTAINABLE BUILDING TAX CREDIT FOR COMMERCIAL BUILDINGS

3.4.17.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[3.4.17.1 NMAC - Rp, 3.4.17.1 NMAC, 1-1-14]

3.4.17.2 SCOPE:

3.4.17 NMAC applies to the application and certification procedures for administration of the sustainable building tax credit for sustainable commercial buildings.

[3.4.17.2 NMAC - Rp, 3.4.17.2 NMAC, 1-1-14]

3.4.17.3 STATUTORY AUTHORITY:

3.4.17 NMAC is established under the authority of NMSA 1978, Section 7-2A-21 and NMSA 1978, Section 9-1-5.

[3.4.17.3 NMAC - Rp, 3.4.17.3 NMAC, 1-1-14]

3.4.17.4 DURATION:

Permanent.

[3.4.17.4 NMAC - Rp, 3.4.17.4 NMAC, 1-1-14]

3.4.17.5 EFFECTIVE DATE:

January 1, 2014, unless a later date is cited at the end of a section.

[3.4.17.5 NMAC - Rp, 3.4.17.5 NMAC, 1-1-14]

3.4.17.6 OBJECTIVE:

3.4.17 NMAC’s objective is to establish procedures for administering the program to issue a certificate of eligibility for the sustainable building tax credit for sustainable commercial buildings.

[3.4.17.6 NMAC - Rp, 3.4.17.6 NMAC, 1-1-14]

3.4.17.7 DEFINITIONS:

A. "Annual cap" means the annual aggregate amount of the sustainable building tax credit available to taxpayers owning sustainable commercial buildings.

B. "Applicant" means a taxpayer that owns a sustainable commercial building in New Mexico and who desires to have the department issue a certificate of eligibility for a sustainable building tax credit.

C. "Application package" means the application documents an applicant submits to the division to receive a certificate of eligibility for a sustainable building tax credit.

D. "Build green New Mexico certification" means the verification by a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

E. "Build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico.

F. "Building project" means a new construction or renovation project that will result in one or more sustainable commercial buildings.

G. "Building type" means the primary use of a building or section of a building as defined in target finder.

H. "Certificate of eligibility" means the document, with a unique identifying number that specifies the amount and taxable year for the approved sustainable building tax credit.

I. "Certification level" means one of the following:

(1) LEED-H silver or build green New Mexico silver;

(2) LEED-H gold or build green New Mexico gold; or

(3) LEED-H platinum or build green New Mexico emerald.

J. "Department" means the energy, minerals and natural resources department.

K. "Division" means the department’s energy conservation and management division.

L. "Energy reduction requirements":

(1) for a non-multi-family commercial building means beginning January 1, 2012, a 60 percent energy reduction based on the national average for that building type as published by the United States department of energy;

(2) for a multi-family dwelling unit means that it has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network.

M. "HERS" means home energy rating system as developed by RESNET.

N. "HERS index" means a relative energy use index, where 100 represents the energy use of a home built to a HERS reference house and zero indicates that the proposed home uses no net purchased energy.

O. "LEED" means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the U. S. green building council.

P. "LEED certification" means the U. S. green building council's verification that a building project has met certain prerequisites and performance benchmarks or credits within each category of a LEED rating system resulting in the issuance of a certification document.

Q. "LEED-CI" means the LEED rating system for commercial interiors.

R. "LEED-CS" means the LEED rating system for the core and shell of buildings.

S. "LEED-EB" means the LEED rating system for existing buildings.

T. "LEED-NC" means the LEED rating system for new buildings and major renovations.

U. "LEED rating system" means one of the following:

(1) LEED-CI;

(2) LEED-CS;

(3) LEED-EB; or

(4) LEED-NC.

V. "LEED registration" means the notification to the U. S. green building council that a project is pursuing LEED certification.

W. "Most current" means the LEED rating system available and selected at the time of LEED registration.

X. "Person" does not include state, local government, public school district or tribal agencies.

Y. "Qualified occupied square footage" means the building's occupied spaces as determined by the U. S. green building council for those buildings obtaining LEED certification or the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification.

Z. "RESNET" means the residential energy services network, an industry not-for-profit membership corporation and national standards making body for building energy efficiency rating systems.

AA. "Solar market development tax credit" means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.

BB. "Sustainable building tax credit" means the income tax credit the state of New Mexico issues to an applicant for a sustainable building.

CC. "Sustainable commercial building" means one of the following:

(1) a building that is registered with and certified by the U.S. green building council under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system at the certification level of silver, gold or platinum and that:

(a) achieves any prerequisite for and at least one point related to commissioning under the "energy and atmosphere" credits of LEED, if included in the applicable rating system; and

(b) has met the energy reduction requirements as substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development, or an alternative method the division approved pursuant to 3.4.17.12 NMAC;

(2) a building used as multi-family residences where all dwelling units have met the energy reduction requirements and the building has been awarded:

(a) LEED-H certification at the certification level of silver, gold or platinum; or

(b) build green New Mexico certification at the certification level of silver, gold or emerald.

DD. "Target finder" means the web-based program developed by the United States environmental protection agency to establish an energy goal in kilo British thermal units per square foot per year for predetermined building types.

EE. "Taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act, NMSA 1978, 7-2A-1 *et seq*.

FF. "Taxpayer" means an individual subject to the tax imposed by the Income Tax Act, NMSA 1978, Section 7-2-1 *et seq*.

GG. "Tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

HH. "Verifier" means an entity the department approves to provide certification for homes under the build green New Mexico or LEED-H rating systems.

[3.4.17.7 NMAC - Rp, 3.4.17.7 NMAC, 1-1-14]

3.4.17.8 GENERAL PROVISIONS:

A. A person who is the owner of a building in New Mexico that has been constructed or renovated to be a sustainable commercial building and that receives certification on or after January 1, 2007 may receive a certificate of eligibility for a sustainable building tax credit.

B. The annual total amount of the sustainable building tax credit available to taxpayers owning sustainable commercial buildings is limited to $1,000,000. When the $1,000,000 limit for sustainable commercial buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

(2) if no sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the sustainable building tax credit is in effect.

C. The department may issue certificates of eligibility to applicants who meet the requirements for the sustainable residential buildings tax credit in a taxable year when applications for the sustainable residential buildings tax credit exceed the annual cap and applications for the sustainable commercial buildings tax credit are under the annual cap for commercial buildings by April 30 of any year in which the tax credit is in effect.

D. In the event of a discrepancy between a requirement of 3.4.17 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.4.17 NMAC’s adoption, the existing rule governs.

[3.4.17.8 NMAC - Rp, 3.4.17.8 NMAC, 1-1-14]

3.4.17.9 VERIFIER ELIGIBILITY:

A. The division reviews the qualification for verifiers of the build green New Mexico or LEED-H certifications based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including;

(a) experience in green home building services;

(b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;

(c) a method of auditing the certification process to maintain adequate stringency; and

(d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;

(3) the verifier can identify the geographic area being served; and

(4) the verifier provides a statement that expresses a commitment to promoting energy efficient green building with the highest standard of excellence.

B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

C. The verifier shall notify the division 30 calendar days prior to making changes to its certification process or rating systems.

D. The department may rescind an existing verifier's approval, if it determines that the above criteria are not being met. The department notifies the verifier of the reasons for disapproving or rescinding eligibility.

(1) The division shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the division's notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing concludes.

[3.4.17.9 NMAC - N, 1-1-14]

3.4.17.10 APPLICATION FOR THE SUSTAINABLE BUILDING TAX CREDIT:

A. In order to receive a certificate of eligibility for the tax credit, the applicant must submit an application for the sustainable building tax credit after the building is completed, the applicant has fulfilled all other requirements and the total annual cap for the sustainable building tax credit has not been met. An applicant may obtain an application form from the division.

B. An application package shall include a completed application form and attachments as specified on the form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable commercial building. The applicant shall submit all material in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the application incomplete.

C. An applicant shall submit a complete application package to the division no later than April 30 of the taxable year for which the applicant seeks the sustainable building tax credit. If an applicant does not submit a complete application package by April 30, any remaining sustainable commercial building tax credit funds under the cap may be used in that taxable year for completed sustainable residential building applications. The division may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

D. The completed application form shall consist of the following information:

(1) the applicant's name, mailing address, telephone number and taxpayer identification number;

(2) the name of the authorized representative of the applicant, if different from the tax credit request form;

(3) the ending date of the applicant's taxable year;

(4) the address of the sustainable commercial building, including the property's legal description;

(5) whether the applicant was the building owner at time of certification or a subsequent purchaser;

(6) the rating system under which the sustainable commercial building was certified;

(7) the certification level achieved;

(8) for non-multi-family commercial buildings, the kilo British thermal units per square foot per year anticipated as demonstrated in the energy model submitted for LEED certification, broken out by all energy sources and including the percent of use for each energy source;

(9) for non-multi-family commercial buildings, revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than 10 percent;

(10) the qualified occupied square footage of the sustainable commercial building;

(11) the date of certification;

(12) for multi-family commercial buildings, the HERS index; and

(13) a statement signed and dated by the applicant or an authorized representative of the applicant, which may be a form of electronic signature if approved by the department, asserting that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) all inputs for the energy reduction requirements are the same as the inputs for the energy model;

(c) if an onsite solar system is used to meet the requirements of either the certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market development tax credit;

(d) applicant understands that there are annual caps in place for the sustainable building tax credit;

(e) applicant understands that the division must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a sustainable building tax credit; and

(f) applicant understands that the department issues a certificate of eligibility for the tax year in which the sustainable commercial building was certified or if the applicant submitted the application after April 30 or the sustainable building tax credit's annual cap has been reached for the next tax year in which funds are available.

E. In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a current warranty deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable commercial building;

(2) a copy of the rating system certification form;

(3) a copy of the final LEED project info or project summary that shows the building's square footage;

(4) a copy of the final certification review LEED checklist that shows the LEED credits achieved;

(5) for non-multi-family commercial buildings, a copy of the final LEED optimize energy performance template or templates, signed by a New Mexico licensed design professional, that the applicant submitted for LEED certification including the results of the energy model that shows the kilo British thermal units per square foot per year for the sustainable commercial building;

(6) for non-multi-family commercial buildings, revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than 10 percent; and

(7) a copy of the final LEED enhanced commissioning template, if available under the applicable LEED rating system;

(8) for multi-family commercial buildings, a copy of a HERS certificate from a RESNET (or a rating network that has the same standards as RESNET accredited HERS provider, using software the internal revenue service lists as eligible for certification of the federal tax credit, showing the building has achieved a HERS index of sixty or lower; and

(9) other information the department needs to review the building project for the sustainable building tax credit.

[3.4.17.10 NMAC - Rp, 3.4.17.11 NMAC, 1-1-14]

3.4.17.11 APPLICATION REVIEW PROCESS:

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package.

C. The division reviews the application package to calculate the maximum sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the sustainable building tax credit.

D. If an onsite solar system is used to meet the requirements of either the certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the division verifies that no person has applied for a solar market development tax credit for that solar system. If the division finds that a solar market development tax credit has been approved for that solar system, the division disapproves the application for the sustainable building tax credit. The applicant may submit a revised application package to the division. The division places the resubmitted application in the review schedule as if it were a new application.

E. If the division finds that the application package meets the requirements and funds for a sustainable building tax credit are available, the department issues the certificate of eligibility for a sustainable building tax credit. If funds for a sustainable building tax credit are partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year in which funds are available, until the last taxable year when the sustainable building tax credit is in effect. The department provides approval through written notification to the applicant upon the application's completed review. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the sustainable building tax credit maximum amount or amounts and the sustainable building tax credit's taxable year or years.

F. The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application.

[3.4.17.11 NMAC - Rp, 3.4.17.12 NMAC, 1-1-14]

3.4.17.12 VERIFICATION OF THE ALTERNATIVE METHOD USED FOR THE ENERGY REDUCTION REQUIREMENT:

A. In the event the sustainable commercial building is a building type that is not available in target finder and the applicant uses an alternative method for the energy reduction requirement, the division reviews the submitted documentation. The following information shall be included:

(1) a narrative describing the methodology used;

(2) the kilo British thermal units per square foot per year for all buildings, real or modeled, used as a basis of comparison, broken out by all energy sources and including the percent of use for each energy source; and

(3) all formulas, assumptions, and other explanation necessary to clarify how the kilo British thermal units per square foot per year for this project was derived.

B. The division uses the following criteria to evaluate the alternative method:

(1) clarity and completeness of the description of the alternative method;

(2) reasonableness of assumptions and comparisons; and

(3) thoroughness of justification of the method.

C. If the division rejects an alternative method it notifies the applicant of the reasons for the rejection.

D. The applicant may request that the division obtain the advice of a volunteer review committee of three or more New Mexico registered architects and New Mexico licensed professional mechanical and electrical engineers, chosen by the division, on their assessment of the alternative method, at which time the division may:

(1) reconsider the decision and accept the alternative method;

(2) recommend a revised alternative method; or

(3) reaffirm the rejection of the alternative method.

[3.4.17.12 NMAC - Rp, 3.4.17.13 NMAC, 1-1-14]

3.4.17.13 CALCULATING THE TAX CREDIT:

A. The division calculates the maximum sustainable building tax credit for the non-multi-family commercial buildings based on the qualified occupied square footage of the sustainable commercial building, the LEED rating system under which the applicant

achieved LEED certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

LEED-NC silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by $3.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.75; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.70
LEED-NC gold:	
first 10,000 square	equals the qualified square footage less than or equal to 10,000 multiplied by $4.75; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $2.00; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $1.00
LEED-NC platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by $6.25; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $3.25; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $2.00
LEED-EB OR LEED-CS silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by $2.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.25; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.50
LEED-EB OR LEED-CS gold:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by $3.35; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.40; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.70
LEED-EB OR LEED-CS platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by $4.40; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $2.30; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $1.40
LEED-CI silver:	

first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by $1.40; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $.70; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.30
LEED-CI gold:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by $1.90; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $.80; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.40
LEED-CI platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by $2.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.30; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.80

B. The division calculates the maximum sustainable building tax credit for multi-family residences based on the qualified occupied square footage of the sustainable building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

LEED-H silver or build green New Mexico silver:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by $5.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by $2.50.
LEED-H gold or build green New Mexico gold:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by $6.85; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by $3.40.
LEED-H platinum or build green New Mexico emerald:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by $9.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by $4.45.

C. An applicant may receive both a sustainable building tax credit and a federal tax credit if the applicant is eligible for each tax credit.

D. The taxation and revenue department makes the final determination of the amount of the sustainable building tax credit.

[3.4.17.13 NMAC - Rp, 3.4.17.14 NMAC, 1-1-14]

3.4.17.14 CLAIMING THE STATE TAX CREDIT:

A. To claim the sustainable building tax credit for a given year, an applicant shall submit all certificates of eligibility to the taxation and revenue department prior to the end of that taxable year, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.

B. If the amount of the sustainable building tax credit the applicant claims exceeds the applicant's income tax liability, the applicant may carry the excess forward for up to seven consecutive taxable years.

C. A taxpayer claiming a sustainable building tax credit shall not claim a tax credit pursuant to another law for the same sustainable commercial building unless the other tax credit is applicable to systems that are unrelated to the sustainable building tax credit. In addition, a taxpayer claiming the sustainable building tax credit shall not claim the credit for the same sustainable building under both the Income Tax Act and the Corporate Income and Franchise Tax Act.

[3.4.17.14 NMAC - Rp, 3.4.17.15 NMAC, 1-1-14]

PART 18: APPLICATION AND CERTIFICATION PROCESS FOR THE ADMINISTRATION OF THE WATER CONSERVATION TAX CREDIT [EXPIRED]

[This part expired January 1, 2013.]

PART 19: CERTIFICATION FOR TAX CREDIT FOR GEOTHERMAL GROUND-COUPLED HEAT PUMPS

3.4.19.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[3.4.19.1 NMAC - N, 09/15/2010]

3.4.19.2 SCOPE:

3.4.19 NMAC applies to the application and certification procedures for administration of the tax credit for geothermal ground-coupled heat pumps.

[3.4.19.2 NMAC - N, 09/15/2010]

3.4.19.3 STATUTORY AUTHORITY:

3.4.19 NMAC is established under the authority of NMSA 1978, Section 7-2A-24 and NMSA 1978, Section 9-1-5.

[3.4.19.3 NMAC - N, 09/15/2010]

3.4.19.4 DURATION:

Permanent.

[3.4.19.4 NMAC - N, 09/15/2010]

3.4.19.5 EFFECTIVE DATE:

09/15/2010, unless a later date is cited at the end of a section.

[3.4.19.5 NMAC - N, 09/15/2010]

3.4.19.6 OBJECTIVE:

3.4.19 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the tax credit for geothermal ground-coupled heat pumps.

[3.4.19.6 NMAC - N, 09/15/2010]

3.4.19.7 DEFINITIONS:

A. "Annual cap" means the annual aggregate amount of the geothermal ground-coupled heat pump tax credit available to individual and corporate taxpayers.

B. "Applicant" means a taxpayer or taxpayers that own a geothermal ground-coupled heat pump system in New Mexico and that desires to have the department issue a certificate of eligibility for the geothermal ground-coupled heat pump tax credit.

C. "Application package" means the application document and all attachments that an applicant submits to the division to receive a certificate of eligibility for a geothermal ground-coupled heat pump tax credit.

D. "Certificate of eligibility" means the document, with a unique system certification number, that specifies the amount and taxable year for the approved geothermal ground-coupled heat pump tax credit.

E. "Department" means the energy, minerals and natural resources department.

F. "Division" means the energy, minerals and natural resources department's energy conservation and management division.

G. "Geothermal ground-coupled heat pump system" means a reversible refrigerator device that provides space heating, space cooling, domestic hot water, processed hot water, processed chilled water or any other application where hot air, cool air, hot water or chilled water is required and that utilizes ground water or water circulating through pipes buried in the ground as a condenser in the cooling mode and an evaporator in the heating mode.

H. "Geothermal ground-coupled heat pump tax credit" means the corporate income tax credit that the taxation and revenue department issues to an applicant for a geothermal ground-coupled heat pump system.

I. "System certification number" means the unique number issued by the department that identifies the certified geothermal ground-coupled heat pump system.

J. "Taxpayer" means a corporation as defined by NMSA 1978, Section 7-2A-2, subject to the tax imposed by the Corporate Income and Franchise Tax Act, NMSA 1978, Section 7-2A-1 *et seq*.

K. "Taxpayer identification number" means an 11-digit number the taxation and revenue department issues that indicates that the taxpayer is registered with the taxation and revenue department to pay gross receipts and compensating taxes.

L. "Tax credit" means the New Mexico state tax credit for geothermal ground-coupled heat pumps as described in 3.4.19 NMAC.

[3.4.19.7 NMAC - N, 09/15/2010]

3.4.19.8 GENERAL PROVISIONS:

A. Only a taxpayer who is the owner of a geothermal ground-coupled heat pump system that is purchased and is installed in a residence, business or agricultural enterprise in New Mexico on or after January 1, 2010, but before December 31, 2020 may receive a certificate of eligibility for a tax credit.

B. Only one application package shall be filed per geothermal ground-coupled heat pump system. If more than one taxpayer owns an interest in the property where the geothermal ground-coupled heat pump system is installed as a member of a partnership or other business association, a taxpayer may only claim a tax credit in proportion to that taxpayer's interest in the partnership or association. The application package shall specify the interest each taxpayer has in the property. In the event that there is more

than one taxpayer that owns an interest in the property where the geothermal ground-coupled heat pump system is installed:

(1) each such taxpayer applying for a tax credit must be identified as an applicant on the application package;

(2) each such taxpayer applying for a tax credit must provide the required taxpayer information as required by 3.4.19.9 NMAC and the application form;

(3) each such taxpayer applying for a tax credit must sign the application; and

(4) the department shall issue one certificate of eligibility per taxpayer that reflects the amount of the tax credit to which the taxpayer is entitled in accordance with the taxpayer's interest in the property, as set forth in the application.

C. 3.4.19 NMAC applies to geothermal ground-coupled heat pump systems for corporate income tax only; the rules for personal income tax geothermal ground-coupled heat pump system tax credit are at 3.3.32 NMAC.

D. The tax credit certificate may be issued for up to 30 percent of the purchase and installation costs of the geothermal ground-coupled heat pump system but may not exceed $9,000.

E. The annual cap is $2,000,000. When the $2,000,000 annual cap is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the next subsequent tax year in which such tax credits are available; except

(2) if no tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which such credits are available, except for the last taxable year when the tax credit is in effect.

[3.4.19.8 NMAC - N, 09/15/2010]

3.4.19.9 APPLICATION:

A. To apply for the tax credit an applicant shall submit a complete application package to the division. An applicant may obtain the tax credit application form and system installation form from the division to submit as part of the package.

B. An application package shall include a completed tax credit application form and written attachments for a geothermal ground-coupled heat pump system. The applicant shall submit the tax credit application form together with all attachments required as a

complete application package. An applicant shall submit one application package for each geothermal ground-coupled heat pump system. All material submitted in the application package shall be provided on 8½-inch x 11-inch paper.

C. The completed application form shall include the following information:

(1) the taxpayer's name, mailing address, telephone number and taxpayer identification number;

(2) the address where the geothermal ground-coupled heat pump system is located;

(3) the geothermal ground-coupled heat pump system's type and description;

(4) the date the geothermal ground-coupled heat pump system started continuous operation;

(5) the installer's name, address, telephone number, license category and license number;

(6) the net cost of equipment, materials and labor of the geothermal ground-coupled heat pump system, excluding the expenses and income listed in 3.4.19.13 NMAC;

(7) a statement, signed and dated by the applicant, which signature may be electronic if approved by the department, agreeing that:

(a) all information provided in the application package is true and correct;

(b) applicant has read the certification requirements contained in 3.4.19 NMAC;

(c) applicant understands that there are annual aggregate tax credit limits in place for geothermal ground-coupled heat pump systems;

(d) applicant understands that the department must approve the application package before the applicant is eligible for a tax credit;

(e) applicant agrees to make changes the department requires to the geothermal ground-coupled heat pump system for compliance with 3.4.19 NMAC; and

(f) to ensure compliance with 3.4.19 NMAC, applicant agrees to allow the division or its authorized representative to inspect the geothermal ground-coupled heat pump system that is described in the application package at any time after the submission of the application package with not less than five business days notice to the applicant; and

(8) a system certification number the division assigns to the application.

D. The application package shall meet 3.4.19 NMAC's requirements and be materially complete.

E. The application package shall include the following information provided as attachments:

(1) a copy of the most recent property tax bill to the taxpayer for the residence where the geothermal ground-coupled heat pump system is located;

(2) a copy of the invoice of itemized equipment and labor costs for the geothermal ground-coupled heat pump system;

(3) a copy of the geothermal ground-coupled heat pump system's design schematic and technical specifications as described in 3.4.19 NMAC;

(4) a photograph of the geothermal ground-coupled heat pump system after installation is completed;

(5) a completed system installation form;

(6) a completed taxpayer and installer statement, with information about the geothermal ground-coupled heat pump that includes:

(a) manufacturer or supplier of system components and the system compenents' model numbers;

(b) number of well borings (if applicable);

(c) a description of horizontal trenching (if applicable);

(d) a description of a water source system component (if applicable);

(7) if the system was installed using vertical or horizontal directional boreholes, the applicant shall provide the following information:

(a) drilling operator;

(b) office of the state engineer exploratory permit number and approval date (if required);

(c) drilling method;

(d) borehole diameter;

(e) number of boreholes drilled;

(f) general description of subsurface geology or copies of drillers logs;

(g) depth of the boreholes;

(h) distance between boreholes;

(i) depth to ground water (indicate if ground water not encountered);

(j) whether the system is an "open" or "closed" loop design; and

(8) if the system was installed using horizontal trenching, the applicant shall provide the following information:

(a) length, width and depth of the trench or trenches; and

(b) general description of subsurface geology.

F. The completed system installation form shall include the following information:

(1) printed name of the taxpayer who is identified on the application form;

(2) printed name, title and telephone number of the installer who signs the system installation form;

(3) printed name, title and telephone number of the building code authority's authorized representative, if applicable, who approves the system installation form;

(4) date on which the geothermal ground-coupled heat pump system installation was complete and ready to operate;

(5) a statement that the installer has signed and dated, which may be a form of electronic signature if approved by the department, certifying that:

(a) the geothermal ground-coupled heat pump system was installed in full compliance with all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time of installation;

(b) the installer has read 3.4.19 NMAC's certification requirements;

(c) the installed geothermal ground-coupled heat pump system will work properly with regular maintenance; and

(d) the installer provided written operations and maintenance instructions to the applicant and posted a one-page summary of these instructions in a sheltered accessible location acceptable to the taxpayer and that is near or at the geothermal ground-coupled heat pump system's components;

(6) documentation of the total geothermal ground-coupled heat pump system size.

G. The application form shall request that the applicant provide the following optional information:

(1) taxpayer's email address; and

(2) contractor's email address.

H. The application form shall include optional selections where the applicant can indicate interest in allowing the department to take the following actions. Selection of such options by the applicant shall not create in the department an obligation to take such action:

(1) adding energy monitoring equipment to the geothermal ground-coupled heat pump system;

(2) conducting an analysis of geothermal ground-coupled heat pump system operation and performance; or

(3) conducting an analysis of taxpayer's utility bill records.

[3.4.19.9 NMAC – N, 09/15/2010]

3.4.19.10 APPLICATION REVIEW PROCESS:

A. The department shall consider applications in the order received, according to the day they are received, but not the time of day. If the department approves applications received on the same day and the applications would exceed the annual cap, then the department will divide the available tax credit among those applications on a prorated system cost basis.

B. The division shall review the application package to calculate the tax credit and check accuracy of the applicant's documentation and shall determine whether the department certifies the geothermal ground-coupled heat pump system.

C. If an application package fails to meet a requirement or is materially incomplete, the department shall disapprove the application. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant

may resubmit the application package for the disapproved project. The division shall place the resubmitted application in the review schedule as if it were a new application.

D. If the division finds that the application package meets 3.4.19 NMAC's requirements and a tax credit is available, the department shall certify the applicant's geothermal ground-coupled heat pump system and documents the taxpayer as eligible for a tax credit. If a tax credit is not available in the taxable year of certification of the geothermal ground-coupled heat pump system submitted in the application package, the division shall place the taxpayer on a waiting list for inclusion in the following taxable year, if a tax credit remains available. The department shall provide approval through written notification to the applicant. The notification shall include the taxpayer's contact information, taxpayer identification number, system certification number, net system cost eligible for the tax credit, the tax credit amount and, if applicable waiting list status.

E. The division shall report to the taxation and revenue department the information required to verify, process and distribute each tax credit by providing a copy of the department's approval notification.

[3.4.19.10 NMAC - N, 09/15/2010]

3.4.19.11 SAFETY, CODES AND STANDARDS:

A. Geothermal ground-coupled heat pump systems that the department may certify shall meet the following minimum requirements:

(1) compliance with the latest adopted version of all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time that the applicant submits the application package including design, permitting and installation in full compliance with all applicable provisions of the New Mexico Plumbing Code (14.8.2 NMAC), the New Mexico Mechanical Codes (14.9.2 - 5 NMAC), the New Mexico General Construction Building Codes (14.7.2 - 8 NMAC) and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under NMSA 1978, Sections 3-17-6 and 3-18-6; and

(2) compliance with all applicable utility company or heating fuel vendor requirements, if the system being served with a geothermal ground-coupled heat pump system is also served by utility electricity or a heating fuel.

B. The application package shall include the following information concerning building codes:

(1) a statement that the building code authority's authorized representative has signed and dated, which may be a form of electronic signature if approved by the department, that the geothermal ground-coupled heat pump system was installed in full compliance with all applicable codes; or

(2) if the applicant is unable to obtain a signed and dated statement from the building code authority's authorized representative on the system installation form, then the applicant may provide one of the following instead:

(a) a photograph or copy of the permit tag clearly identifying the building code authority's authorized representative's signature, the date and the permit number;

(b) an official document from the building code authority that includes the:

(i) agency's name;

(ii) authorized representative's name, title, telephone number and signature;

(iii) date of authorized representative's signature; and

(iv) permit number; or

(c) a web-based application the building code authority approves.

[3.4.19.11 NMAC - N, 09/15/2010]

3.4.19.12 SYSTEM APPLICATIONS AND LISTS OF ELIGIBLE COMPONENTS:

A. Geothermal ground-coupled heat pump systems that the department may certify shall meet the following requirements:

(1) be made of new equipment, components and materials;

(2) have a written minimum two year warranty provided by the contractor on parts, equipment and labor with the following exceptions;

(a) the warranty provided by the contractor on each specific piece of equipment shall not exceed the duration and conditions of the warranty provided by the manufacturer of the equipment against defects in materials and workmanship; and

(b) the owner of the geothermal ground-coupled heat pump system may bear the actual cost of shipping the product for the repair and replacement;

(3) be a complete system that collects and distributes geothermal energy to the residence, business or agricultural enterprise in New Mexico that it serves; and

(4) be a minimum one-ton system size.

B. Geothermal ground-coupled heat pump systems or their portions that the department shall not certify are as follows:

(1) a system or portion of a system that would be present if the geothermal ground-coupled heat pump system was not installed;

(2) a system that is not connected to a structure or foundation and does not serve a permanent end use energy load or is not permanently located in New Mexico;

(3) a system not serving an end use energy load; or

(4) a system or portion of a system that replaces a system or portion of a system the department has certified in a previous application for a tax credit.

C. System components and installation processes that the department may include in the cost calculation and certify include:

(1) the system applications of geothermal space heating, geothermal air heating, geothermal process heating, geothermal space cooling or combinations of geothermal system applications, domestic hot water, processed hot water, processed chilled water or any other application where hot air, cool air, hot water or chilled water is required and that utilizes ground water or water circulating through pipes buried in the ground as a condenser in the cooling mode and an evaporator in the heating mode;

(2) collectors;

(3) pumps;

(4) fans;

(5) storage tanks;

(6) buffer tanks;

(7) expansion tanks;

(8) expansion valves;

(9) valves;

(10) "txv" valves;

(11) three-way valves;

(12) refrigerant compressors;

(13) chill water tanks;

(14) refrigerant reversing valves;

(15) controllers;

(16) heat exchangers;

(17) compressors;

(18) compressor gas;

(19) flow center circulators;

(20) tubing;

(21) tubing u-bend connections;

(22) tubing connections and fittings;

(23) manifolds;

(24) supply headers;

(25) expansion metering devices;

(26) desuperheaters;

(27) hot water tanks;

(28) heat exchange refrigerant;

(29) reverse return headers;

(30) thermostats;

(31) evaporators;

(32) borehole grout;

(33) borehole backfill sand or other medium;

(34) turnarounds; and

(35) air handlers;

(36) above-ground fluid coolers;

(37) thermal conductivity testing; and

(38) all materials and costs associated with vertical well drilling and horizontal trenching including well casing and tubing.

[3.4.19.12 NMAC - N, 09/15/2010]

3.4.19.13 CALCULATING THE GEOTHERMAL GROUND-COUPLED HEAT PUMP SYSTEM COST:

A. The cost of a geothermal ground-coupled heat pump system the department certifies shall be the cost of acquiring the system but shall not include the following:

(1) expenses, including but not limited to:

(a) unpaid labor or the applicant's labor;

(b) unpaid equipment or materials;

(c) land costs or property taxes;

(d) costs of structural, surface protection and other functions in building elements that would be included in building construction if a geothermal ground-coupled heat pump system were not installed;

(e) mortgage, lease or rental costs of the residence, business or agricultural enterprise;

(f) legal and court costs;

(g) research fees or patent search fees;

(h) fees for use permits or variances;

(i) membership fees;

(j) financing costs or loan interest;

(k) marketing, promotional or advertising costs;

(l) repair, operating or maintenance costs;

(m) extended warranty costs;

(n) system visual barrier costs;

(o) adjacent structure modification costs;

(p) vegetation maintenance costs; and

(2) income, including:

(a) payments the installer or other parties provide that reduce the system cost, including rebates, discounts and refunds with the exception of federal, state and local government and utility company incentives;

(b) services, benefits or material goods the installer or other parties provide by the same or separate contract, whether written or verbal; and

(c) other financial incentives provided for geothermal ground-coupled heat pump system installation, if applicable.

B. The division shall make the final determination of the net cost that the department certifies is eligible for a tax credit.

[3.4.19.13 NMAC - N, 09/15/2010]

3.4.19.14 CLAIMING THE TAX CREDIT:

A. To claim the tax credit, a taxpayer owning a geothermal ground-coupled heat pump system that the department has certified shall submit to the taxation and revenue department a claim, which shall consist of the certificate of eligibility the department issued to the taxpayer, a completed claim form the taxation and revenue department has approved and any other information the taxation and revenue department requires.

B. If the amount of tax credit claimed exceeds the taxpayer's corporate income tax liability, the taxpayer may carry the excess forward for up to 10 consecutive taxable years.

[3.4.19.14 NMAC - N, 09/15/2010]

PART 20: CERTIFICATION FOR TAX CREDIT FOR AGRICULTURAL BIOMASS

3.4.20.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[3.4.20.1 NMAC - N, 02/29/2012]

3.4.20.2 SCOPE:

3.4.20 NMAC applies to the application and certification procedures for administration of the agricultural biomass corporate income tax credit for dairy or feedlot operations.

[3.4.20.2 NMAC - N, 02/29/2012]

3.4.20.3 STATUTORY AUTHORITY:

3.4.20 NMAC is established under the authority of Subsection D of Section 7-2A-26 NMSA 1978 and Section 9-1-5 NMSA 1978.

[3.4.20.3 NMAC - N, 02/29/2012]

3.4.20.4 DURATION:

Permanent.

[3.4.20.4 NMAC - N, 02/29/2012]

3.4.20.5 EFFECTIVE DATE:

February 29, 2012, unless a later date is cited at the end of a section.

[3.4.20.5 NMAC - N, 02/29/2012; A, 09/29/2020]

3.4.20.6 OBJECTIVE:

3.4.20 NMAC's objective is to establish procedures to provide certification of transportation of agricultural biomass to a qualified facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use.

[3.4.20.6 NMAC - N, 02/29/2012]

3.4.20.7 DEFINITIONS:

A. "Agricultural biomass" means wet manure from either dairy or feedlot commercial operations that meets specifications established by the energy minerals and natural resources department.

B. "Agricultural biomass production facility" means a diary or feedlot that collects animal waste for the purpose of transporting that material to a facility where it will be used to generate electricity, make biocrude or other liquid or gaseous fuel for commercial use.

C. "Applicant" means a taxpayer that transports agricultural biomass to a qualified energy producing facility and who desires to have the department issue a certificate of transportation to be used in applying for an agricultural biomass corporate income tax credit from the taxation and revenue department.

D. "Application package" means the application documents an applicant submits to the department to receive a certificate of transportation to support an agricultural biomass corporate income tax credit application to the taxation and revenue department.

E. "Apron scrape" means biomass collected from concrete feeding aprons or bedding areas.

F. "Biocrude" means a non-fossil form of energy that can be transported and refined using existing petroleum refining facilities and that is made from biologically derived feedstocks and other agricultural biomass.

G. "Certificate of transportation" means a document issued by the department to the applicant and the taxation and revenue department, enumerated with a unique system certification number and certifying the number of wet tons of agricultural biomass transported to a qualified facility during a specified taxable year. The purpose of this document is to certify the number of wet tons of biomass qualifying for the biomass corporate income tax credit.

H. "Corral scrape" means biomass collected from soil bedding or feed areas.

I. "Dairy" means a facility that raises livestock for milk production.

J. "Department" means the energy, minerals and natural resources department.

K. "Dry cow" means a fully grown cow that is not currently being milked.

L. "Feedlot" means an operation that fattens livestock for market.

M. "Greenwater" means milking parlor washwater.

N. "Heifer" means a young replacement cow of at least 500 pounds that has not yet been milked.

O. "Livestock" means domestic animals that produce usable agricultural biomass.

P. "Milking cow" means a dairy cow that is lactating and which is milked on a daily basis.

Q. "Qualified facility" or **"qualified energy producing facility"** means a facility that the department has determined uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use.

R. "Transport" means to convey or arrange for conveyance of biomass by vehicle or pipe from dairy or feedlot to a qualified facility.

S. "Taxable year" means the annual accounting period for purposes of filing corporate income tax returns as defined by the United States internal revenue service.

T. "Taxpayer" means a diary or feedlot operator or lessee who is liable for payment of gross receipts tax or corporate income tax.

U. "Taxpayer identification number" means an applicant's 11 digit number issued to the applicant upon registration with the taxation and revenue department to pay gross receipts and corporate taxes.

V. "Wet ton" means 2000 pounds of agricultural biomass qualifying for a certificate of transportation from the department. The number of wet tons qualifying for the certificate of transportation from a dairy during a specific time period is the amount in tons transported from the agricultural biomass production facility calculated by adding:

(1) the daily population of milking cows times 49 pounds of biomass per milking cow per day of apron scrape plus 70 pounds of biomass per day per milking cow of corral scrape; plus

(2) the daily population of dry cows times 30 pounds of biomass per dry cow per day of apron scrape plus 45 pounds of biomass per day per dry cow of corral scrape; plus

(3) the daily population of heifers times 17 pounds of biomass per heifer per day of apron scrape plus 26 pounds of biomass per day per heifer of corral scrape; plus

(4) 13 pounds of biomass per milking cow per day pumped from the agricultural biomass production facility as greenwater for each day of the time period. In the event that less than 100 percent of the biomass produced at the agricultural biomass production facility is transported to a qualified facility, the amount of calculated transported biomass qualifying for a certificate of transportation will be proportionally reduced by the percentage of each of the three catagories (apron scrape, corral scrape and greenwater) of the biomass not transported to a qualifying facility during the time period.

[3.4.20.7 NMAC - N, 02/29/2012]

3.4.20.8 GENERAL PROVISIONS:

A. The agricultural biomass corporate income tax credit is available to taxpayers filing a corporate income tax return for taxable years beginning on or after January 1, 2011 and ending prior to January 1, 2030. Certificates of transportation pursuant to 3.4.20 NMAC may be issued by the department for agricultural biomass transported during taxable years beginning on or after January 1, 2011 and ending prior to January 1, 2030.

B. The amount of the agricultural biomass income tax credit is calculated at $5.00 per wet ton. The maximum amount of the annual combined total of all agricultural biomass personal income tax credits and all agricultural biomass corporate income tax credits allowed is $5,000,000.

[3.4.20.8 NMAC - N, 02/29/2012; A, 09/29/2020]

3.4.20.9 APPLICATION FOR CERTIFICATE OF TRANSPORTATION:

A. To apply for the certificate of transportation, an applicant shall submit a complete application package to the energy conservation and management division of the department within 30 days of the end of the taxable year for which certification is sought. An applicant may obtain the application form from the energy conservation and management division of the department.

B. A complete application package shall include a certificate of transportation application form and all required attachments. An applicant shall submit one application package for each dairy or feedlot operation. All material submitted in the application package shall be provided on 8½-inch x 11-inch paper.

C. The completed application form shall include the following information and documents:

(1) the applicant's name, mailing address, telephone number, taxpayer identification number and the dates of the taxable year for which application is being made;

(2) the address or public land survey system description of the location of the dairy or feedlot operation, including the county;

(3) a description of the dairy or feedlot operation, descriptions and photographs of equipment used to collect and to transport agricultural biomass;

(4) daily data showing the number of milking cows, dry cows and heifers present at the dairy or feedlot during the specified time period;

(5) a description of the qualified facility to which the biomass was transported, including the name and address of the operator;

(6) dated weigh or volume tickets for each truckload of waste leaving the agricultural biomass production facility, the classification of each truckload as either apron scrape, corral scrape or greenwater, and the destination of each load beginning on the first day of the specified period and no later than the last day of the specified time period for which certification is sought;

(7) totalizing flow meter readings showing the amount of pumped waste or greenwater leaving the agricultural biomass production facility and the amount and destination of any waste diverted from delivery to the qualified facility beginning on the first day of the specified time period and no later than the last day of the specified time period for which certification is sought;

(8) a statement, signed and dated by the applicant, which signature may be electronic if approved by the department, stipulating that:

(a) all information provided in the application package is true and correct;

(b) applicant has read the certification requirements contained in 3.4.20 NMAC;

(c) applicant understands that there are annual aggregate limits to the amount of biomass that will qualify for the agricultural biomass income tax credit;

(d) applicant understands that the department must certify the transportation of the biomass before the applicant is eligible for a tax credit; and

(e) to ensure compliance with 3.4.20 NMAC, applicant agrees that the division or its authorized representative may inspect the dairy or feedlot operation that is described in the application package at any time after the submission of the application package with not less than five business days notice to the applicant; and

(9) a signed statement from the operator of the qualified facility specifying the amount of the biomass received and identifying the dairy or feedlot from which it was received.

D. The application package shall meet 3.4.20 NMAC's requirements and be materially complete.

[3.4.20.9 NMAC - N, 02/29/2012]

3.4.20.10 APPLICATION REVIEW PROCESS AND CERTIFICATION:

A. The department shall review the application within 30 days of receipt. If the application package complies with 3.4.20 NMAC, the department will determine the number of wet tons of biomass transported, check accuracy of the applicant's documentation and determine whether the department is able to certify that the biomass was transported to a qualified facility.

B. If an application package fails to meet a requirement or is not materially complete, the department shall deny the application. The department shall also deny an application from which it is unable to determine from the materials presented in the application package the tonnage transported to or accepted at a qualified facility. The

department's disapproval letter shall be issued within 30 days of the receipt of the application and shall state the reasons why the department denied the application.

C. If the department finds that the application package meets 3.4.20 NMAC's requirements, the department shall certify that the transportation of the biomass to a qualified facility did occur and so notify the taxpayer and the taxation and revenue department. The certificate shall include the taxpayer's contact information, taxpayer identification number, system certification number and the net amount of biomass eligible for the tax credit.

D. If the department denies the application, the applicant shall have 15 days from the date of denial to petition the department secretary for reconsideration. If no petition is received, the denial shall be considered final on the 15th day. If a petition for reconsideration is received, it shall contain a statement of reasons the secretary should reconsider the application and any additional or updated material necessary to support that petition. The secretary shall have 15 days to reconsider and approve the amended application, set the matter for an examiner hearing or deny the application. If the secretary has not acted within 15 days of receipt of the petition for reconsideration, the denial of the original application shall be considered final.

[3.4.20.10 NMAC - N, 02/29/2012]

PART 21: 2015 SUSTAINABLE BUILDING TAX CREDIT

3.4.21.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[3.4.21.1 NMAC - Rp, 3.4.21.1 NMAC, 02/08/2022]

3.4.21.2 SCOPE:

3.4.21 NMAC applies to the application and certification procedures for administration of the 2015 sustainable building tax credit for sustainable residential buildings, sustainable commercial buildings and manufactured housing. 3.4.21 NMAC only applies to the 2015 sustainable building tax credit.

[3.4.21.2 NMAC - Rp, 3.4.21.2 NMAC, 02/08/2022]

3.4.21.3 STATUTORY AUTHORITY:

3.4.21 NMAC is established under the authority of Sections 7-2A-28 and Subsection E of Section 9-1-5 NMSA 1978.

[3.4.21.3 NMAC - Rp, 3.4.21.3 NMAC, 02/08/2022]

3.4.21.4 DURATION:

Permanent unless an earlier date is specified in a section.

[3.4.21.4 NMAC - Rp, 3.4.21.4 NMAC, 02/08/2022]

3.4.21.5 EFFECTIVE DATE:

February 8, 2022, unless a later date is cited at the end of a section.

[3.4.21.5 NMAC - Rp, 3.4.21.5 NMAC, 02/08/2022]

3.4.21.6 OBJECTIVE:

3.4.21 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the 2015 sustainable building tax credit for sustainable residential buildings, sustainable commercial buildings and manufactured homes.

[3.4.21.6 NMAC - Rp, 3.4.21.6 NMAC, 02/08/2022]

3.4.21.7 DEFINITIONS:

"2015 sustainable building tax credit" means the amendments passed by the legislature in 2021 to the new sustainable building tax credit in the Income Tax Act and the Corporate and Franchise Tax Act. The name of the new sustainable building tax credit was changed to the 2015 sustainable building tax credit.

A. "Annual cap" means the annual total amount of the 2015 sustainable building tax credit available to taxpayers owning sustainable buildings.

B. "Applicant" means a taxpayer who owns a sustainable residential or commercial building or manufactured home in New Mexico and who desires to have the department issue a certificate of eligibility for a 2015 sustainable building tax credit.

C. "Application package" means the documents an applicant submits to the department to apply for a certificate of eligibility for a 2015 sustainable building tax credit.

D. "Build green New Mexico certification" means the verification by a department-approved verifier that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

E. "Building type" means the primary use of a building or section of a building as defined in target finder.

F. "Certification" means build green New Mexico certification or LEED certification or energy star qualified for manufactured housing.

G. "Certificate of eligibility" means the document with a unique identifying number that specifies the amount and taxable year and specific physical address for the approved 2015 sustainable building tax credit, the system certification level awarded to the building, the amount of qualified occupied square footage, a calculation of the maximum amount of the 2015 sustainable building tax credit for which the owner would be eligible and the date of issuance.

H. "Certification level" means one of the following:

(1) LEED-H silver or build green New Mexico silver;

(2) LEED-H gold or build green New Mexico gold;

(3) LEED-H platinum or build green New Mexico emerald;

(4) LEED-NC silver or LEED-NC gold or LEED-NC platinum;

(5) LEED-EB (O&M) or LEED-CS silver;

(6) LEED-EB (O&M) or LEED-CS gold;

(7) LEED-EB (O&M) or LEED-CS platinum; or

(8) LEED-CI silver or LEED-CI gold or LEED-CI platinum.

I. "Code official" means the officer or other designated authority charged with the administration and enforcement of the building code.

J. "Department" means the energy, minerals and natural resources department.

K. "Division director" means the director of the department's energy conservation and management division.

L. "Energy reduction requirements means" means has achieved a HERS of 60 or lower for a sustainable residential building; or has reduced energy consumption beginning January 1, 2012, by sixty percent based on the national average for that building type as published by the United States department of energy as substantiated by the United States environmental protection agency target finder energy performance results form dated no sooner than the schematic design phase of development for a sustainable commercial building.

M. "Energy star" means a joint program of the United States environmental protection agency and the United States department of energy that qualifies homes based on a predetermined threshold of energy efficiency and other requirements.

N. "Energy star qualified manufactured home" means a home that an in state or out of state energy star certified plant has certified as being designed, produced and installed in accordance with energy star's guidelines.

O. "HERS" means home energy rating system as developed by RESNET.

P. "HERS index" means a relative energy use index, where 100 represents the energy use of a home built to a HERS reference house and zero indicates that the proposed home uses no net purchased energy.

Q. "LEED certification" means the verification by the United States green building council, or a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits.

R. "Multifamily" means more than one family dwelling such as two-family dwellings, multiple single-family dwellings such as townhouses and buildings three stories or less in height above grade plane.

S. "Not a multifamily dwelling unit that is commercial" mean a single-family unit occupied by a renter or leasee or a work-live unit.

T. "Notice of approval" means that the work complies in all respects with the latest building code and has been approved by the code official.

U. "O&M" means operation and maintenance.

V. "Project completion" means notice of approval of installation of project prior to April 1, 2023. New buildings and renovations of existing buildings and installations shall be completed before April 1, 2023.

W. "Rating system" means the LEED rating system, the build green New Mexico rating system or the energy star program for manufactured housing.

X. "RESNET" means the residential energy services network, an industry not-for-profit membership corporation and national standards making body for building energy efficiency rating systems.

Y. "Solar market development tax credit" means the personal income tax credit the state of New Mexico issued to a taxpayer between January 1, 2006, and December 31, 2016, for a solar energy system the department has certified.

Z. "Target finder" means the web-based program developed by the United States environmental protection agency to establish an energy goal in kilo british thermal units per square foot per year for predetermined building types.

AA. "Taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act, 7-2A-1 *et seq*. NMSA 1978.

BB. "Taxpayer" means any corporation subject to the tax imposed by the Corporate Income and Franchise Tax Act, 7-2A-1 et seq. NMSA 1978.

CC. "Taxpayer identification number" means the taxpayer's nine-digit social security number or employer identification number provided by a business enterprise.

DD. "Verifier" means an entity the department approves to provide certifications under the build green New Mexico or LEED rating systems.

[3.4.21.7 NMAC - Rp, 3.4.21.7 NMAC, 02/08/2022]

3.4.21.8 GENERAL PROVISIONS:

A. A person who is the owner of a building in New Mexico that has been constructed, renovated or manufactured or is a sustainable residential or sustainable commercial building and that receives certification on or after January 1, 2017, and prior to April 1, 2023, may receive a certificate of eligibility for a 2015 sustainable building tax credit. A subsequent purchaser of a sustainable residential building may receive a certificate if no tax credit has previously been claimed for the building.

B. The annual total amount in a calendar year of the 2015 sustainable building tax credit pursuant to the Income Tax Act and the Corporate Income and Franchise Tax Act available to taxpayers owning sustainable residential buildings is limited to $3,375,000 for sustainable residential buildings that are not manufactured housing. When the $3,375,000 cap for sustainable residential buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of an eligible 2015 sustainable residential building tax funds are within the annual residential cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year, except for the last taxable year when the 2015 sustainable building tax credit is in effect;

(2) if no 2015 sustainable residential building tax credit funds are available in a given taxable year, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the 2015 sustainable building tax credit is in effect; or

(3) the department may issue certificates of eligibility to applicants who meet the requirements for the 2015 sustainable residential buildings tax credit in a taxable year when applications for the 2015 sustainable residential buildings tax credit exceed the annual cap, but applications for the 2015 sustainable commercial buildings or manufactured housing tax credits are under the annual cap for that type of sustainable building by February 1 of any year in which the tax credit is in effect.

C. The total amount in a calendar year of the 2015 sustainable building tax credit available pursuant to the Income Tax Act and the Corporate Income and Franchise Tax Act to taxpayers owning sustainable commercial buildings is limited to $1,250,000. When the $1,250,000 limit for sustainable commercial buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible 2015 sustainable building tax credit is within the annual commercial buildings cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

(2) if no 2015 sustainable commercial building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the 2015 sustainable building tax credit is in effect; or

(3) the department may issue certificates of eligibility to applicants who meet the requirements for the 2015 sustainable building tax credit in a taxable year when applications for the 2015 sustainable commercial buildings tax credits exceed the annual cap and applications for the 2015 sustainable residential buildings or manufactured housing tax credits are under the annual cap for that type of sustainable building by February 1 of any year in which the tax credit is in effect.

D. In the event of a discrepancy between a requirement of 3.4.21 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.4.21 NMAC's adoption, the existing rule governs.

E. All notices and applications required to be submitted to the department under 3.4.21 NMAC shall be submitted to the energy conservation and management division of the department.

F. There is a $375,000 annual cap for sustainable residential buildings that are manufactured housing.

[3.4.21.8 NMAC - Rp, 3.4.21.8 NMAC, 02/08/2022]

3.4.21.9 VERIFIER ELIGIBILITY FOR ALL BUILDINGS:

A. The department reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications or LEED commercial buildings, which shall be provided annually to the department, based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners or commercial building owner that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including:

(a) experience in green building services;

(b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;

(c) a method of auditing the certification process to maintain adequate stringency; and

(d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;

(3) the verifier can identify the geographic area being served; and

(4) the verifier provides a statement that expresses a commitment to promoting energy-efficient green building with the highest standard of excellence.

B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

C. The verifier shall notify the department 30 calendar days prior to making changes to its certification process or rating systems.

D. The department may rescind an existing verifier's approval if it determines that the above criteria are not being met.

E. The department notifies the verifier of the reasons for disapproving or rescinding eligibility as follows.

(1) The department shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the department's notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division

director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing concludes.

[3.4.21.9 NMAC - Rp, 3.4.21.9 NMAC, 02/08/2022]

3.4.21.10 APPLICATION FOR THE 2015 SUSTAINABLE BUILDING TAX CREDIT:

A. To obtain the 2015 sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the department using either a department-developed application form or approved electronic application system as directed by the division director. An applicant may obtain the department-developed application form or access to the electronic application system from the department.

B. An application package shall include a completed application form and attachments as specified on the application form or by the electronic application system. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application package for each sustainable building. The applicant shall submit all material in the application package on 8½ inch by 11-inch paper or using any approved electronic application system provided by the department as directed by the division director. If the applicant fails to submit the application form and required attachments at the same time as directed by the division director, the department may consider the application incomplete.

C. An applicant shall submit a complete application package to the department no later than February 1 of the taxable year for which the applicant seeks the 2015 sustainable building tax credit. If an applicant does not submit a complete application package by February 1, any remaining 2015 sustainable building tax credit funds under the cap may be used in that taxable year for completed 2015 sustainable building applications in another category. The department may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

D. The completed application form shall consist of the following information:

(1) the applicant's name, mailing address, telephone number and taxpayer identification number;

(2) the name of the applicant's authorized representative;

(3) the ending date of the applicant's taxable year;

(4) the address of the sustainable building, including the property's legal description;

(5) whether the applicant was the building owner at time of certification or a subsequent purchaser;

(6) the qualified occupied square footage of the sustainable residential or commercial buildings for projects eligible under LEED or build green New Mexico;

(7) the rating system under which the sustainable residential or commercial building was certified for projects eligible under LEED or build green New Mexico;

(8) the certification level achieved, if applicable;

(9) the HERS index; if applicable;

(10) documentation that applicant meets water efficiency standards to comply with water efficiency requirements of LEED and build green New Mexico programs;

(11) the date of rating system certification;

(12) project completion date;

(13) notice of approval from a code official shall be provided to document that construction, renovation, or installation of project was completed before April 1, 2023; and

(14) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, agreeing that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) applicant has read the requirements contained in 3.4.21 NMAC;

(c) if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the 2015 sustainable building tax credit or the energy reduction requirement achieved, the applicant did not claim a solar market development tax credit;

(d) applicant understands that there are annual caps for the 2015 sustainable building tax credit;

(e) applicant understands that the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a 2015 sustainable building tax credit; and

(f) applicant understands that the department issues a certificate of eligibility for the taxable year in which the sustainable building was certified or, if the 2015 sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available.

E. In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable building;

(2) a copy of the rating system certification form;

(3) a copy of the final certification review checklist that shows the points achieved, if applicable;

(4) a copy of a HERS certificate, from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software RESNET lists as eligible for certification of the federal tax credit, showing the building has achieved a HERS index of 60 or lower;

(5) for sustainable commercial buildings that are not multifamily dwelling units, a copy of the final LEED optimized energy performance template or templates, signed by a New Mexico licensed design professional, that the applicant submitted for LEED certification including the results of the energy model that shows the kilo british thermal units per square foot per year for the sustainable commercial building;

(6) for sustainable commercial buildings that are not multifamily dwelling units, revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than ten percent;

(7) a copy of the final LEED enhanced commissioning template, if available under the applicable LEED rating system;

(8) for multifamily dwelling units, a copy of a HERS certificate from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software the internal revenue service lists as eligible for certification of the federal tax credit, showing the building has achieved a HERS index of 60 or lower;

(9) documentation to show project completion date such as a copy of a notice of approval from a building official; and

(10) other information the department needs to review the building project for the 2015 sustainable building tax credit.

F. If the requirements established by the department have been complied with, the department shall issue to the building owner a document granting a 2015 sustainable building tax credit with an identification number, date of issuance, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and a calculation of the maximum amount of the 2015 sustainable building tax credit for which the building owner would be eligible.

[3.4.21.10 NMAC - Rp, 3.4.21.10 NMAC, 02/08/2022]

3.4.21.11 VERIFICATION OF THE ALTERNATIVE METHOD USED FOR THE ENERGY REDUCTION REQUIREMENT:

A. In the event the sustainable commercial building is a building type that is not available in target finder and the applicant uses an alternative method to establish the energy reduction requirement, the applicant shall include the following information in addition to the other application requirements:

(1) a narrative describing the methodology used;

(2) the kilo british thermal units per square foot per year for all buildings, real or modeled, used as a basis of comparison, broken out by all energy sources, and including the percent of use for each energy source; and

(3) all formulas, assumptions and other explanation necessary to clarify how the kilo british thermal units per square foot per year for this project was derived.

B. The department will use the following criteria to evaluate the alternative method:

(1) clarity and completeness of the description of the alternative method;

(2) reasonableness of assumptions and comparisons; and

(3) thoroughness of justification of the method.

C. If the department rejects an alternative method, it notifies the applicant of the reasons for the rejection.

D. The applicant may request that the department obtain the advice of a volunteer review committee of three or more New Mexico registered architects or New Mexico

licensed professional mechanical or electrical engineers, chosen by the division, on their assessment of the alternative method, at which time the department may:

(1) reconsider the decision and accept the alternative method;

(2) recommend a revised alternative method; or

(3) reaffirm the rejection of the alternative method.

[3.4.21.11 NMAC - N, 02/08/2022]

3.4.21.12 APPLICATION REVIEW PROCESS:

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package. The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The department places the resubmitted application in the review schedule as if it were a new application.

C. The department reviews the application package to calculate the maximum 2015 sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the 2015 sustainable building tax credit.

D. If an applicant has claimed a solar market development tax credit (in effect January 1, 2006, through December 31, 2016) that solar system cannot be used to meet the requirements of either the certification level applied for, or the energy reduction achieved. If an applicant has received a solar market development tax credit for a system that is used to meet the requirements of the certification level applied for or the energy reduction achieved, the department shall disapprove the application for the 2015 sustainable building tax credit. The applicant may submit a revised application package to the department that does not include the electricity projected to be generated by the solar system. The department places the resubmitted application in the review schedule as if it were a new application.

E. If the department finds that the application package meets the requirements and a 2015 sustainable building tax credit is available, the department issues the certificate of eligibility for a 2015 sustainable building tax credit. If a 2015 sustainable building tax credit is partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year except in the last year that the tax credit is in effect. The notification shall include the taxpayer's contact information, taxpayer identification

number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and calculation of the maximum amount of the 2015 sustainable building tax credit for which the owner would be eligible.

[3.4.21.12 NMAC - Rp, 3.4.21.11 NMAC, 02/08/2022]

3.4.21.13 CALCULATING THE TAX CREDIT:

A. The department calculates the maximum 2015 sustainable building tax credit for sustainable residential and sustainable commercial buildings that are not multifamily dwelling units based on the qualified occupied square footage of the sustainable commercial building, the LEED rating system under which the applicant achieved LEED certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below.

LEED-NC silver:	
first 10,000 square feet	equals the qualified occupied square footage less than or equal to 10,000 multiplied by $3.50; plus
next 40,000 square feet	the qualified occupied square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.75; plus
next 450,000 square feet	the qualified occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.70
LEED-NC gold:	
first 10,000 square feet	equals the qualified occupied square footage less than or equal to 10,000 multiplied by $4.75; plus
next 40,000 square feet	the qualified occupied square footage greater than 10,000 and less than or equal to 50,000 multiplied by $2.00; plus
next 450,000 square feet	the qualified occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $1.00
LEED-NC platinum:	
first 10,000 square feet	equals the qualified occupied square footage less than or equal to 10,000 multiplied by $6.25; plus
next 40,000 square feet	the qualified occupied square footage greater than 10,000 and less than or equal to 50,000 multiplied by $3.25; plus
next 450,000 square feet	the qualified occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $2.00
LEED-EB OR LEED-CS silver:	
first 10,000 square feet	equals the qualified occupied square footage less than or equal to 10,000 multiplied by $2.50; plus
next 40,000 square feet	the qualified occupied square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.25; plus
next 450,000 square feet	the qualified occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.50
LEED-EB OR LEED-CS gold:	

first 10,000 square feet	equals the qualified occupied square footage less than or equal to 10,000 multiplied by $3.35; plus
next 40,000 square feet	the qualified occupied square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.40; plus
next 450,000 square feet	the qualified occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.70
LEED-EB OR LEED-CS platinum:	
first 10,000 square feet	equals the qualified occupied square footage less than or equal to 10,000 multiplied by $4.40; plus
next 40,000 square feet	the qualified occupied square footage greater than 10,000 and less than or equal to 50,000 multiplied by $2.30; plus
next 450,000 square feet	the qualified occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $1.40
LEED-CI silver:	
first 10,000 square feet	equals the qualified occupied square footage less than or equal to 10,000 multiplied by $1.40; plus
next 40,000 square feet	the qualified occupied square footage greater than 10,000 and less than or equal to 50,000 multiplied by $.70; plus
next 450,000 square feet	the qualified occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.30
LEED-CI gold:	
first 10,000 square feet	equals the qualified occupied square footage less than or equal to 10,000 multiplied by $1.90; plus
next 40,000 square feet	the qualified occupied square footage greater than 10,000 and less than or equal to 50,000 multiplied by $.80; plus
next 450,000 square feet	the qualified occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.40
LEED-CI platinum:	
first 10,000 square feet	equals the qualified occupied square footage less than or equal to 10,000 multiplied by $2.50; plus
next 40,000 square feet	the qualified occupied square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.30; plus
next 450,000 square feet	the qualified occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.80

B. The department calculates the maximum 2015 sustainable building tax credit for residential (single family or multifamily) dwelling units based on the qualified occupied square footage of the sustainable building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below.

LEED-H silver or build green New Mexico silver:	
up to 2,000 square feet	equals the qualified occupied square footage less than or equal to 2,000 multiplied by $3.00
LEED-H gold or build green New Mexico gold:	

up to 2,000 square feet	equals the qualified occupied square footage less than or equal to 2,000 multiplied by $4.50
LEED-H platinum or build green New Mexico emerald:	
up to 2,000 square feet	equals the qualified occupied square footage less than or equal to 2,000 multiplied by $6.50
energy star manufactured housing:	
up to 2,000 square feet	equals the qualified occupied square footage less than or equal to 2,000 multiplied by $3.00

C. The taxation and revenue department makes the final determination of the amount of the 2015 sustainable building tax credit.

[3.4.21.13 NMAC - Rp, 3.4.21.12 NMAC, 02/08/2022]

3.4.21.14 CLAIMING THE STATE TAX CREDIT:

To claim the 2015 sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department's issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires. The applicant shall submit the certificate to the taxation and revenue department no later than December 31, 2024.

[3.4.21.14 NMAC - Rp, 3.4.21.13 NMAC, 02/08/2022]

PART 22: 2021 SUSTAINABLE BUILDING TAX CREDIT

3.4.22.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[3.4.22.1 NMAC - Rp, 3.4.22.1 NMAC, 07/12/2022]

3.4.22.2 SCOPE:

3.4.22 NMAC applies to the application and certification procedures for administration of the 2021 sustainable building tax credit for sustainable residential buildings, sustainable commercial buildings, the permanent installation of manufactured housing or the installation of energy-conserving products to existing buildings.

[3.4.22.2 NMAC - Rp, 3.4.22.2 NMAC, 07/12/2022]

3.4.22.3 STATUTORY AUTHORITY:

3.4.22 NMAC is established under the authority of Section 7-2A-28.1 and Subsection E of 9-1-5 NMSA 1978.

[3.4.22.3 NMAC - Rp, 3.4.22.3 NMAC, 07/12/2022]

3.4.22.4 DURATION:

Permanent unless an earlier date is specified in a section.

[3.4.22.4 NMAC - Rp, 3.4.22.4 NMAC, 07/12/2022]

3.4.22.5 EFFECTIVE DATE:

July 12, 2022, unless a later date is cited at the end of a section.

[3.4.22.5 NMAC - Rp, 3.4.22.5 NMAC, 07/12/2022]

3.4.22.6 OBJECTIVE:

3.4.22 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the 2021 sustainable building tax credit for sustainable residential and commercial buildings, permanent installation of manufactured housing, renovation of existing buildings or the installation of energy-conserving products to existing buildings.

[3.4.22.6 NMAC - Rp, 3.4.22.6 NMAC, 07/12/2022]

3.4.22.7 DEFINITIONS:

For additional definitions refer to Section 7-2A-28.1, NMSA 1978.

A. "Annual cap" means the annual total amount of the 2021 sustainable building tax credit available to taxpayers owning sustainable buildings.

B. "Applicant" means a taxpayer who owns a sustainable residential or commercial building or manufactured housing or who has renovated an existing building or installed energy-conserving products in New Mexico and who desires to have the department issue a certificate of eligibility for a 2021 sustainable building tax credit.

C. "Application package" means the documents an applicant submits to the department to apply for a certificate of eligibility for a 2021 sustainable building tax credit.

D. "Build green New Mexico certification" means the verification by a department-approved verifier that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

E. "Build green New Mexico rating system" means the certification standards adopted by build green New Mexico in November 2014, which includes water conservation standards.

F. "Building project" means a new construction of a sustainable commercial or residential building, installation of manufactured housing, renovation of an existing building or installation of energy-conserving products to existing buildings.

G. "Building type" means the primary use of a building or section of a building as defined in target finder.

H. "Certificate of eligibility" means the document with a unique identifying number that specifies the specific physical address for the approved 2021 sustainable building tax credit, the rating system certification level awarded to the building, the amount of qualified occupied square footage, a calculation of the maximum amount of the 2021 sustainable building tax credit for which the owner would be eligible, the date of issuance and the first taxable year the credit shall be claimed.

I. "Certification level" means one of the following:

(1) LEED-H gold or build green New Mexico gold;

(2) LEED-H platinum or build green New Mexico emerald;

(3) LEED-NC gold;

(4) LEED-NC platinum;

(5) LEED-EB (O&M) or LEED-CS gold;

(6) LEED-EB (O&M) or LEED-CS platinum;

(7) LEED-CI gold or LEED-CI platinum; and

(8) manufactured housing.

J. "Code official" means the officer or other designated authority charged with the administration and enforcement of the building codes.

K. "Department" means the energy, minerals and natural resources department.

L. "Division director" means the director of the department's energy conservation and management division.

M. "Insulation" is a material that contains properties to significantly control heat flow caused by radiation, convection and conduction. It is essential for controlling heat

gain and loss through the building enclosure. Insulation is rated by R-value, the material's resistance to heat flow.

N. "Install" or **"installation"** means the direct work of placing an energy conservation product into service to operate and reduce energy at the expected level for window, doors and insulation and contribute to electrification of commercial and residential buildings with energy star rated equipment.

O. "LEED certification" means the verification by the United States green building council, or a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within the applicable LEED rating system resulting in the issuance of a certification document.

P. "LEED registration" means the notification to the United States green building council that a project is pursuing LEED certification.

Q. "Most current" means the most recent date of the latest approved edition of a standard LEED rating system or the most recent date of an approved energy code adopted by the construction industries division of the regulation and licensing department.

R. "O&M" means operation and maintenance.

S. "2021 sustainable building tax credit" for the purposes of 3.4.22 NMAC means the corporate income tax credit the state of New Mexico issues to an applicant for a sustainable residential or commercial building, manufactured home, renovation of an existing building or installation of energy-conserving products.

T. "New solar market development income tax credit" means the tax credit enacted in 2020 issued to a taxpayer for a solar energy system the department has certified.

U. "Notice of approval" means the work complies in all respects with the latest building codes and has been approved by the code official.

V. "Project completion" means notice of approval by code officials for construction or renovation projects. New buildings must be completed after January 1, 2022. Renovation of existing buildings or installation of energy conserving products must be completed after January 1, 2021.

W. "Rating system" means the LEED rating systems previously defined, the build green New Mexico rating system or the energy star program for manufactured housing.

X. "RESNET" means the residential energy services network, an industry not-for-profit membership corporation and national standards-making body for building energy efficiency rating systems.

Y. "Sustainable affordable buildings" means housing that serves the needs of low-income persons with an annual household adjusted gross income equal to or less than two hundred percent of the federal poverty level guidelines published by the United States department of health and human services.

Z. "Target finder" means the web-based program developed by the United States environmental protection agency to establish an energy goal in kilo british thermal units per square foot per year for predetermined building types.

AA. "Taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act, 7-2A-1 et seq. NMSA 1978.

BB. "Taxpayer" means any individual subject to the tax imposed by the Corporate Income and Franchise Tax Act, 7-2A-1 et seq. NMSA 1978.

CC. "Taxpayer identification number" means the taxpayer's nine-digit social security number or employer identification number provided by a business enterprise.

DD. "Verifier" means an entity the department approves to provide certifications under the build green New Mexico or LEED rating systems.

[3.4.22.7 NMAC - Rp, 3.4.22.7 NMAC, 07/12/2022]

3.4.22.8 GENERAL PROVISIONS:

A. The 2021 sustainable building tax credit may be claimed for taxable years prior to January 1, 2028.

B. A tax credit provided in 3.4.22.8 NMAC may not be claimed with respect to the same sustainable building under the 2021 sustainable building tax credit provided in the Income Tax Act, for which a credit under the 2015 sustainable building tax credit pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act has already been claimed.

C. A person who is the owner of a building in New Mexico constructed to be a sustainable building or permanently installed manufactured housing and receives certification on or after January 1, 2022, may receive a certificate of eligibility for a sustainable building tax credit. A subsequent purchaser of a sustainable residential building may receive a certificate if no tax credit has previously been claimed for the building.

D. A person who is the owner of a commercial building having more than 20,000 square feet of temperature-controlled space and was built at least 10 years prior to the renovation or a building owner who has installed energy conservation products in an existing commercial or residential building having less than 20,000 square feet of

temperature-controlled space on or after January 1, 2021, may receive a certificate of eligibility for a 2021 sustainable building tax credit.

E. The annual total amounts in a calendar year of the 2021 sustainable building tax credit pursuant to the Income Tax Act and Corporate Income and Franchise Tax Act available to taxpayers owning sustainable residential buildings is $2,000,000, for sustainable commercial buildings is $1,000,000 and for sustainable manufactured housing is $250,000. Any excess funds not used in a taxable year shall not be carried forward to subsequent years. When the cap is reached in any category in a given year based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible 2021 sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance in a subsequent tax year, except for the last taxable year when the 2021 sustainable building tax credit is in effect;

(2) issue certificates of eligibility to applicants who meet the requirements for the 2021 sustainable building tax credit in a taxable year when applications in one sustainable building category exceed the annual cap in another sustainable building category and other categories are under the annual cap as determined by February 1 of any year in which the tax credit is in effect; or

(3) if no 2021 sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the 2021 sustainable building tax credit is in effect.

F. Funding for renovation of commercial buildings is $1,000,000 and for energy conservation products $2,900,000.

G. In the event of a discrepancy between a requirement of 3.4.22 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.4.22 NMAC's adoption, the existing rule governs.

H. All notices and applications required to be submitted to the department under 3.4.22 NMAC shall be submitted to the energy conservation and management division of the department.

I. New Mexico general requirements.

(1) Sustainable buildings shall have the internet connections capable of connecting to a broadband provider.

(2) New sustainable residential buildings shall be electric vehicle ready. The parking space shall be equipped with one 40 ampere, 208 volt or 240 volt dedicated branch circuit for charging electric vehicles. The termination point can be a receptacle

or junction box and shall be near where electric vehicles can easily be charged. The extension cord shall be long enough to reach to a vehicle and meet electric code and electric vehicle manufacturing requirements.

(3) New sustainable commercial buildings shall be electric vehicle ready with at least ten percent of the parking spaces capable of charging electric vehicles and for residential buildings at least one parking space. All parking spaces required to be capable of charging electric vehicles shall be equipped with one 40 ampere, 208 volt or 240 dedicated branch circuit for charging electric vehicles. The termination point can be a receptacle or junction box and shall be near where electric vehicles can easily be charged. The extension cord shall be long enough to reach to a vehicle and meet electric code and electric vehicle manufacturing requirements.

(4) A fully electric new building shall have a permanent supply of only electricity for space heating, water heating, cooking appliances, clothes washing, clothes drying, dish washing, pools and spas. No natural gas or propane plumbing shall be installed. This is only required to obtain the 2021 sustainable building tax credit for fully electric new buildings.

(5) A fully electric existing building shall have a permanent supply of only electricity for space heating, water heating, cooking appliances, clothes washing, clothes drying, pools and spas. The existing building shall not be connected to natural gas or propane energy supplies. Existing natural gas or propane plumbing does not need to be removed for purpose of this provision, so long as it is disconnected. This is only required to obtain the 2021 sustainable building tax credit for fully electric new buildings.

(6) Sustainable building projects shall follow the latest LEED rating system requirements as established by the United States green building council or the latest build green New Mexico requirements.

J. Build green New Mexico sustainable single-family residential requirements.

(1) Build green emerald shall:

(a) comply with watersense standards for indoor plumbing fixtures and water using appliances that, on average, have flow rates equal to or lower than the flow rates required for certification;

(b) include one waterline in the front and one waterline in the back, below the frost line, that can be connected to a drip irrigation system if landscaping area is available; and

(c) use forty percent less energy than is required by following the prescriptive path of the most current residential energy conservation code adopted by the construction industries division of the regulation and licensing department.

(2) Build green gold shall:

(a) comply with watersense standards for indoor plumbing fixtures and water using appliances that, on average, have flow rates equal to or lower than the flow rates required for certification;

(b) include one waterline in the front and one waterline in the back, below the frost line, that can be connected to a drip irrigation system if landscaping area is available; and

(c) use thirty percent less energy than is required by following the prescriptive path of the most current residential energy conservation code adopted by the construction industries division of the regulation and licensing department.

(3) Build green New Mexico shall use department approved verifiers to determine a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

K. Net zero homes shall be determined using an energy rating system index that gives a numerical score to a building where 100 represents the energy use of a home relative to the 2006 International Energy Conservation Code and 0 is equivalent to a net zero home.

[3.4.22.8 NMAC - Rp, 3.4.22.8 NMAC, 07/12/2022]

3.4.22.9 VERIFIER ELIGIBILITY FOR ALL BUILDINGS:

A. The department reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications or LEED commercial buildings, which shall be provided annually to the department, based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners or commercial building owners that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including:

(a) experience in green home building and commercial building services;

(b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;

(c) a method of auditing the certification process to maintain adequate stringency; and

(d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;

(3) the verifier can identify the geographic area being served; and

(4) the verifier provides a statement that expresses a commitment to promoting energy-efficient green building with the highest standard of excellence.

B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

C. The verifier shall notify the department 30 calendar days prior to making any changes to its certification process or rating systems on which its prior approval by the department was based.

D. The department may rescind an existing verifier's approval at any time if it determines the above criteria are not being met.

E. The department notifies the verifier of the reasons for disapproving or rescinding eligibility as follows.

(1) The department shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the department's notice is sent. The verifier shall address the request to the division director and include the reasons the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold, at his or her discretion, a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier on the latter of 20 calendar days after receiving the request or five calendar days after a hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing, at his or her sole discretion, and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within the latter of 20 calendar days after receiving the request or five calendar days after the date the hearing concludes.

[3.4.22.9 NMAC – Rp, 3.4.22.9 NMAC, 07/12/2022]

3.4.22.10 APPLICATION FOR THE 2021 SUSTAINABLE BUILDING TAX CREDIT:

A. To obtain the 2021 sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the department using either a department-developed application form or approved electronic application system as directed by the division director. An applicant may obtain the department-developed application form or access to the electronic application system from the department.

B. An application package shall include a completed application form and attachments as specified on the application form or by the electronic application system. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application package for each sustainable residential or commercial building or manufactured house. An applicant for a multiuse building shall submit one residential application and one commercial application. The applicant shall submit all material in the application package on 8½ inch by 11-inch paper or using any approved electronic application system provided by the department as directed by the division director. If the applicant fails to submit the application form and required attachments at the same time as directed by the division director, the department may consider the application incomplete.

C. An applicant shall submit a complete sustainable building application package to the department no later than February 1 of the taxable year for which the applicant seeks the 2021 sustainable building tax credit. If an applicant does not submit a complete application package by February 1, any remaining funds in any other sustainable building category in the 2021 sustainable building tax credit funds, under the cap, may be used in that taxable year for completed 2021 sustainable building or manufactured housing applications. The department may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

D. The completed application form shall consist of the following information:

(1) the applicant's name, mailing address, telephone number and taxpayer identification number;

(2) the name of the applicant's authorized representative;

(3) the ending date of the applicant's taxable year;

(4) the address of the sustainable commercial or residential building or manufactured housing, or the address where the renovations were done including the applicable property's legal description;

(5) whether the applicant was the building owner at time of certification or a subsequent purchaser;

(6) the qualified occupied square footage of the sustainable residential or commercial building for projects eligible under LEED or build green New Mexico and for

renovations of commercial buildings built at least ten years prior to the renovation and having at least 20,000 square feet;

(7) the rating system under which the sustainable residential or commercial building was certified for projects eligible under LEED or build green New Mexico;

(8) the certification level achieved, if applicable;

(9) the energy rating system index, if applicable;

(10) documentation applicant meets water efficiency standards to comply with water efficiency requirements of LEED and build green New Mexico programs;

(11) the date of rating system certification, if applicable;

(12) project completion date;

(13) if applicable, the low-income taxpayer declaration confirming an applicant's annual household adjusted gross income is equal to or less than two hundred percent of the federal poverty level guidelines published by the United States department of health and human services;

(a) the annual update of the poverty guideline of the United States department of health and human services as published in the federal register shall be the basis for determining eligibility;

(b) the taxable year prior to the calendar year in which the energy-conserving products were purchased and installed shall be used to determine eligibility of the low-income taxpayer;

(14) if applicable, a statement from the building owner that the occupants of the commercial or residential building are low-income persons as defined in Paragraph (13) of Subsection D of 3.4.22.10 NMAC;

(15) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, certifying:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) applicant has read the requirements contained in 3.4.22 NMAC;

(c) if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the 2021 sustainable building tax credit or the energy reduction requirement achieved, the applicant did not claim a new solar market development income tax credit and will not do so;

(d) applicant understands there are annual caps for the 2021 sustainable building tax credit;

(e) applicant understands the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a 2021 sustainable building tax credit; and

(f) energy conservation products installed on or after January 1, 2021, may be certified for the 2021 sustainable building tax credit.

E. In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable building;

(2) a copy of the rating system certification form;

(3) a copy of the final certification review checklist showing the points achieved, if applicable;

(4) a copy of the energy rating index system certificate from an approved rating network or an equivalent rating system to the home energy rating system developed by RESNET showing the building has achieved the energy reduction requirements for build green New Mexico gold and emerald energy reduction levels;

(5) documentation showing compliance with the thirty and forty percent reduction requirements including:

(a) an analysis establishing the energy per square foot per year level that complies with the prescriptive path of the latest adopted residential energy code; the energy level established by meeting the energy code shall be compared to the energy consumption level of the final sustainable residential constructed design to demonstrate that the building consumes forty percent less energy or thirty percent less energy depending on the certification requested; and

(b) renewables can be used to meet the forty or thirty percent energy requirements if calculation results show the annual energy contribution of renewables, in consistent units, of energy per square foot per year demonstrate the forty or thirty percent requirement is met; results from the national renewable energy laboratory PV calculator or equivalent evaluation systems shall be used to determine the annual energy output of photovoltaic systems;

(6) documentation showing a renovation of a commercial building having 20,000 square feet or more reduces total energy and power costs by fifty percent when

compared to the most current energy standard for buildings titled energy standard for buildings except low-rise residential buildings, as developed by the American society of heating, refrigerating and air-conditioning engineers;

(7) documentation showing project completion date; and

(8) a copy of a notice of approval such as a certificate of occupancy from the building official for the renovation of a commercial building showing it was built at least 10 years prior to the project completion date.

F. The applicant shall provide the following attachments, as applicable;

(1) fully electric building certification;

(2) electric vehicle ready certification;

(3) broadband ready certification; and

(4) any other information the department determines it needs to review the building project for the 2021 sustainable building tax credit.

[3.4.22.10 NMAC – Rp, 3.4.22.10 NMAC, 07/12/2022]

3.4.22.11 APPLICATIONS FOR ENERGY-CONSERVING PRODUCTS:

A. Energy-conserving products shall be energy star rated for the location installed and meet the insulation requirements in 3.4.22.14 NMAC to be eligible for the 2021 sustainable building tax credit.

B. Energy-conserving products installed under the 2021 sustainable building tax credit shall reduce the energy consumption of a residential or commercial building with energy star windows and doors and insulation or contribute towards electrification of sustainable buildings with energy star heat pump furnaces and water heaters.

C. To obtain the 2021 sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the department using either a department-developed application form or approved electronic application system as directed by the division director. An applicant may obtain the department-developed application form or access to the electronic application system from the department.

D. An application package shall include a completed application form and attachments as specified on the application form or by the electronic application system. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application package for each project. The applicant shall submit all material in the application package on 8½ inch by 11-inch paper or using any approved electronic application system provided by the department as directed by

the division director. If the applicant fails to submit the application form and required attachments as directed by the division director, the department may consider the application incomplete.

E. An applicant shall submit a complete application package to the department no later than February 1 of the year following the taxable year for which the applicant seeks the 2021 sustainable building tax credit. An applicant may submit an application for energy-conserving products installed in 2021 after February 1, 2022. The department may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

F. The completed application form shall consist of the following information:

(1) the applicant's name, mailing address, telephone number, email address and taxpayer identification number;

(2) the name of the applicant's authorized representative, if any;

(3) the ending date of the applicant's taxable year;

(4) the address of the building where the energy conserving products have been installed, including the property's legal description;

(5) if applicable, a low-income taxpayer declaration confirming annual household adjusted gross income equal to or less than two hundred percent of the federal poverty level guidelines published by the United States department of health and human services;

(a) the annual update of the poverty guideline of the United States department of health and human services as published in the federal register shall be the bases for determining eligibility;

(b) the taxable year prior to the calendar year in which the energy-conserving products were purchased and installed shall be used to determine eligibility of the low-income taxpayer;

(6) if applicable, a statement from the building owner certifying the occupants of the commercial or residential building are low-income persons and low-income persons, as defined in Paragraph (5) of Subsection F of 3.4.22.11 NMAC, continue to reside in the building;

(7) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, certifying:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) applicant has read the requirements contained in 3.4.22 NMAC;

(c) applicant understands there are annual caps for the 2021 sustainable building tax credit;

(d) applicant understands the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a 2021 sustainable building tax credit; and

(e) applicant understands the department issues a certificate of eligibility for the taxable year in which the energy-conserving products were installed; or if the 2021 sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available;

(8) a statement verifying when the installation was complete; and

(9) a statement verifying that the application is for an affordable or non-affordable commercial or residential sustainable building tax credit.

G. The following attachments are required for applications for installation of energy star equipment:

(1) equipment specification sheet showing complete model number and copy of energy star certification for specific model of installed items;

(2) documentation that energy star certification is for the climate zone where the unit is installed;

(3) itemized invoice showing the quantity of product, cost of the energy conserving product and cost for installation incurred within the tax year for which the application is submitted;

(4) proof of inspection and approval of installation; if applicable; and

(5) a copy of a deed, property tax bill or legal description of the building.

H. The following attachments are required for applications for installation of insulation:

(1) material specification sheet showing the R-value or U-value of insulation;

(2) material flame spread index and smoke development index specifications;

(3) a certification provided by the contractor showing the installed thickness of insulation following the manufacturer's installation instructions for blown-in or sprayed-on insulation;

(4) itemized invoice showing quantity, product and installation costs of the insulation project;

(5) proof of inspection and approval of installation; if applicable; and

(6) a copy of a deed, property tax bill or legal description of the building.

I. The following attachments are required for electric vehicle ready equipment:

(1) a specification sheet for the electric vehicle charging unit; and

(2) a one-line diagram showing the ampere and voltage rating of the dedicated branch circuit for each charging unit.

J. In addition to the foregoing, the applicant shall submit any other information the department determines it needs to review the building project for the 2021 sustainable building tax credit.

K. If the requirements established by the department have been complied with, the department shall issue to the building owner a document granting a 2021 sustainable building tax credit with an identification number, date of issuance, a calculation of the maximum amount of the 2021 sustainable building tax credit for which the building owner would be eligible and the first taxable year the credit shall be claimed.

L. To ensure compliance with 3.4.22 NMAC applicant agrees to allow the department or its authorized representative to inspect the energy conservation product installation described in the application package at any time after the date of submittal of the application package until three years after the department has certified the energy conservation product installation, upon the department providing a minimum of five days' notice to the applicant.

[3.4.22.11 NMAC - Rp, 3.4.22.11 NMAC, 07/12/2022]

3.4.22.12 APPLICATION REVIEW PROCESS:

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package. The department disapproves an incomplete or incorrect application. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The department places the resubmitted application in the review schedule as if it were a new application.

C. The department reviews the application package to calculate the maximum 2021 sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the 2021sustainable building tax credit.

D. If an applicant has claimed a new solar market development income tax credit that solar system cannot be used to meet the requirements of either the certification level applied for or the energy reduction achieved. If an applicant has received a new solar market development income tax credit for a system used to meet the requirements of the certification level applied for or the energy reduction achieved, the department shall disapprove the application for the 2021 sustainable building tax credit. The applicant may submit a revised application package to the department that does not include the electricity projected to be generated by the solar system. The department places the resubmitted application in the review schedule as if it were a new application.

E. If the department finds the application package meets the requirements and a 2021 sustainable building tax credit is available, the department issues the certificate of eligibility for a 2021 sustainable building tax credit as provided in 3.4.22.8 NMAC. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, a calculation of the maximum amount of 2021 sustainable building tax credit for which the owner would be eligible, date of issuance and the first and any subsequent taxable year(s) the credit shall be claimed.

F. If the department finds the application package for energy conservation products meets the requirements and a 2021 sustainable building tax credit is available, the department issues the certificate of eligibility for a 2021 sustainable building tax credit as provided in 3.4.22.8 NMAC. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, energy-conserving product certified, a calculation of the maximum amount of 2021 sustainable building tax credit for which the owner would be eligible, date of issuance and the first and any subsequent taxable year(s) the credit shall be claimed.

G. The certificate shall state the energy conservation product that is certified and that the certificate is for an affordable or non-affordable sustainable building project.

[3.4.22.12 NMAC - Rp, 3.4.22.12 NMAC, 07/12/2022]

3.4.22.13 CALCULATING THE TAX CREDIT FOR THE 2021 SUSTAINABLE BUILDING TAX CREDIT:

A. The department calculates the maximum 2021 sustainable building tax credit based on the qualified occupied square footage of the sustainable building, the rating system under which the applicant achieved certification and the certification level the

applicant achieved. The tax credit for various square footages is specified in the chart below.

Sustainable commercial building that is broadband ready and electric vehicle ready and is completed after January 1, 2022:	
LEED-NC platinum first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $5.25
LEED-NC platinum next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $2.25
LEED-NC platinum over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $1.00
LEED-EB (O&M) or CS platinum first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $3.40
LEED-EB (O&M) or CS platinum next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $1.30
LEED-EB (O&M) or CS platinum over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.35
LEED-CI platinum first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $1.50
LEED-CI platinum next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $0.40
LEED-CI platinum over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.30

LEED-NC gold first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $3.00
LEED-NC gold next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $1.00
LEED-NC gold over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.25
LEED-EB (O&M) or CS gold first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $2.00
LEED-EB (O&M) or CS gold next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $1.00
LEED-EB (O&M) or CS gold over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.25
LEED-CI gold first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $0.90
LEED-CI gold next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $0.40
LEED-CI gold over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.10
Additional criteria	
fully electric buildings first 50,000 square feet	equals the qualified square footage up to 50,000 multiplied by $1.00

fully electric buildings over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.50
zero carbon, energy, waste or water certified first 50,000 square feet	equals the qualified square footage up to 50,000 multiplied by $0.25
zero carbon, energy, waste or water certified over 50,000 square feet up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.10
Renovation of commercial building at least 10 years old with at least 20,000 square feet of qualified occupied square footage in which temperature is controlled and is broadband and electric vehicle ready effective January 1, 2021:	
renovation that reduces total energy consumption by 50% when compared to the most current energy standard for buildings except low-rise residential buildings as developed by American society of heating, refrigerating and air-conditioning engineers	equals qualified square footage multiplied by $2.25 up to a maximum of $150,000 per renovation

For the installation of these energy conserving products for renovation of sustainable affordable and non-affordable commercial buildings less than 20,000 square feet of space in which temperature is controlled and is broadband ready effective January 1, 2021:		
Product	affordable housing	non-affordable housing

energy star air source heat pump	$2,000 including product and installation costs and associated electrical connection costs	$1,000 including product and installation costs and associated electrical connection costs
energy star ground source heat pump	$2,000 including product and installation costs and associated electrical connection costs	$1,000 including product and installation costs per product installed and associated electrical connection costs
energy star windows and doors	one hundred percent of product and installation costs up to $1,000	fifty percent of product and installation costs up to $500 per product installed
insulation improvements that meet department's rules	one hundred percent of product and installation costs up to $2,000	fifty percent of product and installation costs up to $1,000 per product installed
energy star heat pump water heater	$700 including product and installation costs and associated electrical connection costs	$350 including product and installation costs per product installed and associated electrical connection costs
electric vehicle ready	one hundred percent of product and installation costs up to $3,000 and associated electrical connection costs	fifty percent of product and installation costs up to $1,500 per product installed and associated electrical connection costs

For construction of a new sustainable residential building that is broadband ready and electric vehicle ready and completed after January 1, 2022:	
LEED-H platinum	equals the qualified square footage up to 2,000 multiplied by $5.50

LEED-H gold	equals the qualified square footage up to 2,000 multiplied by $3.80
build green emerald	equals the qualified square footage up to 2,000 multiplied by $5.50
build green gold	equals the qualified square footage up to 2,000 multiplied by $3.80
manufactured housing	equals the qualified square footage up to 2,000 multiplied by $2.00
Additional criteria	
fully electric building	equals the qualified square footage up to 2,000 multiplied by $1.00
zero carbon, energy, waste or water certified	equals the qualified square footage up to 2,000 multiplied by $0.25

For installation of energy conserving products for renovation of affordable and non-affordable existing residential buildings effective January 1, 2021:		
Product	affordable housing and low income	non-affordable housing and non-low income
energy star air source heat pump	$2,000 including product and installation costs (per product installed if the applicant is a low- income taxpayer)	$1,000 including product and installation costs per product installed

energy star ground source heat pump	$2,000 including product and installation costs (per product installed if the applicant is a low-income taxpayer)	$1,000 including product and installation costs per product installed
energy star windows and doors	one hundred percent of product and installation costs up to $1,000 (per product installed if the applicant is a low-income taxpayer)	fifty percent of product and installation costs up to $500 per product installed
insulation improvements that meet department's rules	one hundred percent of product and installation costs up to $2,000 (per product installed if the applicant is a low-income taxpayer)	fifty percent of product and installation costs up to $1,000 per product installed
energy star heat pump water heaters	$700 including product and installation costs (per product installed if the applicant is a low-income taxpayer)	$350 including product and installation costs per product installed
electric vehicle ready	$1,000 including product and installation costs (per product installed if the applicant is a low-income taxpayer)	$500 including product and installations costs per product installed

B. Energy conservation products shall meet the specified energy star rating performance requirements at the installed location.

energy star zones for New Mexico	
south-central zone	Chavez, Dona Ana, Eddy, Hidalgo, Lea, Luna and Otero counties

north-central zone	Bernalillo, Cibola, Curry, De Baca, Grant, Guadalupe, Lincoln, Quay, Roosevelt, Sierra, Socorro, Union and Valencia counties
northern	Catron, Colfax, Harding, Los Alamos, McKinley, Mora, Rio Arriba, San Juan, San Miguel, Sandoval, Santa Fe, Taos and Torrance counties

[3.4.22.13 NMAC - Rp, 3.4.22.13 NMAC, 07/12/2022]

3.4.22.14 REQUIREMENTS FOR ENERGY CONSERVING PRODUCTS:

A. Energy-conserving products shall be energy star rated for the location installed and meet the insulation requirements in 3.4.22.14 NMAC to be eligible for the 2021 sustainable building tax credit. Energy conserving products and insulation improvements eligible for the 2021 sustainable building tax credit shall meet the applicable requirements of the most current New Mexico commercial building code, the New Mexico residential building code, the New Mexico electrical code, the New Mexico mechanical code and the New Mexico plumbing code and shall be installed under a construction permit and shall be inspected by the code official having jurisdiction.

B. Insulation products and installation eligible for consideration for a tax credit are

(1) batts and blankets made of mineral fiber and mineral wool such as fiberglass, rock, slag, wool, cotton or cellulose materials; they are available with facings that serve as vapor retarders and without facings; some products have flanges to aid in installation to framed assemblies;

(2) loose-fill insulation that uses a blown installation process for cellulose, fiberglass, mineral wool and natural wools; the R-value of the blown wall insulation material installed in closed cavities is determined by the installed thickness and density; the installed density shall meet manufactured specifications; open horizontal applications, such as for attic and floors, the R-value is verified by thickness and rated coverage; in open vertical applications the R-value shall be thickness and rated coverage as per manufacture specifications;

(3) spray polyurethane foam having an open cellular structure having a nominal density of 0.4 to 1.5 pounds per cubic foot shall have a minimum R-value of 3.6 per inch for compliance; a spray applied polyurethane foam having a closed cellular structure having a nominal density of 1.5 to less than 2.5 pounds per cubic foot shall have a minimum R-value of 5.8 per inch for compliance; the weatherproof seal placed on top of spray polyurethane foam shall protect from degradation caused by ultraviolet light, water and other normal weathering hazards; surfaces to receive the roof covering

system must comply with applicable building codes and manufacturers installation recommendations;

(4) rigid insulation sheathing made from fiberglass, mineral wool, expanded polystyrene, extruded polystyrene, polyisocyanurate or polyurethane; this type of insulation may be used for roof decks, exterior walls, ceilings, basement walls, perimeter insulation or to cover window and door headers; fastening shall follow manufacturer requirements;

(5) wet insulation systems are roofing systems where insulation is installed above the waterproof membrane of a roof; installation shall meet New Mexico building code water sealing requirements;

(6) structural form wall systems made of closed cell spray foam placed in the cavity bonded to wood framing and continuous rigid board insulation on the exterior of the frame;

(7) structural insulated panels that are non-framed advanced construction system that consists of ridged foam insulation sandwiched between two sheets of board; the insulation can be expanded polystyrene foam, extruded polystyrene foam, polyurethane or polyisocyanurate foam; and

(8) insulated concrete forms (ICF) that are a system of formwork for concrete that stays in place as permanent building insulation and can be used for cast-in-place reinforced above-and below-grade concrete walls, floors and roofs; they are interlocking modular units that can be dry stacked (without mortar) and filled with concrete as a single concrete masonry unit; ICFs lock together externally and have internal metal or plastic ties to hold the outer layers of insulation to create a concrete form.

C. Eligible insulation installations shall to the extent possible, without structural framing modification, be installed in the building cavity to the R-factor listed in the prescriptive method of the latest New Mexico energy conservation code adopted by the construction industries division of the regulation and licensing department for the applicable building cavity and construction site climate zone. In no instance shall an increase in insulating R-factor less than 10 be considered for the 2021 sustainable building tax credit. Reframing involving basic structural framing of a building is not required.

D. Mandatory requirements for insulation products.

(1) R-value identification marks shall be applied by the manufacturer to each piece of insulation 12 inches or wider. Alternatively, the insulation installer shall provide a certification listing the type, manufacturer and R-value of the insulation install in each element of the building thermal envelope.

(2) For blown in or sprayed fiberglass and cellulose insulation, the initial installed thickness, settled thickness, settled R value, installed density, coverage area and number of bags installed shall be listed on the certification.

(3) For sprayed polyurethane foam insulation, the installed thickness shall be listed on the certification. The thickness of sprayed insulation shall be marked in inches and markers showing the thickness shall be installed every 300 square feet and attached to trusses or joists in attics. The numbers in the markers shall be at least one inch high and visible from the attic access opening.

(4) Fire rating of products shall follow the New Mexico commercial building code and New Mexico residential code.

(5) Foam plastic insulation shall be tested to demonstrate a flame-spread index of not more than 75 and a smoke-developed index of not more than 450.

(6) Exposed facing on insulation materials shall be fire resistant and tested and certified not to exceed a flame spread index of 25 and a smoke development index of 450. These indexes shall be shown on the insulation or packaging material or supplied by the manufacturer.

(7) Exposed foundation insulation shall have a protective rigid, opaque and weather-resistant protective covering to prevent the degradation of the insulation.

(8) Slab insulation must be suitable for applications in direct contact with soil and have a water absorption rate less than 0.3 percent when tested and a vapor permeance not greater than 2.0 perm/inch when tested.

(9) All insulation shall be properly sealed to prevent air leakage.

(10) To qualify for the 2021 sustainable building tax credit, insulation products installed shall meet the most current New Mexico energy code insulation requirements adopted by the construction industries division of the regulation and licensing department.

E. Retrofits with the following construction material or methods are not eligible for the 2021 sustainable building tax credit;

(1) logs, strawbales, adobe and rammed earth;

(2) spray-in-place polyurethane foam for interior walls or ceilings;

(3) urea formaldehyde foam insulation; and

(4) passive solar technologies using direct gain, trombe walls or mass energy storage.

F. The following are mandatory requirements for fenestration products.

(1) Fenestration products shall meet energy star requirements.

(2) The temporary label on windows shall not be removed until after inspection by the code official.

(3) All fenestration products shall be properly sealed to prevent air leakage.

G. Windows and skylights.

(1) Windows are considered part of an exterior wall when the slope is 60 degrees or more as measured from the horizontal. Where the slope of the fenestration is less than 60 degrees, the glazing is considered a skylight. Skylights are not eligible for the 2021 sustainable building tax credit.

(2) Site built fenestration or field-fabricated fenestration are not eligible for the 2021 sustainable building tax credit.

H. To qualify for an electric vehicle ready 2021 sustainable building tax credit, a commercial building shall have at least ten percent of parking spaces and for residential buildings at least one parking space with one 40 ampere, 208 volt or 240 volt dedicated branch circuit for charging electric vehicles. The termination point can be a receptacle or junction box and shall be near where electric vehicles can easily be charged. The extension cord shall be long enough to reach a vehicle and meet code and electric vehicle manufacturing requirements.

[3.4.22.14 NMAC - Rp, 3.4.22.14 NMAC, 07/12/2022]

3.4.22.15 CLAIMING THE STATE TAX CREDIT:

To claim the 2021 sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department's issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department may require.

[3.4.22.15 NMAC – Rp, 3.4.15 NMAC, 07/12/2022]

PART 23 CLEAN CAR CORPORATE INCOME TAX CREDIT

3.4.23.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Energy, Conservation and Management Division.

[3.4.23.1 NMAC - N, 9/24/2024]

3.4.23.2 SCOPE:

3.4.23 NMAC applies to the application and certification procedures for administration of the clean car corporate income tax credit.

[3.4.23.2 NMAC - N, 9/24/2024]

3.4.23.3 STATUTORY AUTHORITY:

3.4.23 NMAC is established under the authority of Section 7-2A-19.01 NMSA 1978.

[3.4.23.3 NMAC - N, 9/24/2024]

3.4.23.4 DURATION:

Permanent.

[3.4.23.4 NMAC - N, 9/24/2024]

3.4.23.5 EFFECTIVE DATE:

September 24, 2024, unless a later date is cited at the end of a section.

[3.4.23.5 NMAC - N, 9/24/2024]

3.4.23.6 OBJECTIVE:

3.4.23 NMAC's objective is to establish procedures for administering the certification program for the clean car corporate income tax credit.

[3.4.23.6 NMAC - N, 9/24/2024]

3.4.23.7 DEFINITIONS:

For additional definitions refer to Section 7-2A-19.01 NMSA 1978.

A. "Applicant" means a New Mexico taxpayer that has purchased an electric vehicle, plug-in hybrid electric vehicle or fuel cell vehicle or enters into a new lease of at least three years for one of these vehicles.

B. "Application package" means the application documents an applicant submits to the department for certification to receive a state tax credit.

C. "Certified" or **"certification"** means department approval of an applicant's eligible purchase of an electric vehicle, plug-in hybrid electric vehicle or fuel cell vehicle,

or an applicant's new lease of at least three years for one of these vehicles, either of which makes the applicant owning or leasing the vehicle eligible for a state tax credit.

D. "Department" means the energy, minerals, and natural resources department.

E. "Division" means the department's energy conservation and management division.

F. "Extended warranty" means a dealership-provided one-year extended warranty against defects and repairs on a previously owned vehicle.

G. "Licensed dealer" means a dealer licensed by the motor vehicle division of the taxation revenue department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico.

H. "New lease" means when a taxpayer enters into a new lease agreement of at least three years for a clean car vehicle.

I. "State tax credit" or **"tax credit"** means the clean car corporate income tax credit.

[3.4.23.7 NMAC - N, 9/24/2024]

3.4.23.8 GENERAL PROVISIONS:

A. The state tax credit may be claimed for taxable years after January 1, 2024, and prior to January 1, 2030.

B. The tax credit provided by this section may be referred to as the clean car corporate income tax credit.

C. One tax credit may be certified per taxpayer, per taxable year; only one tax credit shall be certified per new motor vehicle, and only one tax credit shall be certified per previously owned motor vehicle.

D. A taxpayer who is not a dependent of another individual and who, beginning on May 15, 2024, and prior to January 1, 2030, purchases an electric vehicle, plug-in hybrid electric vehicle, fuel cell vehicle or enters a new lease of at least three years for one of these vehicles is eligible to apply for certification for the tax credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act.

E. If a New Mexico taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all the requirements to be eligible for the credit, that taxpayer may be allocated the right to claim the tax credit in proportion to the taxpayer's ownership interest.

F. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit the department has certified.

G. The state tax credit is available for the tax year in which the vehicle was purchased or leased. The tax year of vehicle purchase date determines tax year eligibility.

H. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the tax credit that would have been claimed on a joint return.

I. A vehicle purchase or lease must be through a motor vehicle dealer licensed by the New Mexico motor vehicle division. A vehicle purchased through an unlicensed dealer is not eligible for the clean car corporate income tax credit.

J. A lessee of a vehicle must have entered into a new lease for at least three years.

K. A previously owned motor vehicle must have a minimum one-year extended warranty against defects and repairs.

L. The department shall report to the taxation and revenue department the information required to verify, process, and distribute each state tax credit.

M. In the event of a discrepancy between a requirement of 3.4.23 NMAC and an existing New Mexico taxation and revenue department rule promulgated prior to the adoption of 3.4.23 NMAC's, the existing rule shall govern.

[3.4.23.8 NMAC - N, 9/24/2024]

3.4.23.9 TAX CREDIT ADMINISTRATION:

A. A taxpayer may apply for certification for a clean car corporate income tax credit from the energy, minerals, and natural resources department on electronic forms and in the manner prescribed by that department. The department will not accept paper applications or applications submitted by e-mail unless specifically authorized by the division.

B. An application package for a new clean car or previously owned clean car shall include a completed state tax credit electronic application and all required attachments. Partial applications will not be accepted. After the department has certified an application, applicants may not amend the certified application package to seek additional credits for that vehicle. If there are multiple owners on a clean car vehicle registration, a joint application must be submitted.

C. If the energy, minerals, and natural resources department determines that the taxpayer meets the clean car tax credit requirements, the department shall issue a

certificate of eligibility to the taxpayer providing the amount of tax credit and the taxable year in which the credit may be claimed.

[3.4.23.9 NMAC – N, 9/24/2024]

3.4.23.10 APPLICATION REQUIREMENTS:

A. The state tax credit is available for purchases of an electric vehicle, plug-in hybrid electric vehicle or fuel cell vehicle, or new leases of at least three years for one of these vehicles.

B. Applications for certification of the state tax credit shall be made no later than one year from the date on which the vehicle is purchased or the lease is entered into.

C. The application package shall meet the requirements of 3.4.23 NMAC. If an application package fails to meet a requirement, the department shall disapprove the application.

[3.4.23.10 NMAC - N, 9/24/2024]

3.4.23.11 APPLICATION:

A. To apply for a state tax credit, an applicant shall submit an application for a certificate of eligibility to the division using a department-developed application or an approved electronic application system.

B. To be considered complete, an application must include the state tax credit application and all required attachments.

C. If there are multiple owners of the clean car, a joint application must be submitted.

D. A completed application shall consist of the following information:

(1) The applicant's name, mailing address, e-mail address, telephone number, vehicle identification number (VIN) and the last four digits of the applicant's social security number or employer identification number (EIN) provided by a business applicant.

(2) A detailed description of the clean car, including year, make and model.

(3) A statement the applicant signed and dated, which signature may be a form of electronic signature if approved by the department, agreeing that all information provided in the application package is true and correct to the best of the applicant's knowledge.

(4) The vehicle's weight, battery capacity, and VIN as listed on the vehicle's window sticker.

E. A statement the applicant signed and dated, which may be a form of electronic signature if approved by the department, agreeing:

(1) applicant has read the certification requirements contained in 3.4.23 NMAC.

(2) applicant understands that the department must certify the clean car documents in the application package before becoming eligible for a state tax credit.

[3.4.23.11 NMAC – N, 9/24/2024]

3.4.23.12 APPLICATION ATTACHMENTS:

A. An application for new vehicle shall contain the following information as attachments:

(1) Purchase agreement, vehicle proof of purchase from or proof of new lease through a dealer licensed by the motor vehicle division of the department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico;

(2) the vehicle's registration in New Mexico;

(3) vehicle purchase sticker or vehicle specification sheet;

(4) any additional information the energy, minerals, and natural resources department may require determining eligibility for the credit.

B. An application for previously owned motor vehicle certification of eligibility shall include:

(1) proof of vehicle purchase from or lease through a dealer licensed by the motor vehicle division of the department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico;

(2) the vehicle's registration in New Mexico;

(3) vehicle purchase sticker or vehicle specification sheet;

(4) proof that the dealer provided at least a one-year extended warranty against defects and repairs for the previously owned vehicle;

(5) any additional information the energy, minerals and natural resources department may require in determining eligibility for the credit.

[3.4.23.12 NMAC-N, 9/24/2024]

3.4.23.13 APPLICATION REVIEW PROCESS:

A. The department shall consider complete applications in the order received.

B. The department shall review the application package to calculate the state tax credit; check the accuracy of the applicant's documentation and determine whether the department shall certify the clean car corporate income tax credit. The department shall disapprove an application that is not complete, correct, or does not meet the approval criteria.

C. If the department finds the application package meets the requirements of 3.4.22 NMAC, and a state tax credit is available, the department shall certify the applicant's clean car corporate income tax credit.

D. If applicable, the department's disapproval notification shall state the reasons why the department disapproved the application. The applicant may resubmit the electronic application package for a disapproved project, but it shall be placed back at the beginning of the queue and reviewed as if it were a new application.

[3.4.23.13 NMAC - N, 9/24/2024]

3.4.23.14 WARRANTIES AND LEASES:

A. Clean car tax credit warranties that the department may accept for previously owned motor vehicles shall be provided by the dealer and shall cover a minimum of one-year extended warranty against defects and repairs.

(1) Auto warranties accepted by the department must cover both the failed part and the labor to replace or repair it. The warranty types that the department may accept include the following:

(a) an auto warranty that covers repairs for parts that fail due to defects or errors in how a vehicle was built;

(b) a bumper-to-bumper warranty, which may also be called a comprehensive or limited warranty, that covers nearly all a vehicle's systems;

(c) a certified pre-owned warranty that carries the balance of the original bumper-to-bumper and powertrain warranties;

(d) an extended warranty that covers a vehicle's problems after the original new vehicle warranty expires and which covers mechanical breakdowns and electrical failures;

(e) extended length warranty;

(f) factory warranty;

(g) new vehicle warranty;

(h) manufacturer warranty;

(i) any other warranty deemed eligible by the department.

(2) The warranty types that the department will not accept include the following:

(a) aftermarket accessories warranty;

(b) a basic used warranty for a car "as is," or for a period less than a year;

(c) corrosion and perforation warranties;

(d) emissions system warranty;

(e) hybrid and electric car battery warranties. The department will not accept a warranty covering only the high-voltage batteries installed in hybrids, plug-in hybrids and battery-electric vehicles;

(f) implied warranty;

(g) powertrain warranty. The department will not accept a warranty covering only the engine, transmission, and drivetrain components, even if it includes coverage of components in drive systems for electric vehicles and gas-electric hybrids;

(h) replacement parts warranty;

(i) restraint system warranty. The department will not accept a warranty covering only a vehicle's seat belts or restraint stem;

(j) roadside assistance warranty;

(k) tire warranty;

(l) any other warranty deemed ineligible by the department.

B. The following new lease agreement types that the department will accept include the following:

(1) closed-end lease where the applicant agrees to lease the car from a licensed dealer for a set term and certain mileage limits, and then return it at the end of the leasing period;

(2) open-end lease where the terms are flexible, and the applicant takes the depreciation risk of the vehicle;

(3) single payment lease where the applicant pays the entire amount for the lease upfront;

(4) long-term lease;

(5) used vehicle lease if it is longer than three years;

(6) any other type of lease deemed eligible by the department;

C. The lease agreement types that the department will not accept include the following:

(1) sub-vented or subsidized lease. The department will not accept a lease type that is offered with special incentives to make it more enticing to consumers. These incentives can include lower base interest rates, higher residual values, and manufacturer discounts;

(2) A lease shorter than three years.

[3.4.23.14 NMAC - N, 9/24/2024]

3.4.23.15 CALCULATING THE STATE TAX CREDIT:

A. The amount of the tax credit shall be:

(1) for taxable years beginning January 1, 2024, and prior to January 1, 2027:

(a) $3,000 for a new electric vehicle.

(b) $2,500 for a new plug-in hybrid electric vehicle or fuel cell vehicle.

(c) $2,500 for a previously owned electric vehicle.

(d) $2,000 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

(2) for a taxable year beginning January 1, 2027, and prior to January 1, 2028:

(a) $2,220 for a new electric vehicle.

(b) $1,850 for a new plug-in hybrid electric vehicle or fuel cell vehicle.

(c) $1,850 for a previously owned electric vehicle.

(d) $1,480 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

(3) for a taxable year beginning on January 1, 2028, and prior to January 1, 2029:

(a) $1,470 for a new electric vehicle.

(b) $1,225 for a new plug-in hybrid electric vehicle or fuel cell vehicle.

(c) $1,225 for a previously owned electric vehicle.

(d) $980 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

(4) for the taxable year beginning January 1, 2029:

(a) $960 for a new electric vehicle.

(b) $800 for a new plug-in hybrid electric vehicle or fuel cell vehicle.

(c) $800 for a previously owned electric vehicle.

(d) $640 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

B. A state tax credit to an applicant for a clean car the department has certified shall not exceed:

(1) $3000 for a new clean car.

(2) $2500 for a previously owned clean car.

[3.4.23.15 NMAC - N, 9/24/2024]

3.4.23.16 CERTIFICATION:

A. The energy, minerals and natural resources department shall provide the applicant with the certificates of eligibility in an electronic format.

B. The department shall provide certification through electronic notification to the applicant. The notification shall include the applicant's contact information, the last four digits of the social security number, or EIN, the clean car tax credit certification number and the tax credit amount.

C. If, after the department has issued a certification, any of the requirements are found to be insufficient, the department may rescind the certification.

[3.4.23.16 NMAC - N, 9/24/2024]

3.4.23.17 CLAIMING THE STATE TAX CREDIT:

A. A taxpayer who has received a certificate of eligibility from the energy minerals and natural resources department shall claim the credit with the taxation and revenue department as required in statute and outlined the income tax form instructions.

B. A certificate of eligibility for the tax credit may be sold, exchanged or otherwise transferred to another taxpayer for the full value of the credit. The parties to such a transaction shall notify the taxation and revenue department of the sale, exchange or transfer within 10 days of the sale, exchange or transfer in an electronic format prescribed by the taxation and revenue department.

[3.4.23.17 NMAC - N, 9/24/2024]

PART 24 CLEAN CAR CHARGING UNIT CORPORATE INCOME TAX CREDIT

3.4.24.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Energy, Conservation and Management Division.

[3.4.24.1 NMAC - N, 9/10/2024]

3.4.24.2 SCOPE:

3.4.24 NMAC applies to the application and certification procedures for administration of the clean car charging unit corporate income tax credit.

[3.4.24.2 NMAC - N, 9/10/2024]

3.4.24.3 STATUTORY AUTHORITY:

3.4.24 NMAC is established under the authority of Section 7-2A-19.02 NMSA 1978.

[3.4.24.3 NMAC - N, 9/10/2024]

3.4.24.4 DURATION:

Permanent.

[3.4.24.4 NMAC - N, 9/10/2024]

3.4.24.5 EFFECTIVE DATE:

September 10, 2024, unless a later date is cited at the end of a section.

[3.4.24.5 NMAC - N, 9/10/2024]

3.4.24.6 OBJECTIVE:

3.4.24 NMAC's objective is to establish procedures for administering the certification program for the clean car charging unit corporate income tax credit.

[3.4.24.6 NMAC - N, 9/10/2024]

3.4.24.7 DEFINITIONS:

For additional definitions see Section 7-2A-19.02 NMSA 1978.

A. "Applicant" means a New Mexico taxpayer that has purchased and installed an electric vehicle charging unit or fuel cell charging unit in New Mexico.

B. "Application package" means the application documents an applicant submits to the department for certification to receive a state tax credit.

C. "Certified" or **"certification"** means department approval of an electric vehicle charging unit or fuel cell charging unit, which makes the applicant owning the system eligible for a state tax credit.

D. "Department" means the energy, minerals and natural resources department.

E. "Division" means the department's energy conservation and management division.

F. "National Electrical Code" (NEC), or NFPA 70, is a regionally adoptable standard for the safe installation of electrical wiring and equipment in the United States.

G. "NRTL" means nationally recognized testing laboratory which is an independent third-party organization recognized by the occupational safety & health administration (OSHA) that provides evaluation, testing and certification of products to ensure they meet the requirements of both the construction and general industry OSHA electrical standards.

H. "OpenADR" means open automated demand response, a highly secure, and two-way information exchange model and smart grid standard.

I. "Open Charge Point Protocol" (OCPP) is an open-source communication standard for electric vehicle charging stations and network software companies.

J. "Wi-Fi" is a wireless networking technology that uses radio waves to provide wireless high-speed internet access.

[3.4.24.7 NMAC - N, 9/10/2024]

3.4.24.8 GENERAL PROVISIONS:

A. The state tax credit may be claimed for taxable years after January 1, 2024, and prior to January 1, 2030.

B. The tax credit provided by this section may be referred to as the clean car charging unit corporate income tax credit.

C. One tax credit shall be certified per taxpayer per taxable year for a direct current fast charger or a fuel cell charging unit.

D. A taxpayer who claimed the 2021 sustainable building tax credit for expenses of purchasing or installing an electric vehicle charging unit or fuel cell charging unit shall not be eligible to claim the tax credit.

E. A taxpayer who is not a dependent of another individual and who, beginning on May 15, 2024, and prior to January 1, 2030, purchases and installs an electric vehicle charging unit or fuel cell charging unit in New Mexico may be eligible to claim a clean car charging unit corporate income tax credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act.

F. A taxpayer may be allocated the right to claim the tax credit in proportion to the taxpayer's ownership.

G. If a New Mexico taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all requirements to be eligible for the credit, that taxpayer may be allocated the right to claim the tax credit in proportion to the taxpayer ownership interest.

H. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit the department has certified.

I. In the event of a discrepancy between a requirement of 3.4.24 NMAC and an existing New Mexico regulation and licensing department or New Mexico taxation and

revenue department rule promulgated prior to the adoption 3.4.24 NMAC's, the existing rule shall govern.

[3.4.24.8 NMAC - N, 9/10/2024]

3.4.24.9 TAX CREDIT ADMINISTRATION:

A. A taxpayer may apply for a clean car income tax credit from the energy, minerals, and natural resources department on an electronic form and in the manner prescribed by that department. The department will not accept paper applications or applications submitted by e-mail unless specifically authorized by the division.

B. An application package for a clean car charging unit shall include a completed clean car charging unit corporate income tax credit electronic application and all required documents attachments.

(1) Partial applications will not be accepted.

(2) After the department has certified an application, applicants may not amend the certified application package to seek additional credits for that charging unit.

(3) If there are multiple owners of a clean car motor vehicle charging unit, they must submit a joint application.

C. If the energy, minerals, and natural resources department determines that the taxpayer meets the requirements for a clean car charging unit tax credit, the department shall issue a certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable year in which the credit may be claimed.

(1) If an inspection is required for the charger, the final passing inspection date will determine tax year eligibility.

(2) If an inspection is not required for the charger, the date of purchase or installation will determine tax year eligibility, whichever comes later.

[3.4.24.9 NMAC - N, 9/10/2024]

3.4.24.10 APPLICATION REQUIREMENTS:

A. The state tax credit is available for purchase and installation of a clean car charging unit designed for charging electric vehicles, plug-in hybrid electric vehicles or fuel cell vehicles purchased and installed between May 15, 2024, and January 1, 2030.

B. Applications for the state tax credit shall be made no later than one year from the date the charging unit is purchased or, if the unit is installed, the installation date.

C. The application package shall meet the requirements of 3.4.24. If an application package fails to meet a requirement, the department shall disapprove the application.

[3.4.24.10 NMAC - N, 9/10/2024]

3.4.24.11 APPLICATION:

A. An applicant may apply for a New Mexico clean car charging unit corporate income tax credit by submitting an application for a certificate of eligibility to the division using a department-developed application or an approved electronic application system.

B. To be considered complete, an application must include the state tax credit application and any required attachments.

C. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the tax credit that would have been claimed on a joint return.

D. The completed application shall consist of the following:

(1) The applicant's name, mailing address, e-mail address, county of installation, telephone number and last four of applicant's social security number or employer identification number (EIN) provided by a business applicant.

(2) The address where the clean car charging unit is located.

(3) Name of the electric utility service provider for that address.

(4) Whether the clean car charging unit is for private or public use.

(5) Total purchase price and price of any labor to install the operating clean car charging unit.

(6) If applicable, the date the charging unit received a successful electrical inspection.

(7) The charging unit specification sheet and description.

(a) A charging unit specification sheet must specify the connector type(s), plug type(s), manufacturer, model, serial number, voltage, and amperage, of the electric vehicle charging unit, and whether the current is alternating or direct;

(b) For a fuel cell charging unit, technical specifications on the fuel dispensing unit and fuel storage system, including information about operational pressures of the fuel cell charging unit.

(8) A statement the applicant signed and dated, which may be a form of electronic signature if approved by the department, agreeing:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge;

(b) the applicant has read the certification requirements contained in 3.4.24;

(c) the applicant understands that the department must certify the clean car charging unit documents in the application package before the applicant becomes eligible for a state tax credit;

(d) a taxpayer who received the 2021 sustainable building tax credit for expenses of purchasing or installing an electric vehicle charging unit or fuel cell charging unit shall not be eligible to claim the tax credit, and;

(e) the clean car charging unit was installed in full compliance with all applicable federal, state, and local government statutes, ordinances, rules, regulations, codes and standards that were in effect at the time of installation.

[3.4.24.11 NMAC - N, 9/10/2024]

3.4.24.12 APPLICATION ATTACHMENTS:

A. An application for a clean car charging unit corporate income tax credit shall contain the following information as attachments:

(1) proof of clean car charging unit purchase;

(2) itemized installation receipt; the itemized invoice shall include description of work performed, installation labor cost, charging unit cost, electrical amperage and voltage, and material costs;

(3) post-installation digital photo of operating clean car charging unit;

(4) clean car charging unit specification sheet;

(a) a charging unit data sheet must specify the connector type(s), plug type(s), manufacturer, model, serial number, voltage, and amperage of the electric vehicle charging unit, and whether the electrical current is alternating or direct;

(b) a fuel cell charging unit must specify technical specifications on the fuel dispensing unit and fuel storage system, including information about operational pressures of the fuel cell charging unit;

(c) the specification sheet must match the charging unit submitted for the tax credit;

(5) A copy of any applicable building code authority inspections, including permit number, issuance date, and date of inspection, noted on a physical form, or a photo of inspection sticker or a web-based report approved by the applicable building code authority, or similar document if applicable;

(6) Any additional information the energy, minerals and natural resources department may require to determine tax credit eligibility.

[3.4.24.12 NMAC - N, 9/10/2024]

3.4.24.13 APPLICATION REVIEW PROCESS:

A. The department shall consider complete applications in the order received.

B. The department shall review the application package to check the accuracy of the applicant's documentation, determine whether the department shall certify the clean car charging unit and calculate the amount of the state tax credit.

(1) The department shall disapprove an application that is not complete, correct, or does not meet the approval criteria.

(2) Duplicate applications or multiple submissions for the same project will be rejected.

C. If the department finds the application package meets the requirements of 3.4.24, and a state tax credit is available, the department shall certify the applicant's claim for clean car charging unit.

D. If applicable, the department's disapproval notification shall state the reasons why the department disapproved the application. The applicant may resubmit a corrected electronic application package for a disapproved project, and it shall be placed at the beginning of the queue and reviewed as if it were a new application.

[3.4.24.13 NMAC - N, 9/10/2024]

3.4.24.14 CLEAN CAR CHARGING UNIT REQUIREMENTS:

A. A direct current fast charger must provide at least 50 kilowatts of direct current electrical power for charging an electric vehicle through a connector based on fast charging equipment standards and is approved for installation for that purpose under the National Electrical Code through an underwriter's laboratories certification or an equivalent certifying organization.

B. An electrical vehicle charger used to provide electricity to an electric vehicle or plug-in hybrid electric vehicle must be designed to create a connection between an electricity source and the electric vehicle or plug-in hybrid vehicle, and uses the electric vehicles or plug-in hybrid electric vehicle's control system to ensure that electricity flows at an appropriate voltage and current level.

C. A fuel cell charging unit is a facility or unit that dispenses liquefied or compressed hydrogen for fuel cell vehicle refueling and is approved for installation for that purpose under applicable codes and compliant with the requirements of applicable certifying organizations.

D. The clean car charging unit must be made of new equipment, components, and materials to be eligible for a tax credit.

E. Charging unit equipment must meet the following requirements:

(1) Charging software is able to connect to OpenADR or OCPP.

(2) Charging unit can connect to Wi-Fi or wireless networking technology.

(3) Charging unit is a 'Listed' or 'Recognized' product under the production control of the issuing NRTL.

[3.4.24.14 NMAC - N, 9/10/2024]

3.4.24.15 CALCULATING THE STATE TAX CREDIT:

A. The tax credit is limited to the purchase and the installation labor cost for the clean car charging unit, whichever is less.

B. The amount of tax credit shall be:

(1) For a direct current fast charger or fuel cell charging unit, $25,000 or the cost to purchase and install the direct current fast charger or fuel cell charging unit, whichever is less.

(2) For all other electric vehicle charging units, $400 or the cost to purchase and install the electric vehicle charging unit, whichever is less.

[3.4.24.15 NMAC - N, 9/10/2024]

3.4.24.16 CERTIFICATION:

A. The energy, minerals and natural resources department shall provide the applicant with the certificate of eligibility in an electronic format.

B. The department provides certification through electronic notification to the applicant. The notification shall include the applicant's contact information, last four digits of the social security number or EIN, clean car charging unit certification number and the state tax credit amount.

C. If, after the department has issued a certification, any of the requirements are found to be insufficient, the department may rescind the certification.

[3.4.24.16 NMAC - N, 9/10/2024]

3.4.24.17 CLAIMING THE STATE TAX CREDIT:

A taxpayer who has received certificate of eligibility to claim the tax credit must apply to the taxation and revenue department and shall provide the taxation and revenue department with a copy of the certification of eligibility in manner and within a timeframe prescribed by the taxation and revenue department.

[3.4.24.17 NMAC - N, 9/10/2024]

CHAPTER 5: UNIFORM DIVISION OF INCOME FOR TAX PURPOSES

PART 1: GENERAL PROVISIONS

3.5.1.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.5.1.1 NMAC - Rn, 3 NMAC 5.1.1, 6/29/01]

3.5.1.2 SCOPE:

This part applies to every taxpayer having income which is taxable for income tax purposes both within and without New Mexico.

[1/15/97; 3.5.1.2 NMAC - Rn, 3 NMAC 5.1.2, 6/29/01]

3.5.1.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.5.1.3 NMAC - Rn, 3 NMAC 5.1.3, 6/29/01]

3.5.1.4 DURATION:

Permanent.

[1/15/97; 3.5.1.4 NMAC - Rn, 3 NMAC 5.1.4, 6/29/01]

3.5.1.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.5.1.5 NMAC - Rn & A, 3 NMAC 5.1.5, 6/29/01]

3.5.1.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Uniform Division of Income for Tax Purposes Act.

[1/15/97; 3.5.1.6 NMAC - Rn, 3 NMAC 5.1.6, 6/29/01]

3.5.1.7 DEFINITIONS:

[RESERVED]

[1/15/97; 3.5.1.7 NMAC - Rn, 3 NMAC 5.1.7, 6/29/01]

3.5.1.8 CITATIONS:

Unless otherwise noted, all citations to statute in Title 3, Chapter 5 NMAC are to the New Mexico Statutes Annotated, 1978 (NMSA 1978).

[1/15/97; 3.5.1.8 NMAC - Rn, 3 NMAC 5.1.8, 6/29/01]

3.5.1.9 "BUSINESS AND NONBUSINESS INCOME" DEFINED:

A. Section 7-4-2 NMSA 1978 defines "business income" as income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management or disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. In essence, all income which arises from the conduct or the disposition or liquidation of trade or business operations of a taxpayer is business income.

B. "Nonbusiness income" means all income other than business income.

C. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, nonoperating income, etc., is of no aid in

determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is "business income" or "nonbusiness income" is the identification of the transactions and activity which are the elements of particular trade or business. In general, all transactions and activities of the taxpayer which are dependent upon or contribute to the operations of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of, and constitute integral parts of, a trade or business.

[1/15/74, 9/15/88, 9/20/93, 1/15/97, 10/29/99; 3.5.1.9 NMAC - Rn & A, 3 NMAC 5.1.9, 6/29/01]

3.5.1.10 BUSINESS AND NONBUSINESS INCOME; APPLICATION OF DEFINITIONS:

A. The following are rules for determining whether particular income is business or nonbusiness income.

B. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or is incidental thereto and therefore is includable in the property factor under Part 3.5.11 NMAC.

C. Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if such property was utilized for the production of nonbusiness income or otherwise was removed from the property factor before its sale, exchange or other disposition, the gain or loss will constitute nonbusiness income.

D. "Interest income" is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to such trade or business operations.

E. Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose of acquiring and holding the stock is related to or incidental to such trade or business operations.

F. Patent and copyright royalties are business income where the patent or copyright with respect to which the royalties were received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the patent or copyright is related or incidental to such trade or business operations.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.1.10 NMAC - Rn & A, 3 NMAC 5.1.10, 6/29/01]

3.5.1.11 PRORATION OF DEDUCTIONS:

A. In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business incomes of more than one trade or business, to several items of nonbusiness income or to both. In such cases the deduction shall be prorated among such trades or businesses and such items of nonbusiness income in a manner which fairly distributes the deduction among the classes of income to which it is applicable.

B. In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

C. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act or Article IV of the multistate tax compact are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.1.11 NMAC - Rn, 3 NMAC 5.1.11, 6/29/01]

PART 2: [RESERVED]

PART 3: ALLOCATION AND APPORTIONMENT OF INCOME IN GENERAL

3.5.3.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.5.3.1 NMAC - Rn, 3 NMAC 5.3.1, 6/29/01]

3.5.3.2 SCOPE:

This part applies to every taxpayer having income which is taxable for income tax purposes both within and without New Mexico.

[1/15/97; 3.5.3.2 NMAC - Rn, 3 NMAC 5.3.2, 6/29/01]

3.5.3.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.5.3.3 NMAC - Rn, 3 NMAC 5.3.3, 6/29/01]

3.5.3.4 DURATION:

Permanent.

[1/15/97; 3.5.3.4 NMAC - Rn, 3 NMAC 5.3.4, 6/29/01]

3.5.3.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.5.3.5 NMAC - Rn & A, 3 NMAC 5.3.5, 6/29/01]

3.5.3.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Uniform Division of Income for Tax Purposes Act.

[1/15/97; 3.5.3.6 NMAC - Rn, 3 NMAC 5.3.6, 6/29/01]

3.5.3.7 DEFINITIONS:

A. "Allocation" and "allocate" refer to the assignment of nonbusiness income to a particular state.

B. "Apportionment" and "apportion" refer to the division of business income between states by the use of a formula containing apportionment factors.

C. "Business activity" refers to the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer.

D. "Taxpayer" means any individual subject to tax imposed by the Income Tax Act or any corporation required to file an income tax return pursuant to the Corporate Income and Franchise Tax Act.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.3.7 NMAC - Rn, 3 NMAC 5.3.7, 6/29/01]

3.5.3.8 APPLICATION OF SECTIONS 7-4-2 TO 7-4-19 NMSA 1978; APPORTIONMENT:

Where a taxpayer elects to apportion income pursuant to Section 7-2-11 NMSA 1978 or Section 7-2A-8 NMSA 1978, if the business activity in respect to any trade or business of a taxpayer occurs both within and without this state, and if by reason of such business activity the taxpayer is taxable in another state, the portion of the net income

(or net loss) arising from such trade or business which is derived from sources within this state shall be determined by apportionment in accordance with Sections 7-4-10 to 7-4-18 NMSA 1978.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.3.8 NMAC - Rn & A, 3 NMAC 5.3.8, 6/29/01]

3.5.3.9 APPLICATION OF SECTIONS 7-4-2 TO 7-4-19 NMSA 1978; COMBINED REPORT:

If a particular trade or business is carried on by a taxpayer and one or more affiliated corporations, nothing in Sections 7-4-2 to 7-4-19 NMSA 1978 or in Title 3, Chapter 5 NMAC shall preclude the use of a "combined report" whereby the entire business income of such trade or business is apportioned in accordance with Sections 7-4-10 to 7-4-18 NMSA 1978.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.3.9 NMAC - Rn & A, 3 NMAC 5.3.9, 6/29/01]

3.5.3.10 APPLICATION OF SECTIONS 7-4-2 TO 7-4-19 NMSA 1978; ALLOCATION:

Any taxpayer electing to apportion income pursuant to Section 7-2-11 NMSA 1978 or Section 7-2A-8 NMSA 1978 and who is subject to the taxing jurisdiction of this state shall allocate all of its net nonbusiness income or loss within or without this state in accordance with Sections 7-4-5 to 7-4-9 NMSA 1978. Such income or loss to be allocated within or without this state is the gross income less related expenses.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.3.10 NMAC - Rn & A, 3 NMAC 5.3.10, 6/29/01]

3.5.3.11 CONSISTENCY AND UNIFORMITY IN REPORTING:

A. In filing with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

B. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act or Article IV of the multistate tax compact are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.3.11 NMAC - Rn, 3 NMAC 5.3.11, 6/29/01]

PART 4: WHEN TAXABLE IN ANOTHER STATE

3.5.4.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.5.4.1 NMAC - Rn, 3 NMAC 5.4.1, 6/29/01]

3.5.4.2 SCOPE:

This part applies to every taxpayer having income which is taxable for income tax purposes both within and without New Mexico.

[1/15/97; 3.5.4.2 NMAC - Rn, 3 NMAC 5.4.2, 6/29/01]

3.5.4.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.5.4.3 NMAC - Rn, 3 NMAC 5.4.3, 6/29/01]

3.5.4.4 DURATION:

Permanent.

[1/15/97; 3.5.4.4 NMAC - Rn, 3 NMAC 5.4.4, 6/29/01]

3.5.4.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.5.4.5 NMAC - Rn & A, 3 NMAC 5.4.5, 6/29/01]

3.5.4.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Uniform Division of Income for Tax Purposes Act.

[1/15/97; 3.5.4.6 NMAC - Rn, 3 NMAC 5.4.6, 6/29/01]

3.5.4.7 DEFINITIONS:

[Reserved.]

[1/15/97; 3.5.4.7 NMAC - Rn, 3 NMAC 5.4.7, 6/29/01]

3.5.4.8 TAXABLE IN ANOTHER STATE - IN GENERAL:

A taxpayer's income from business activity is taxable without this state if such taxpayer, by reason of such business activity, is taxable in another state within the meaning of Section 7-4-4 NMSA 1978. A taxpayer is taxable within another state if it meets either one of two tests:

A. if by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in Subsection A of Section 7-4-4 NMSA 1978, namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax; or

B. if by reason of such business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether or not the state imposes such a tax on a taxpayer.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.4.8 NMAC - Rn & A, 3 NMAC 5.4.8, 6/29/01]

3.5.4.9 TAXABLE IN ANOTHER STATE - WHEN A TAXPAYER IS "SUBJECT TO" A TAX - FOR TAXABLE YEARS BEGINNING PRIOR TO JANUARY 1, 2020.

A. A taxpayer is "subject to" one of the taxes specified in Subsection A of Section 7-4-4 NMSA 1978 if it carries on business activity in such state and such state imposes or has the ability to impose such a tax thereon. Any taxpayer which asserts that it is subject to one of the taxes specified in Subsection A of Section 7-4-4 NMSA 1978 in another state shall furnish to the department upon its request evidence to support such assertion. The department may request that such evidence include proof that the taxpayer has filed the requisite tax return in such other state and has paid any taxes imposed under the law of such other state; the taxpayer's failure to produce such proof may be taken into account in determining whether the taxpayer in fact is subject to one of the taxes specified in Subsection A of Section 7-4-4 NMSA 1978 in such other state.

B. If the taxpayer voluntarily files and pays one or more of such taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization or for the privilege of doing business in that state, but

(1) does not actually engage in business activity in that state; or

(2) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within such state, the taxpayer is not "subject to" one of the taxes specified within the meaning of Subsection A of Section 7-4-4 NMSA 1978.

C. The concept of taxability in another state is based upon the premise that every state in which the taxpayer is engaged in business activity may impose an income tax even though every state does not do so. In states which do not, other types of taxes may be imposed as a substitute for an income tax. Therefore, only those taxes enumerated in Subsection A of Section 7-4-4 NMSA 1978 which may be considered as

basically revenue raising rather than regulatory measures shall be considered in determining whether the taxpayer is "subject to" one of the taxes specified in Subsection A of Section 7-4-4 NMSA 1978 in another state.

D. When determining whether a taxpayer is taxable in another state, the term "taxpayer" shall apply to each separate member of a combined or consolidated filing group and shall not apply to the group as a single taxpaying entity, unless the taxpayer can demonstrate that application of this rule will subject it to multiple taxation based on the application of a contrary rule in the other state.

E. This version of this section applies to taxable years beginning prior to January 1, 2020. For tax periods beginning on or after January 1, 2020 see 3.5.4.11 NMAC.

[1/15/1974, 9/15/1988, 9/20/1993, 1/15/1997; 3.5.4.9 NMAC - Rn & A, 3 NMAC 5.4.9, 6/29/2001; A, 3/23/2021]

3.5.4.10 TAXABLE IN ANOTHER STATE - WHEN A STATE HAS JURISDICTION TO SUBJECT A TAXPAYER TO A NET INCOME TAX FOR TAXABLE YEARS BEGINNING PRIOR TO JANUARY 1, 2020:

The second test, that of Subsection B of Section 7-4-4 NMSA 1978, applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of such business activity under the constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U.S.C.A. Sections 381-385. In the case of any "state" as defined in Section 7-4-2 NMSA 1978 other than a state of the United States or political subdivision of such state, the determination of whether such "state" has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that "state". If jurisdiction is otherwise present, such "state" is not considered as without jurisdiction by reason of the provisions of a treaty between that "state" and the United States. This section applies to taxable years beginning prior to January 1, 2020. For taxable years beginning on or after January 1, 2020 see 3.4.11 NMAC.

[1/15/1974, 9/15/1988, 9/20/1993, 1/15/1997; 3.5.4.10 NMAC - Rn & A, 3 NMAC 5.4.10, 6/29/2001; A. 3/23/2021]

3.5.4.11 TAXABLE IN ANOTHER STATE; WHEN A TAXPAYER IS "SUBJECT TO" A TAX – FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2020:

For periods beginning on or after January 1, 2020. New Mexico follows the so-called Finnigan approach. This approach determines when a corporation will be deemed to be taxable in New Mexico as well as to the question of when a taxpayer is "taxable in another state" for purposes of Section 7-4-4 NMSA 1978, and sourcing of sales under

Sections 7-4-17 and 7-4-18 NMSA 1978. In general, under the Finnigan approach, New Mexico looks to the activities of the unitary group, or if the group has elected to file a consolidated return, to the activities of the consolidated group, to determine if any member of the group is taxable in New Mexico or in another state. If the group, or any member of the group, could be subjected to New Mexico corporate income tax under both constitutional principles and any applicable federal statutory law, then all members of the group are taxable in New Mexico. Similarly, when determining if a member of the group is "taxable in another state," if the state has jurisdiction to impose such a tax on the unitary business in whatever form it may allow that unitary business to file, whether or not it does impose such a tax, then all members of that unitary group are taxable in that state. This version of this section applies to taxable years beginning on or after January 1, 2020.

[3.5.4.11 NMAC - N, 3/23/2021]

PART 5: ALLOCATION OF CERTAIN NON-BUSINESS INCOME

3.5.5.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.5.5.1 NMAC - Rn, 3 NMAC 5.5.1, 6/29/01]

3.5.5.2 SCOPE:

This part applies to every taxpayer having income which is taxable for income tax purposes both within and without New Mexico.

[1/15/97; 3.5.5.2 NMAC - Rn, 3 NMAC 5.5.2, 6/29/01]

3.5.5.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.5.5.3 NMAC - Rn, 3 NMAC 5.5.3, 6/29/01]

3.5.5.4 DURATION:

Permanent.

[1/15/97; 3.5.5.4 NMAC - Rn, 3 NMAC 5.5.4, 6/29/01]

3.5.5.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.5.5.5 NMAC - Rn & A, 3 NMAC 5.5.5, 6/29/01]

3.5.5.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Uniform Division of Income for Tax Purposes Act.

[1/15/97; 3.5.5.6 NMAC - Rn, 3 NMAC 5.5.6, 6/29/01]

3.5.5.7 DEFINITIONS:

[Reserved.]

[1/15/97; 3.5.5.7 NMAC - Rn, 3 NMAC 5.5.7, 6/29/01]

3.5.5.8 RELATED EXPENSES:

A. From the items of gross income from rents, patent and copyright royalties interest, dividends and capital gains being specifically allocated to or outside this state, there shall be deducted the expenses related thereto. The term "expenses related thereto" as used in Section 3.5.5.8 NMAC means the expenses and other deductions directly attributable to such rents, patent and copyright royalties, interest, dividends and capital gains and a ratable part of any other expenses or deductions which cannot definitely be allocated to some item or class of income.

B. The amount to be allocated to or outside this state is this gross income from such rents, patent and copyright royalties, interest, dividends and capital gains less the related expenses.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.5.8 NMAC - Rn & A, 3 NMAC 5.5.8, 6/29/01]

PART 6: ALLOCATION OF RENTS AND ROYALTIES [RESERVED]

PART 7: ALLOCATION OF CAPITAL GAINS AND LOSSES [RESERVED]

PART 8: ALLOCATION OF INTEREST AND DIVIDENDS [RESERVED]

PART 9: ALLOCATION OF PATENT AND COPYRIGHT ROYALTIES [RESERVED]

PART 10: APPORTIONMENT OF BUSINESS INCOME

3.5.10.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.5.10.1 NMAC - Rn, 3 NMAC 5.10.1, 6/29/01]

3.5.10.2 SCOPE:

This part applies to every taxpayer having income which is taxable for income tax purposes both within and without New Mexico.

[1/15/97; 3.5.10.2 NMAC - Rn, 3 NMAC 5.10.2, 6/29/01]

3.5.10.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.5.10.3 NMAC - Rn, 3 NMAC 5.10.3, 6/29/01]

3.5.10.4 DURATION:

Permanent.

[1/15/97; 3.5.10.4 NMAC - Rn, 3 NMAC 5.10.4, 6/29/01]

3.5.10.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.5.10.5 NMAC - Rn & A, 3 NMAC 5.10.5, 6/29/01]

3.5.10.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Uniform Division of Income for Tax Purposes Act.

[1/15/97; 3.5.10.6 NMAC - Rn, 3 NMAC 5.10.6, 6/29/01]

3.5.10.7 DEFINITIONS:

[Reserved.]

[1/15/97; 3.5.10.7 NMAC - Rn, 3 NMAC 5.10.7, 6/29/01]

3.5.10.8 [RESERVED]

[1/15/1974, 9/15/1988, 9/20/1993, 1/15/1997, 10/29/1999; 3.5.10.8 NMAC - Rn & A, 3 NMAC 5.10.8, 6/29/2001; Repealed, 3/23/2021]

3.5.10.9 APPORTIONMENT OF BUSINESS INCOME:

"Business income" is defined in Section 7-4-2 NMSA 1978 and Part 3.5.1 NMAC. The business income to be apportioned is net business income after taking into account only those expenses and deductions which are allowable under the United States Internal Revenue Code of 1986, as amended, which are related to the production of business income. Expenses and deductions attributable to nonbusiness income may not be taken into account in arriving at net business income to be apportioned.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.10.9 NMAC - Rn & A, 3 NMAC 5.10.9, 6/29/01]

PART 11: PROPERTY FACTOR FOR APPORTIONMENT OF BUSINESS INCOME

3.5.11.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.5.11.1 NMAC - Rn, 3 NMAC 5.11.1, 6/29/01]

3.5.11.2 SCOPE:

This part applies to every taxpayer having income which is taxable for income tax purposes both within and without New Mexico.

[1/15/97; 3.5.11.2 NMAC - Rn, 3 NMAC 5.11.2, 6/29/01]

3.5.11.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.5.11.3 NMAC - Rn, 3 NMAC 5.11.3, 6/29/01]

3.5.11.4 DURATION:

Permanent.

[1/15/97; 3.5.11.4 NMAC - Rn, 3 NMAC 5.11.4, 6/29/01]

3.5.11.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.5.11.5 NMAC - Rn & A, 3 NMAC 5.11.5, 6/29/01]

3.5.11.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Uniform Division of Income for Tax Purposes Act.

[1/15/97; 3.5.11.6 NMAC - Rn, 3 NMAC 5.11.6, 6/29/01]

3.5.11.7 DEFINITIONS:

[Reserved.]

[1/15/97; 3.5.11.7 NMAC - Rn, 3 NMAC 5.11.7, 6/29/01]

3.5.11.8 PROPERTY FACTOR - IN GENERAL:

A. The property factor of the apportionment formula for the trade or business of the taxpayer shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of such trade or business. The term "real and tangible personal property" includes land, buildings, machinery, stocks of goods, equipment and other real and tangible personal property but does not include coin or currency.

B. Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of taxpayer's trade or business. The method of determining that portion of the value to be included in the factor will depend upon the facts of each case.

C. The property factor shall reflect the average value of property includable in the factor.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.11.8 NMAC - Rn, 3 NMAC 5.11.8, 6/29/01]

3.5.11.9 PROPERTY FACTOR - PROPERTY USED FOR THE PRODUCTION OF BUSINESS INCOME:

Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant

temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period (except inventoriable goods in process) shall be excluded from the factor until such property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of nonbusiness income, its sale or the lapse of an extended period of time (normally five years) during which the property is held for sale.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.11.9 NMAC - Rn, 3 NMAC 5.11.9, 6/29/01]

3.5.11.10 PROPERTY FACTOR - CONSISTENCY IN REPORTING:

A. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

B. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act or Article IV of the multistate tax compact are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.11.10 NMAC - Rn, 3 NMAC 5.11.10, 6/29/01]

3.5.11.11 PROPERTY FACTOR - NUMERATOR:

The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.11.11 NMAC - Rn, 3 NMAC 5.11.11, 6/29/01]

PART 12: VALUATION OF PROPERTY FOR INCLUSION IN PROPERTY FACTOR

3.5.12.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.5.12.1 NMAC - Rn, 3 NMAC 5.12.1, 6/29/01]

3.5.12.2 SCOPE:

This part applies to every taxpayer having income which is taxable for income tax purposes both within and without New Mexico.

[1/15/97; 3.5.12.2 NMAC - Rn, 3 NMAC 5.12.2, 6/29/01]

3.5.12.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.5.12.3 NMAC - Rn, 3 NMAC 5.12.3, 6/29/01]

3.5.12.4 DURATION:

Permanent.

[1/15/97; 3.5.12.4 NMAC - Rn, 3 NMAC 5.12.4, 6/29/01]

3.5.12.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.5.12.5 NMAC - Rn & A, 3 NMAC 5.12.5, 6/29/01]

3.5.12.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Uniform Division of Income for Tax Purposes Act.

[1/15/97; 3.5.12.6 NMAC - Rn, 3 NMAC 5.12.6, 6/29/01]

3.5.12.7 DEFINITIONS:

[Reserved.]

[1/15/97; 3.5.12.7 NMAC - Rn, 3 NMAC 5.12.7, 6/29/01]

3.5.12.8 PROPERTY FACTOR - VALUATION OF OWNED PROPERTY:

A. Property owned by the taxpayer shall be valued at its original cost. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.

B. If the original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer.

C. Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.

D. Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.12.8 NMAC - Rn, 3 NMAC 5.12.8, 6/29/01]

3.5.12.9 PROPERTY FACTOR - VALUATION OF RENTED PROPERTY:

A. Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for such property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. Subrents are not deducted when the subrents constitute business income because the property which produces the subrents is used in the regular course of a trade or business of the taxpayer when it is producing such income. Accordingly there is no reduction in its value.

B. "Annual rental rate" is the amount paid as rental for property for a twelve- month period (i.e., the amount of the annual rent). Where property is rented for less than a twelve-month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of twelve or more months and the current tax period covers a period of less than twelve months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than twelve months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month-to-month basis.

C. "Annual rent" is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(1) any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or a percentage of sales, profits or otherwise; and

(2) any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc.; if a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

D. "Annual rent" does not include:

(1) incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.; and

(2) royalties based on extraction of natural resources, whether represented by delivery or purchase; for this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property which constitutes a sharing of current or future production of natural resources from such property, irrespective of the method of payment or how such consideration may be characterized, whether as a royalty, advance royalty rental or otherwise.

E. Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.12.9 NMAC - Rn & A, 3 NMAC 5.12.9, 6/29/01; A, 7/31/12]

PART 13: DETERMINATION OF AVERAGE VALUE OF PROPERTY FOR INCLUSION IN PROPERTY FACTOR

3.5.13.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.5.13.1 NMAC - Rn, 3 NMAC 5.13.1, 6/29/01]

3.5.13.2 SCOPE:

This part applies to every taxpayer having income which is taxable for income tax purposes both within and without New Mexico.

[1/15/97; 3.5.13.2 NMAC - Rn, 3 NMAC 5.13.2, 6/29/01]

3.5.13.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.5.13.3 NMAC - Rn, 3 NMAC 5.13.3, 6/29/01]

3.5.13.4 DURATION:

Permanent.

[1/15/97; 3.5.13.4 NMAC - Rn, 3 NMAC 5.13.4, 6/29/01]

3.5.13.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.5.13.5 NMAC - Rn & A, 3 NMAC 5.13.5, 6/29/01]

3.5.13.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Uniform Division of Income for Tax Purposes Act.

[1/15/97; 3.5.13.6 NMAC - Rn, 3 NMAC 5.13.6, 6/29/01]

3.5.13.7 DEFINITIONS:

[Reserved.]

[1/15/97; 3.5.13.7 NMAC - Rn, 3 NMAC 5.13.7, 6/29/01]

3.5.13.8 PROPERTY FACTOR - AVERAGING PROPERTY VALUES:

A. As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and ending of the tax period. However, the department may require or allow averaging by monthly values if such method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

B. Averaging by monthly values will generally be applied if substantial fluctuations in the value of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

C. Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of such property as set forth in Section 3.5.12.9 NMAC.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.13.8 NMAC - Rn & A, 3 NMAC 5.13.8, 6/29/01]

PART 14: PAYROLL FACTOR FOR APPORTIONMENT OF BUSINESS INCOME

3.5.14.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.5.14.1 NMAC - Rn, 3 NMAC 5.14.1, 6/29/01]

3.5.14.2 SCOPE:

This part applies to every taxpayer having income which is taxable for income tax purposes both within and without New Mexico.

[1/15/97; 3.5.14.2 NMAC - Rn, 3 NMAC 5.14.2, 6/29/01]

3.5.14.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.5.14.3 NMAC - Rn, 3 NMAC 5.14.3, 6/29/01]

3.5.14.4 DURATION:

Permanent.

[1/15/97; 3.5.14.4 NMAC - Rn, 3 NMAC 5.14.4, 6/29/01]

3.5.14.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.5.14.5 NMAC - Rn & A, 3 NMAC 5.14.5, 6/29/01]

3.5.14.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Uniform Division of Income for Tax Purposes Act.

[1/15/97; 3.5.14.6 NMAC - Rn, 3 NMAC 5.14.6, 6/29/01]

3.5.14.7 DEFINITIONS:

[Reserved.]

[1/15/97; 3.5.14.7 NMAC - Rn, 3 NMAC 5.14.7, 6/29/01]

3.5.14.8 PAYROLL FACTOR - IN GENERAL:

A. The payroll factor of the apportionment formula for each trade or business of the taxpayer shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

B. The total amount "paid" to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation under such method for unemployment compensation purposes.

C. The compensation of any employee on account of activities which are connected with the production of nonbusiness income shall be excluded from the factor.

D. The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services provided that such amounts constitute income to the recipient under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such employees were subject to the federal Internal Revenue Code.

E. The term "employee" means any officer of a corporation or any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, an individual will be considered to be an employee if the individual is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. The term "employee" also includes a leased employee whenever the taxpayer is the employer or joint employer of such a leased employee.

F. In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

G. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act or Article IV of the multistate tax compact are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

[1/15/74, 9/15/88, 9/20/93, 1/15/97, 3/31/98; 3.5.14.8 NMAC - Rn & A, 3 NMAC 5.14.8, 6/29/01]

3.5.14.9 PAYROLL FACTOR - DENOMINATOR:

The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by Public Law 86-272, are included in the denominator of the payroll factor.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.14.9 NMAC - Rn & A, 3 NMAC 5.14.9, 6/29/01]

3.5.14.10 PAYROLL FACTOR - NUMERATOR:

The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Section 7-4-15 NMSA 1978 to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report such compensation under such method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitutes compensation paid in this state except for compensation excluded under Parts 3.5.14 and 3.5.15 NMAC. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.14.10 NMAC - Rn & A, 3 NMAC 5.14.10, 6/29/01]

PART 15: DETERMINATION OF COMPENSATION FOR INCLUSION IN PAYROLL FACTOR

3.5.15.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.5.15.1 NMAC - Rn, 3 NMAC 5.15.1, 6/29/01]

3.5.15.2 SCOPE:

This part applies to every taxpayer having income which is taxable for income tax purposes both within and without New Mexico.

[1/15/97; 3.5.15.2 NMAC - Rn, 3 NMAC 5.15.2, 6/29/01]

3.5.15.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.5.15.3 NMAC - Rn, 3 NMAC 5.15.3, 6/29/01]

3.5.15.4 DURATION:

Permanent.

[1/15/97; 3.5.15.4 NMAC - Rn, 3 NMAC 5.15.4, 6/29/01]

3.5.15.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.5.15.5 NMAC - Rn & A, 3 NMAC 5.15.5, 6/29/01]

3.5.15.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Uniform Division of Income for Tax Purposes Act.

[1/15/97; 3.5.15.6 NMAC - Rn, 3 NMAC 5.15.6, 6/29/01]

3.5.15.7 DEFINITIONS:

[Reserved.]

[1/15/97; 3.5.15.7 NMAC - Rn, 3 NMAC 5.15.7, 6/29/01]

3.5.15.8 PAYROLL FACTOR - COMPENSATION PAID IN THIS STATE:

A. Compensation is paid in this state if any one of the following tests, applied consecutively, are met.

(1) The employee's service is performed entirely within the state.

(2) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.

(3) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(a) if the employee's base of operations is in this state; or

(b) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

(c) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

B. The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.15.8 NMAC - Rn, 3 NMAC 5.15.8, 6/29/01]

PART 16: SALES FACTOR FOR APPORTIONMENT OF BUSINESS INCOME

3.5.16.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.5.16.1 NMAC - Rn, 3 NMAC 5.16.1, 6/29/01]

3.5.16.2 SCOPE:

This part applies to every taxpayer having income which is taxable for income tax purposes both within and without New Mexico.

[1/15/97; 3.5.16.2 NMAC - Rn, 3 NMAC 5.16.2, 6/29/01]

3.5.16.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.5.16.3 NMAC - Rn, 3 NMAC 5.16.3, 6/29/01]

3.5.16.4 DURATION:

Permanent.

[1/15/97; 3.5.16.4 NMAC - Rn, 3 NMAC 5.16.4, 6/29/01]

3.5.16.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.5.16.5 NMAC - Rn & A, 3 NMAC 5.16.5, 6/29/01]

3.5.16.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Uniform Division of Income for Tax Purposes Act.

[1/15/97; 3.5.16.6 NMAC - Rn, 3 NMAC 5.16.6, 6/29/01]

3.5.16.7 DEFINITIONS:

[Reserved.]

[1/15/97; 3.5.16.7 NMAC - Rn, 3 NMAC 5.16.7, 6/29/01]

3.5.16.8 SALES FACTOR - IN GENERAL:

A. Section 7-4-2 NMSA 1978 defines the term "sales" to mean all gross receipts of the taxpayer not allocated under Sections 7-4-5 through 7-4-9 NMSA 1978. Thus for the purposes of the sales factor of the apportionment formula for each trade or business of the taxpayer, the term "sales" means all gross receipts derived by the taxpayer from transactions and activity in the regular course of such trade or business. The following are rules for determining "sales" in various situations.

(1) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or

business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes and gross receipts taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.

(2) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, "sales" includes the entire reimbursed cost, plus the fee.

(3) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts or research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions and similar items.

(4) In the case of a taxpayer engaged in renting real or tangible property, "sales" includes the gross receipts from the rental, lease or licensing the use of the property.

(5) In the case of a taxpayer engaged in the sale, assignment or licensing of intangible personal property, such as patents and copyrights, "sales" includes the gross receipts therefrom.

(6) If a taxpayer derives receipts from the sale of equipment used in its business, such receipts constitute "sales". For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

B. In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business.

C. In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

D. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act or Article IV of the multistate tax compact are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.16.8 NMAC - Rn & A, 3 NMAC 5.16.8, 6/29/01]

3.5.16.9 SALES FACTOR - DENOMINATOR:

The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under Section 3.5.19.11 NMAC.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.16.9 NMAC - Rn & A, 3 NMAC 5.16.9, 6/29/01]

3.5.16.10 SALES FACTOR - NUMERATOR:

The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges or time-price differential charges incidental to such gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.16.10 NMAC - Rn, 3 NMAC 5.16.10, 6/29/01]

3.5.16.11 EFFECT OF COMBINED FILING ON THE SALES FACTOR:

For corporations that file on a combined or consolidated basis, the sales factor for the filing group is calculated without the inclusion of intercompany sales that would otherwise be deferred or eliminated under federal consolidated filing rules when calculating net income for the group.

[3.5.16.11 NMAC - N; 3/23/2021]

PART 17: DETERMINATION OF SALES IN THIS STATE OF TANGIBLE PERSONAL PROPERTY FOR INCLUSION IN SALES FACTOR

3.5.17.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.5.17.1 NMAC - Rn, 3 NMAC 5.17.1, 6/29/01]

3.5.17.2 SCOPE:

This part applies to every taxpayer having income which is taxable for income tax purposes both within and without New Mexico.

[1/15/97; 3.5.17.2 NMAC - Rn, 3 NMAC 5.17.2, 6/29/01]

3.5.17.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.5.17.3 NMAC - Rn, 3 NMAC 5.17.3, 6/29/01]

3.5.17.4 DURATION:

Permanent.

[1/15/97; 3.5.17.4 NMAC - Rn, 3 NMAC 5.17.4, 6/29/01]

3.5.17.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.5.17.5 NMAC - Rn & A, 3 NMAC 5.17.5, 6/29/01]

3.5.17.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Uniform Division of Income for Tax Purposes Act.

[1/15/97; 3.5.17.6 NMAC - Rn, 3 NMAC 5.17.6, 6/29/01]

3.5.17.7 DEFINITIONS:

[Reserved.]

[1/15/97; 3.5.17.7 NMAC - Rn, 3 NMAC 5.17.7, 6/29/01]

3.5.17.8 SALES FACTOR - SALES OF TANGIBLE PERSONAL PROPERTY IN THIS STATE:

A. Gross receipts from sales of tangible personal property (except sales to the United States government) are in this state:

(1) If the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale; or

(2) If the property is shipped from an office, store, warehouse, factory or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

B. Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

C. Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

D. The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

E. When property being shipped by a seller from the state of origin to a consignee in another state is diverted while enroute to a purchaser in the state, the sales are in this state.

F. If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory or other place of storage in this state.

G. If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(1) if the taxpayer is taxable in the state from which the third party ships the property, then the sale is in such state.

(2) if the taxpayer is not taxable in the state from which the property is shipped, then the sale is in this state.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.17.8 NMAC - Rn, 3 NMAC 5.17.8, 6/29/01]

3.5.17.9 SALES FACTOR - SALES OF TANGIBLE PERSONAL PROPERTY TO UNITED STATES GOVERNMENT IN THIS STATE:

Gross receipts from sales of tangible personal property to the United States government are in this state if the property is shipped from an office, store, warehouse, factory or other place of storage in this state. For purposes of Section 3.5.17.9 NMAC, only sales for which the United States government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.17.9 NMAC - Rn & A, 3 NMAC 5.17.9, 6/29/01]

PART 18: DETERMINATION OF SALES IN THIS STATE OF OTHER THAN TANGIBLE PERSONAL PROPERTY FOR INCLUSION IN SALES FACTOR

3.5.18.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.5.18.1 NMAC - Rp, 3.5.18.1 NMAC, 3/23/2021]

3.5.18.2 SCOPE:

This part applies to every taxpayer having income which is taxable for income tax purposes both within and without New Mexico.

[3.5.18.2 NMAC - Rp, 3.5.18.2 NMAC, 3/23/2021]

3.5.18.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.5.18.3 NMAC - Rp, 3.5.18.3 NMAC, 3/23/2021]

3.5.18.4 DURATION:

Permanent.

[3.5.18.4 NMAC - Rp, 3.5.18.4 NMAC, 3/23/2021]

3.5.18.5 EFFECTIVE DATE:

March 23, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.5.18.5 NMAC - Rp, 3.5.18.5 NMAC, 3/23/2021]

3.5.18.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Uniform Division of Income for Tax Purposes Act.

[3.5.18.6 NMAC - Rp, 3.5.18.6 NMAC, 3/23/2021]

3.5.18.7 DEFINITIONS:

[RESERVED]

[3.5.18.7 NMAC - Repealed, 3/23/2021]

3.5.18.8 SALES FACTOR - SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY IN THIS STATE - APPLICABLE TO TAXABLE YEARS BEGINNING PRIOR TO JANUARY 1, 2020:

A. In general. Section 7-4-18 NMSA 1978 provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government). Under Section 7-4-18 NMSA 1978 gross receipts are attributed to this state if the income producing activity which gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance.

B. Income producing activity: defined.

(1) The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its obtaining gains or profit. Such activity does not include transactions and activities performed on behalf of a taxpayer such as those conducted on its behalf by an independent contractor. Accordingly, income producing activity includes but is not limited to the following:

(a) the rendering of personal services by employees or the utilization of tangible or intangible property by the taxpayer in performing a service;

(b) the sale, rental, leasing, licensing or other use of real property;

(c) the rental, leasing, licensing or other use of tangible personal property; or

(d) the sale, licensing or other use of intangible personal property.

(2) The mere holding of intangible personal property is not, of itself, an income producing activity.

C. Costs of performance: defined. The term "costs of performance" means direct cost determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

D. Application:

(1) In general. Receipts (other than from sales of tangible personal property) in respect to a particular income producing activity are in this state if:

(a) the income producing activity is performed wholly within this state; or

(b) the income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.

(2) Special rules: The following are special rules for determining when receipts from the income producing activities described below are in this state:

(a) Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state.

(b) Gross receipts from the rental, lease or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state; consequently, if property is within and without this state during the rental lease or licensing period, gross receipts attributable to this state shall be measured by the ratio which the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during such period.

(c) Gross receipts for the performance of personal services are attributable to this state to the extent such services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of such services shall be attributable to this state only if a greater portion of the services were performed in this state, based on costs of performance. Usually where services are performed partly within and partly without this state the services performed in each state will constitute a separate income producing activity; in such case the gross receipts for the performance of services attributable to this state shall be measured by the ratio which the time spent in performing such services in this state bears to the total time spent in performing everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which gives rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations.

E. This section applies to taxable years beginning before January 1, 2020.

[3.5.18.8 NMAC - Rp, 3.5.18.8 NMAC, 3/23/2021]

3.5.18.9 SALES FACTOR - SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY IN THIS STATE - APPLICABLE TO TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2020:

A. Sales factor: Sales other than sales of tangible personal property in this state: General rules:

(1) Definitions. For the purposes of this Section (3.5.18.9 NMAC) these terms have the following meanings:

(a) "Billing address" means the primary mailing address relating to a customer's account as of the time of the transaction as kept in good faith in the normal course of business and not for tax avoidance purposes.

(b) "Business customer" means a customer that is a business or organization operating in any form and generally includes customers other than individual customers.

(c) "Customer" means the person with which the taxpayer has a contract for the transaction, regardless of who pays for or may benefit from the transaction.

(d) "IRC" means the Internal Revenue Code as currently written and subsequently amended.

(e) "Individual customer" means a customer that is a natural person.

(f) "Intangible property" means property that is not physical or whose representation by physical means is merely incidental.

(g) "Place of order" means the physical location from which a customer places an order resulting in a contract with the taxpayer.

(h) "Population" means the most recent population data maintained by the U.S. census bureau for the year in question as of the close of the taxable period.

(i) "Related party" means any person who may exercise control of the taxpayer, or is generally controlled by the taxpayer, directly or indirectly, whether through ownership or agreement.

(j) "Sale" in the context of Section 7-4-18 NMSA 1978 means a transaction described in that section, including a lease or license and depending on the context also means the receipts from that transaction.

(k) "Source" means, in general, attributing a sale to a state using the rules under Section 7-4-18 NMSA, 1978 and this regulation.

(l) "State or location where a contract of sale is principally managed by the customer" means the primary location from which a customer's employee or agent interacts with the taxpayer and oversees the taxpayer's activities under the contract.

(m) "Use" means use for the intended purpose of the intangible property.

(2) Hierarchical rules: Where a hierarchical rule applies under this regulation, a taxpayer must make a reasonable effort to apply each rule, in order, before defaulting to any subsequent rule.

(3) Rules of reasonable approximation as provided for in Subsection B of Section 7-4-18 NMSA 1978. This regulation includes various rules of reasonable approximation for determining when a sale should be included in the New Mexico sales factor numerator. These rules apply when the proper inclusion of sales in sales factor numerator cannot be determined. The method of reasonable approximation should make use of reliable information and be applied consistently.

(4) Exclusion of sales from the sales factor: As provided in Subsection C of Section 7-4-18 NMSA 1978, sales should be excluded from the sales factor if:

(a) using the same rules applicable under Subsection A of Section 7-4-19 NMSA 1978 or a method of reasonable approximation under Subsection B of Section 7-4-18 NMSA 1978 used by the taxpayer to determine if sales are included in the New Mexico sales factor numerator, the sales would be sourced to a state in which the taxpayer is not taxable, as defined under Section 7-4-4 NMSA 1978 and applicable regulations; or

(b) the taxpayer is unable to determine where sales are sourced under Subsection A of Section 7-4-18 NMSA 1978 or a proper method of reasonable approximation under Subsection B of Section 7-4-18 NMSA 1978.

(5) Related-party transactions - Information imputed from customer to taxpayer. Where a taxpayer has receipts subject to this Section (3.5.18.9 NMAC) from transactions with a related-party customer, any information necessary to apply the rules under Subsection A Section 7-4-18 NMSA 1978 will be imputed to the taxpayer and the taxpayer may not use a rule of reasonable approximation to determine if those sales should be included in the New Mexico sales factor numerator or should be excluded from the sales factor under Subsection C Section 7-4-18 NMSA 1978.

(6) No limitation on Section 7-4-19 NMSA 1978. Nothing in this regulation limits the authority granted to the department under Section 7-4-19 NMSA 1978. Regulations adopted pursuant to Section 7-4-19 NMSA 1978 control to the extent they conflict with provisions of this regulation.

B. Sale, rental, lease or license of real property. In the case of a sale, rental, lease or license of real property, the receipts from the sale are in New Mexico if and to the extent that the property is in New Mexico.

C. Rental, lease or license of tangible personal property: In the case of a rental, lease or license of tangible personal property, the receipts are from the sale of tangible personal property in New Mexico if and to the extent that the tangible personal property is located in New Mexico. If property is mobile property that is located both within and

without New Mexico during the period of the lease or other contract, the receipts are assigned to New Mexico in the same percentage as the time the property is used in the state.

D. Sale of a service: general rule - Determining the category of a service. The receipts are from a sale of a service in New Mexico if and to the extent that the product of the service or the service is delivered to a location in New Mexico. These rules in this subsection define three general categories of services and set out rules for when a service in that category is delivered in New Mexico. A service may fall into more than one category. If a service could be characterized as both an in-person service and a professional service, it will be deemed an in-person service. The third category of service - other services - excludes services that can be categorized and assigned based on the rules for in-person or professional services.

(1) In-person services: An in-person service is a service that is physically performed by the taxpayer, whether through employees, agents, or by third parties on behalf of the taxpayer, while in the same location as the customer or on the customer's real or tangible personal property. Examples include: heath care services; in-person training or entertainment; child care services; repair, installation, cleaning or maintenance services; and construction and similar services.

(a) Determining the New Mexico sales factor numerator. Sales of in-person services are included in the New Mexico sales factor numerator if those services are performed on a customer or the customer's property in the state.

(b) Reasonable approximation. If the taxpayer has insufficient information to determine where its in-person services are performed, the taxpayer shall reasonably approximate where those sales are sourced using general information on customers' locations or other similar information.

(2) Professional services. In general. Professional services are services performed for customers by the taxpayer's employees or agents, or by third parties on behalf of the taxpayer, which require the application of specialized knowledge or skill to the customer's particular facts and circumstances, but exclude in-person services. Examples include: management, consulting and similar services; financial and investment services not subject to 3.5.19.17 NMAC; technology and data processing services; legal services; and architectural, engineering and design services.

(a) Determining the New Mexico sales factor numerator: The following hierarchy of rules apply:

(i) Architectural and engineering services with respect to real or tangible personal property. If the service is an architectural or engineering service, it is included in the New Mexico sales factor numerator if the service relates to real estate improvements or tangible personal property located, or expected to be located, in the state.

(ii) Related party transactions. If the customer is a related party, then the taxpayer's sale of the services to that customer are included in the New Mexico sales factor numerator to the extent of that customer's New Mexico apportionment factor as properly determined under Section 7-4-1, et seq. NMSA 1978 and applicable regulations.

(iii) Large individual or business customers: If the sale is to an individual or business customer to which the taxpayer sells five percent or more of its total professional services in a single year, then the sale is included in the New Mexico sales factor numerator: (1) if the customer is an individual customer whose residence is New Mexico, or (2) if the customer is a business customer and the place where the contract for professional services is primarily managed by the customer is in New Mexico.

(iv) Other individual customers: If the taxpayer has information to accurately determine where an individual customer takes delivery of the sale of the professional service, then that sale is included in the New Mexico sales factor numerator if the customer took delivery of the service in New Mexico. Otherwise, the sale is included in the New Mexico sales factor numerator if the customer's primary billing address is in the state.

(v) Other business customers: If the taxpayer has information to accurately determine the location from which the contract for professional services is principally managed by a business customer, then the sale is included in the New Mexico sales factor numerator if that location is in New Mexico. Otherwise, the sale is included in the sales factor numerator if the customer's billing address is in New Mexico.

(b) Reasonable approximation: If, in applying the rules under (iv) and (v) above, the taxpayer lacks information to determine the customer's primary billing address (for example, if someone other than the customer is paying for the service) the taxpayer may use a method of reasonable approximation to determine whether the sales for which the information is lacking are included in the New Mexico sales factor numerator and to determine the sourcing of those sales for purposes of Subsection C of Section 7-4-18 NMSA 1978.

(3) Other services. Services other than in-person or professional services are sourced under this Paragraph (3) of Subsection D of 3.5.18.9 NMAC. The rules in this paragraph may distinguish services based on whether they are delivered physically or electronically, whether they are delivered to a customer or to a third party (including the customer's customer), and whether the customer is an individual or business customer. If a rule depends on whether the customer is an individual or a business customer, and the taxpayer acting in good faith cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer.

(a) Services delivered by physical means to a customer or a third party. Services delivered by physical means to a customer or third party exclude in-person and professional services, but generally include delivery services, themselves, and services that produce a physical product which is then delivered by the taxpayer. In addition to delivery services, examples include: items designed and printed by the taxpayer to the order of the customer that are delivered to the customer's customers by mail; and customized software services where the software is physically installed on the customer's computer.

(i) Determining the New Mexico sales factor numerator. The sale of services delivered by physical means to a customer or third party are delivered are included in the New Mexico sales factor numerator if the delivery takes place in New Mexico.

(ii) Rule of reasonable approximation. If the taxpayer cannot determine where services are actually delivered, the taxpayer may use a method of reasonable approximation determine sales that will be included in the New Mexico sales factor, and for purposes of Subsection C of 7-4-18 NMSA 1978, including the use of population or other information.

(b) Services delivered electronically to a customer. Services delivered electronically include services that are transmitted by any electronic medium whether or not the service provider owns, leases or otherwise controls medium.

(i) Determining the New Mexico sales factor numerator. In the case of the sale of a service delivered electronically, the following hierarchy of rules apply: (a) if the sale is to a related party, the sale is included in the New Mexico sales factor numerator to the extent of that customer's New Mexico apportionment factor as properly determined under Section 7-4-1, et seq. NMSA 1978 and applicable regulations; (b) if the sale is to an individual or business customer to which the taxpayer sells five percent or more of its total other services in a single year, the sale is included in the New Mexico sales factor numerator: if the customer is an individual customer whose residence is New Mexico, or if the customer is a business customer and the place where the contract for professional services is primarily managed by the customer is in New Mexico; and (c) if the sale is to a customer other than a customer described in (a) or (b), the sale is included in the New Mexico sales factor numerator if the customer's primary billing address is in the state.

(ii) Reasonable Approximation: If, in applying the rule under sub-item (c) of item (i) above, the taxpayer lacks information to determine the customer's primary billing address (for example, if someone other than the customer is paying for the service) the taxpayer may use a method of reasonable approximation to determine whether the sales for which the information is lacking are included in the New Mexico sales factor numerator and to determine the sourcing of those sales for purposes of Subsection C of Section 7-4-18 NMSA 1978.

(c) Services delivered electronically on behalf of a customer to a third party. A service delivered electronically "on behalf of" a customer is one in which a customer contracts for the service to be delivered electronically directly by the taxpayer or through one or more intermediaries, provided the service does not change its form, to one or more third parties who are the customer's intended recipients of the service. Examples include: delivery of electronic advertising to a customer's intended audience and subcontracted services performed electronically for the customer's customers.

(i) determining the New Mexico sales factor numerator. The sale of a service delivered electronically to third-party recipients on behalf of the customer is delivered in New Mexico if and to the extent that the third-party recipients are in New Mexico;

(ii) rule of reasonable approximation. If the taxpayer cannot determine the state or states where the sales of a service delivered electronically are actually delivered to the customer's intended third-party recipients, the taxpayer may use a method of reasonable approximation to determine whether the sales are included in the New Mexico sales factor numerator and to determine the sourcing of those sales for purposes of Subsection C of Section 7-4-18 NMSA 1978.

E. Sale, lease, or license of intangible property. General rule. Sourcing of receipts from the sale, lease or license of intangible property depends primarily on the nature of the intangible property and the method by which receipts are determined, rather than on whether the transaction is a true sale, lease or license.

(1) Contract right or government license that authorizes activity in specific geographic area. In the case of a sale, lease or license of a contract right, government license or similar intangible property that authorizes the holder to conduct a activity in a specific geographic area, the receipts from the sale are included in the New Mexico sales factor numerator to the extent that the intangible property is used or is authorized to be used within the state.

(2) Marketing intangible: The receipts from granting a right to use intangible property in connection with the sale, lease, license, or other marketing of goods or services to a consumer are included in the New Mexico sales factor numerator to the extent of the sale or provision of those goods or services is located or occurs in New Mexico. Examples of marketing intangibles include trademarks, service marks and trade names.

(3) Production intangible: The receipts from granting a right to use intangible property, other than a marketing intangible, used in manufacturing (a "production intangible") are included in the New Mexico sales factor numerator to the extent that the use for which the fees are paid takes place in New Mexico.

(4) Mixed intangible: The receipts from a sale, lease or license transaction that involves a mixture of a marketing and production intangible may be included in the New Mexico sales factor as provided in Paragraphs (2) or (3) of Subsection E of 3.5.18.9 NMAC on the basis of the taxpayer's separate statement of these rights, and the related receipts, to the customer as part of the contract with the customer. Otherwise, the receipts will be treated as receipts from a marketing intangible.

(5) Intangible property that resembles a sale of goods or services, including digital goods and services. If receipts from the sale, lease or license of intangible property resembles the sale of a goods or services such that other rules under Section 7-4-17-18 NMSA 1978, or these or other regulations of the department can accurately and appropriately be used to source those receipts, including rules of reasonable approximation, the receipts are included in the New Mexico sales factor numerator as provided in those rules.

(6) Sublicenses. If the receipts from the sale, lease or license of intangible property is to a customer that the taxpayer is aware will grant a sublicense to others, regardless of the form that sublicense may take, and if the taxpayer's own receipts are determined based on its customer's sublicensing of the intangible property, then the taxpayer shall use the rules under this regulation, including rules of reasonable approximation, that would apply to the sourcing of its customer's receipts to determine the sales to be included in the New Mexico sales factor numerator. It is not necessary for the application of this paragraph for the taxpayer to use the same method actually used by its customer to source the sublicensing receipts.

(7) Software transactions - Generally: Receipts from the sale, lease or license of software, whether "canned" or custom, is treated as the sale, lease or license of tangible personal property, rather than intangible property or the performance of a service, except that, to the extent necessary, the taxpayer may use a method of reasonable approximation under these rules if the taxpayer lacks information to determine where the software is delivered.

F. Mediation: Whenever a taxpayer is subjected to different sourcing methodologies regarding intangibles or services, by the department and one or more other state taxing authorities, the taxpayer may petition for, and the department may participate in, and encourage the other state taxing authorities to participate in, non-binding mediation in accordance with the alternative dispute resolution rules promulgated by the multistate tax commission from time to time, regardless of whether all the state taxing authorities are members of the multistate tax compact.

[3.5.18.9 NMAC - N, 3/23/2021]

PART 19: EQUITABLE ADJUSTMENT OF STANDARD ALLOCATION OR APPORTIONMENT

3.5.19.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[7/15/96; 3.5.19.1 NMAC - Rn, 3 NMAC 5.19.1, 6/29/01]

3.5.19.2 SCOPE:

This part applies to every taxpayer having income which is taxable for income tax purposes both within and without New Mexico.

[7/15/96, 1/15/97; 3.5.19.2 NMAC - Rn, 3 NMAC 5.19.2, 6/29/01]

3.5.19.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[7/15/96; 3.5.19.3 NMAC - Rn, 3 NMAC 5.19.3, 6/29/01]

3.5.19.4 DURATION:

Permanent.

[7/15/96; 3.5.19.4 NMAC - Rn, 3 NMAC 5.19.4, 6/29/01]

3.5.19.5 EFFECTIVE DATE:

7/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[7/15/96, 1/15/97; 3.5.19.5 NMAC - Rn & A, 3 NMAC 5.19.5, 6/29/01]

3.5.19.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Uniform Division of Income for Tax Purposes Act.

[7/15/96; 3.5.19.6 NMAC - Rn, 3 NMAC 5.19.6, 6/29/01]

3.5.19.7 DEFINITIONS:

[Reserved.]

[7/15/96; 3.5.19.7 NMAC - Rn, 3 NMAC 5.19.7, 6/29/01]

3.5.19.8 SPECIAL RULES - IN GENERAL:

A. Section 7-4-19 NMSA 1978 provides that if the allocation and apportionment provisions of Sections 7-4-2 to 7-4-18 NMSA 1978 do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) separate accounting;

(2) the exclusion of any one or more of the factors;

(3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

B. Section 7-4-19 NMSA 1978 permits a departure from the allocation and apportionment provisions of Sections 7-4-2 to 7-4-18 NMSA 1978 only in limited and specific cases where the apportionment and allocation provisions contained in Sections 7-4-2 to 7-4-18 NMSA 1978 produce incongruous results.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.19.8 NMAC - Rn & A, 3 NMAC 5.19.8, 6/29/01; A, 7/31/12]

3.5.19.9 ADJUSTMENT OF FORMULA:

A. If a taxpayer requests any deviation from the statutory allocation and apportionment formula, the taxpayer must submit a written petition to the department with the return. The petition must be accompanied by returns for the taxable year computed on both:

(1) the basis of the standard statutory allocation and apportionment formula; and

(2) the basis of the method requested by the taxpayer.

B. To avoid interest and penalty under the Tax Administration Act, timely payment of tax based on the statutory allocation and apportionment formula must be made on the due date. If the petition is allowed in whole or in part, in an appropriate case the petition will be considered a claim for refund.

C. In the case of certain industries such as air transportation, rail transportation, ship transportation, trucking, television, radio, motion pictures, various types of professional athletics, and so forth, the provisions of Parts 3.5.10 through 3.5.18 NMAC

in respect to the apportionment formula may not set forth appropriate procedures for determining the apportionment factors. Nothing in Section 7-4-19 NMSA 1978 or in Sections 3.5.19.8 through 3.5.19.11 NMAC shall preclude the department from establishing appropriate procedures under Section 7-4-11 to 7-4-18 NMSA 1978 for determining the apportionment factors for each such industry, but such procedures shall be applied uniformly.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.19.9 NMAC - Rn & A, 3 NMAC 5.19.9, 6/29/01]

3.5.19.10 SPECIAL RULES - PROPERTY FACTOR:

The following special rules are established in respect to the property factor of the apportionment formula:

A. If the subrents taken into account in determining the net annual rental rate under Section 3.5.12.9 NMAC produce a negative or clearly inaccurate value for any item of property, another method which will properly reflect the value of rented property may be required by the department or requested by the taxpayer. In no case however, shall such value be less than an amount which bears the same ratio to the annual rental rate paid by the taxpayer for such property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property.

B. If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for such property shall be determined on the basis of a reasonable market rental rate for such property.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.19.10 NMAC - Rn & A, 3 NMAC 5.19.10, 6/29/01]

3.5.19.11 SPECIAL RULES - SALES FACTOR:

A. The following special rules are established in respect to the sales factor of the apportionment formula:

(1) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, such gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

(2) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless such exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, business automobiles, etc.

(3) Where the income producing activity in respect to business income from intangible personal property can be readily identified, such income is included in the denominator of the sales factor and, if the income producing activity occurs in this state, in the numerator of the sales factor as well. For example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property and income from the sale, licensing or other use of intangible personal property.

(4) Where the taxpayer realizes gains from the sale or other disposition of intangible property held as part of the taxpayer's short term investments of working capital, only the net gain from such sales reported as taxable income shall be included in the taxpayer's sales factor.

B. Where business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, such income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.19.11 NMAC - Rn, 3 NMAC 5.19.11, 6/29/01]

3.5.19.12 SPECIAL RULES - CONSTRUCTION CONTRACTORS:

A. The special rules established in Section 3.5.19.12 NMAC apply to the apportionment of income of long-term construction contractors.

B. *In general*. When a taxpayer elects to use the percentage of completion method of accounting, or the completed contract method of accounting for long-term contracts (construction contracts covering a period in excess of one year from the date of execution of the contract to the date on which the contract is finally completed and accepted), and has income from sources both within and without this state from a trade or business, the amount of business income derived from such long-term contracts from sources within this state shall be determined pursuant to this section. In such cases, the first step is to determine which portion of the taxpayer's income constitutes "business income" and which portion constitutes "nonbusiness income" under Section 7-4-2 NMSA 1978 and Sections 3.5.1.9 and 3.5.1.10 NMAC. Nonbusiness income is directly allocated to specific states pursuant to the provisions of Section 7-4-5 through 7-4-9 NMSA 1978, inclusive. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll, and sales apportionment factors set forth in this section. The sum of (1) the items nonbusiness income directly allocated to this state and (2) the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax by this state.

C. *Business and nonbusiness income*. For definitions and rules for determining business and nonbusiness income, see Sections 3.5.1.9 and 3.5.1.10 NMAC.

D. *Methods of accounting and year of inclusion*. New Mexico follows the Internal Revenue Code with respect to general rules of accounting, definitions and methods of accounting for long-term construction contracts.

E. Apportionment of business income.

(1) In general. Business income is apportioned to this state by a three-factor formula consisting of property, payroll and sales regardless of the method of accounting for long-term contracts elected by the taxpayer. The total of the property, payroll and sales percentages is divided by three to determine the amount apportioned to this state.

(2) Percentage of completion method. Under this method of accounting for long-term contracts, the amount to be included each year as business income from each contract is the amount by which the gross contract price which corresponds to the percentage of the entire contract which has been completed during the income year exceeds all expenditures made during the income year in connection with the contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the income year for use in each such contract.

(3) Completed contract method. Under this method of accounting business income derived from long-term contracts is reported for the income year in which the contract is finally completed and accepted. Therefore, a special computation is required to compute the amount of business income attributable to this state from each completed contract. Thus, all receipts and expenditures applicable to such contracts whether complete or incomplete as of the end of the income year are excluded from business income derived from other sources, as for example, short-term contracts, interest, rents, royalties, etc., which is apportioned by the regular three-factor formula of property, payroll and sales.

(4) Property factor. In general the numerator and denominator of the property factor shall be determined as set forth in Sections 7-4-11, 7-4-12 and 7-4-13 NMSA 1978, inclusive, and Sections 3.5.11.8 through 3.5.11.11, 3.5.12.8, 3.5.12.9 and 3.5.13.8 NMAC inclusive. However, the following special rules are also applicable.

(a) The average value of the taxpayer's cost (including materials and labor of construction in progress, to the extent that such costs exceed progress billings (accrued or received, depending on whether the taxpayer is on the accrual or cash basis for keeping its accounts) shall be included in the denominator of the property factor. The value of any such construction costs attributable to construction projects in this state shall be included in the numerator of the property factor.

(b) Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate even though such rental expense may be capitalized into the cost of construction.

(c) The property factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though under the completed contract method of accounting, business income is computed separately (see Subsection F of this section below).

(5) Payroll factor. In general the numerator and denominator of the payroll factor shall be determined as set forth in Section 7-4-14 and 7-4-15 NMSA 1978 and Sections 3.5.14.8 through 3.5.14.13 and 3.5.15.8 NMAC. However, the following special rules are also applicable:

(a) Compensation paid employees which is attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

(b) Compensation paid employees who in the aggregate perform most of their services in a state to which their employer does not report them for unemployment tax purposes, shall nevertheless be attributed to the state in which the services are performed.

(c) The payroll factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though, under the completed contract method of accounting, business income is computed separately (see Subsection F of this section below).

(6) Sales factor. In general, the numerator and denominator of the sales factor shall be determined as set forth in Sections 7-4-16 through 7-4-18 NMSA 1978, inclusive, and Sections 3.5.16.8 through 3.5.16.10, 3.5.17.8, 3.5.17.9 and 3.5.18.8 NMAC, inclusive. However, the following special rules are also applicable:

(a) Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio which construction costs for their project in this state incurred during the income year bear to the total of construction costs for the entire project during the income year, or upon any other method, such as engineering cost estimates, which will provide a reasonable apportionment.

(b) If the percentage of completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year.

(c) If the completed contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received or accrued, whichever is applicable, during the income year attributable to each contract.

(d) The sales factor, except as noted above in items 2 and 3 above, is computed in the same manner, regardless of which long-term method of accounting the taxpayer has elected, and is computed for each income year even though, under the completed contract method of accounting, business income is computed separately.

(7) Apportionment percentage. The total of the property, payroll and sales percentages is divided by three to determine the apportionment percentage. The apportionment percentage is then applied to business income to establish the amount apportioned to this state.

F. *Completed contract methods - special computation*. The completed contract method of accounting requires that the reporting of income (or loss) be deferred until the year in which the construction project is completed or accepted. Accordingly, a separate computation is made for each such contract completed during the income year, regardless of whether the project is located within or without this state, in order to determine the amount of income which is attributable to sources within this state. The amount of income from each contract completed during the income year apportioned to this state plus other business income apportioned to this state by the regular three-factor formula such as interest income, rents, royalties, income from short-term contracts, etc. plus all nonbusiness income allocated to this state is the measure of tax for the income year. The amount of income (or loss) from each contract which is derived from sources within this state using the completed contract method of accounting is computed as follows:

(1) in the income year in which the contract is completed, the income (or loss) therefrom is determined; and then

(2) the income (or loss) determined at Paragraph (1) of this subsection is apportioned to this state by the following method:

(a) a fraction is determined for each year during which the contract was in progress; the numerator is the amount of construction costs paid or accrued in each year during which the contract was in progress and the denominator is the total of all such construction costs for the project;

(b) each percentage determined in 1 above is multiplied by the apportionment formula percentage for that year as determined in Paragraph (7) of Subsection E of this section;

(c) the percentages determined at Subparagraph (b) of this paragraph for each year during which the contract was in progress are totaled; the amount of total income (or loss) from the contract determined at Paragraph (1) of this subsection is

multiplied by the total percentage; the resulting income (or loss) is the amount of business income from such contract derived from sources within this state.

G. *Computation for year of withdrawal, dissolution or cessation of business - completed method*.

(1) Use of the completed contract method of accounting for long-term contracts requires that income derived from sources within this state from incomplete contracts in progress outside this state on the date of withdrawal, dissolution or cessation of business in this state be included in the measure of tax for the taxable year during which the corporation withdraws, dissolves or ceases doing business in this state.

(2) The amount of income (or loss) from each such contract to be apportioned to this state by the apportionment method set forth in Paragraph (2) of Subsection F of this section shall be determined as if the percentage of completion method of accounting were used for all such contracts on the date of withdrawal, dissolution or cessation of business. The amount of business income (or loss) for each such contract shall be the amount by which the gross contract price from each such contract which corresponds to the percentage of the entire contract which has been completed from the commencement thereof to the date of withdrawal, dissolution or cessation of business exceeds all expenditures made during such period in connection with each such contract. In so doing, one must take into account the material and supplies on hand at the beginning and end of the income year for use in each such contract.

H. The provisions of this version of this section retroactively apply to any taxable year beginning on or after January 1, 1996.

[12/29/89, 9/20/93, 7/15/96; 3.5.19.12 NMAC - Rn & A, 3 NMAC 5.19.12, 6/29/01]

3.5.19.13 SPECIAL RULES - RAILROADS:

A. The special rules established in Section 3.5.19.13 NMAC apply to railroads.

B. *In general*. Where a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this section. In such cases, the first step is to determine what portion of the railroad's income constitutes "business" income and which portion constitutes "nonbusiness" income under Section 7-4-2 NMSA 1978 and Sections 3.5.1.9 and 3.5.1.10 NMAC. Nonbusiness income is directly allocable to specific states pursuant to the provisions of Sections 7-4-5 through 7-4-9 NMSA 1978, inclusive. Business income is apportioned among the states in which the business is conducted pursuant to property, payroll and sales apportionment factors set forth in this section. The sum of the items of nonbusiness income directly allocated to this state and the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax by this state.

C. *Business and nonbusiness income*. For definitions and rules for determining business and nonbusiness income, see Sections 3.5.1.9 and 3.5.1.10 NMAC.

D. *Apportionment of business income*.

(1) In general. The property factor shall be determined in accordance with Parts 3.5.11 through 3.5.13 NMAC and the sales factor in accordance with Parts 3.5.14 and 3.5.15 NMAC, inclusive, except as modified in this section.

(2) The property factor.

(a) Property valuation. Owned property shall be valued at its original cost and property rented from others shall be valued at eight (8) times the net annual rental rate in accordance with Section 7-4-12 NMSA 1978. Railroad cars owned and operated by other railroads and temporarily used by the taxpayer in its business and for which a per diem or mileage charge is made are not included in the property factor as rented property. Railroad cars owned and operated by the taxpayer and temporarily used by other railroads in their business and for which a per diem charge is made by the taxpayer are included in the property factor of the taxpayer.

(b) General definitions. The following definitions are applicable to the numerator and denominator of the property factor.

(i) "Original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions); or, if the property has no such basis, the valuation of such property for interstate commerce commission purposes. If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

(ii) "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

(iii) The "value" of owned real and tangible personal property shall mean its original cost.

(iv) "Average value" of property means the amount determined by averaging the values at the beginning and ending of the income tax year, but the department may require the averaging of monthly values during the income year or such averaging as necessary to effect properly the average value of the railroad's property.

(v) The "value" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate.

(vi) "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(vii) "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

(viii) A "locomotive-mile" is the movement of a locomotive (a self-propelled unit of equipment designed solely for moving other equipment) a distance of one mile under its own power.

(ix) A "car-mile" is a movement of a unit of car equipment a distance of one mile.

(c) The denominator and numerator of the property factor.

(i) The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(ii) In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers which are located within and without this state during the income year shall be included in the numerator of the property factor in accordance with Sections 7-4-11 through 7-4-13 NMSA 1978, inclusive, and Parts 3.5.11 through 3.5.13 NMAC, inclusive.

(iii) Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers which are located within and without this during the income year shall be included in the numerator of the property factor in the ratio which "locomotive-miles" and "car-miles" in the state bear to the total everywhere.

(3) The payroll factor.

(a) The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. With respect to all personnel except enginemen and trainsmen performing services on interstate trains, compensation paid to such employees shall be included in the numerator as provided in Sections 7-4-14 and 7-4-15 NMSA 1978 and Parts 3.5.14 and 3.5.15 NMAC.

(b) With respect to enginemen and trainmen performing services on interstate trains, compensation paid to such employees shall be included in the numerator of the payroll factor in the ratio which their services performed in this state bear to their

services performed everywhere. Compensation for services performed in this state should be deemed to be the compensation reported or required to be reported by such employees for determination of their income tax liability to this state.

(4) The sales (revenue) factor.

(a) In general.

(i) All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer which produces business income, except per diem and mileage charges which are collected by the taxpayer, is included in the denominator of the revenue factor.

(ii) The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with Sections 7-4-16, 7-4-17 and 7-4-18 NMSA 1978 and Parts 3.5.16 through 3.5.18 NMAC.

(b) Numerator of sales (revenue) factor from freight, mail and express. The total revenue of the taxpayer in this state during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to this state as follows:

(i) all receipts from shipments which both originate and terminate within this state; and

(ii) that portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio which the miles traveled by such movement or shipment in this state bear to the total miles traveled by such movement or shipment from point of origin to destination.

(c) Numerator of sales (revenue) factor from passengers. The numerator of the sales (revenue) factor shall include:

(i) all receipts from the transportation of passengers (including mail and express handled in passenger service) which both originate and terminate within this state; and

(ii) that portion of the receipts from the transportation of interstate passengers (including mail and express handled in passenger service) determined by the ratio which revenue passenger miles in this state bear to the total everywhere.

E. The provisions of Section 3.5.19.13 NMAC apply to any taxable year beginning on or after January 1, 1990.

[12/29/89, 9/20/93, 1/15/97; 3.5.19.13 NMAC - Rn & A, 3 NMAC 5.19.13, 6/29/01]

3.5.19.14 SPECIAL RULES - AIRLINES:

A. The special rules established in Section 3.5.19.14 NMAC apply to airlines.

B. *In general*. Where an airline has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to the provisions of the Uniform Division of Income for Tax Purposes Act, Sections 7-4-1 through 7-4-21 NMSA 1978, except as modified by this section.

C. *Apportionment of business income.*

(1) General definitions. The following definitions are applicable to the terms used in the apportionment factor descriptions.

(a) "Value" of owned real and tangible personal property shall mean its original cost.

(b) "Cost of aircraft by type" means the average original cost or value of aircraft by type which are ready for flight.

(c) "Original cost" means the initial federal tax basis of the property plus the value of capital improvements to such property, except that, for this purpose, it shall be assumed that safe harbor leases are not true leases and do not affect the original initial federal tax basis of the property.

(d) "Average value" of the property means the amount determined by averaging the values at the beginning and ending of the income year, but the taxation and revenue department may require the averaging of monthly values during the income year if such averaging is necessary to reflect properly the average value of the airline's property.

(e) The "value" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate.

(f) "Net annual rental rate" means the annual rental rate paid by the taxpayer.

(g) "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

(h) "Aircraft ready for flight" means aircraft owned or acquired through rental or lease (but not interchange) which are in the possession of the taxpayer and are available for service on the taxpayer routes.

(i) "Revenue service" means the use of aircraft ready for flight for the production of revenue.

(j) "Transportation revenue" means revenue earned by transporting passengers, freight and mail as well as revenue earned from liquor sales, pet crate rentals, etc.

(k) "Departures" means for purposes of Section 3.5.19.14 NMAC all takeoffs, whether they be regularly scheduled or charter flights, that occur during revenue service.

(2) Property factor.

(a) Property valuation. Owned aircraft shall be valued at its original cost and rented aircraft shall be valued at eight (8) times the net annual rental rate in accordance with Section 7-4-12 NMSA 1978 and Part 3.5.12 NMAC. The use of the taxpayer's owned or rented aircraft in an interchange program with another air carrier will not constitute a rental of such aircraft by the airlines to the other participating airline. Such aircraft shall be accounted for in the property factor of the owner. Parts and other expendables, including parts for use in contract overhaul work, will be valued at cost.

(b) The denominator and numerator of the property factor.

(i) The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(ii) In determining the numerator of the property factor, all property except aircraft ready for flight shall be included in the numerator of the property factor in accordance with Sections 7-4-11 through 7-4-13 NMSA 1978 inclusive. Aircraft ready for flight shall be included in the numerator of the property factor in the ratio calculated as follows:

(iii) Departures of aircraft from locations in this state weighted as to the cost and value of aircraft by type compared to total departures similarly weighted.

(3) The payroll factor. The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year. The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. With respect to non-flight personnel, compensation paid to such employees shall be included in the numerator as provided in Sections 7-4-14 and 7-4-15 NMSA 1978. With respect to flight personnel (the air crew aboard an aircraft assisting in the operations of the aircraft or the welfare of passengers while in the air), compensation paid to such employees shall be included in the ratio of departures of

aircraft from locations in this state, weighted as to the cost and value of aircraft by type compared to total departures similarly weighted, multiplied by the total flight personnel compensation.

(4) Sales (transportation revenue) factor. The transportation revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise, etc., are included in the denominator of the revenue factor. Passive income items such as interest, rental income, dividends, etc., will not generally be included in either the denominator nor the numerator of the sales factor nor will the proceeds or net gains or losses from the sale of aircraft be included in the denominator or numerator of the sales factor unless such income is derived from transactions or activities in the regular trade or business of the taxpayer. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year is the result of the following calculation: the ratio of departures of aircraft in this state weighted as to the cost and value of aircraft by type, as compared to total departures similarly weighted multiplied by the total transportation revenue. The product of this calculation is to be added to any non-flight revenues directly attributable to this state.

D. *Records*. The taxpayer must maintain the records necessary to arrive at departures by type of aircraft as used in this section. Such records are to be subject to review by the respective state taxing authorities or their agents.

E. The provisions of Section 3.5.19.14 NMAC apply to any taxable year beginning on or after January 1, 1990.

[12/29/89, 9/20/93, 1/15/97; 3.5.19.14 NMAC - Rn & A, 3 NMAC 5.19.14, 6/29/01]

3.5.19.15 SPECIAL RULES - TRUCKING COMPANIES:

A. The special rules established in Section 3.5.19.15 NMAC apply to trucking companies.

B. *In general*. As used in this section, the term "trucking company" means a motor common carrier, a motor contract carrier or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation. Where a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this section. In such cases, the first step is to determine what portion of the trucking company's income constitutes "business" income and what portion constitutes "nonbusiness" income under Subsections A and E of Section 7-4-2 NMSA 1978 and Sections 3.5.1.9 and 3.5.1.10 NMAC. Nonbusiness income is directly allocable to specific states pursuant to the provisions of Sections 7-4-5 through 7-4-9 NMSA 1978, inclusive. Business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll and sales apportionment factors set

forth in this section. The sum of the items of nonbusiness income directly allocated to this state and the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax in this state.

C. *Business and nonbusiness income*. For definitions and rules for determining business and nonbusiness income, see Sections 3.5.1.9 and 3.5.1.10 NMAC.

D. *Apportionment of business income*.

(1) In general. The property factor shall be determined in accordance with Parts 3.5.11 through 3.5.13 NMAC, inclusive, the payroll factor in accordance with Parts 3.5.14 and 3.5.15 NMAC, and the sales factor in accordance with Parts 3.5.16 through 3.5.18 NMAC, inclusive, except as modified by this section.

(2) The property factor.

(a) Property valuation. Owned property shall be valued at its original cost and property rented from others shall be valued at eight (8) times the net annual rental rate in accordance with Section 7-4-11 NMSA 1978 and Part 3.5.11 NMAC.

(b) General definitions. The following definitions are applicable to the numerator and denominator of the property factor, as well as other apportionment factor descriptions.

(i) "Average value" of property means the amount determined by averaging the values at the beginning and end of the income tax year, but the taxation and revenue department may require the averaging of monthly values during the income tax year or such averaging as is necessary to reflect properly the average value of the trucking company's property.

(ii) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property, other than support vehicles used predominantly in a local capacity. Mobile property shall include purchased transportation.

(iii) A "mobile property mile" is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.

(iv)"Original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or, if the property has no such basis, the valuation of such property for interstate commerce commission purposes. if the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

(v) "Property used during the course of the income tax year" includes property which is available for use in the taxpayer's trade or business during the income year.

(vi) "Purchased transportation" means the taxpayer's use of a motor vehicle owned and operated by another for the purpose of transporting tangible personal property for which a charge, whether based upon a per diem, mileage, or other basis, is incurred.

(vii) "Temporarily used" means the use of any mobile property owned by another for a period not to exceed a total of 30 days during any income tax year.

(viii) The "value" of owned real and tangible personal property means its original cost.

(ix) The "value" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate.

(c) The denominator and numerator of the property factor.

(i) The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year. In the determination of the numerator of the property factor, all property, except mobile property as defined in this section, shall be included in the numerator of the property factor in accordance with Sections 7-4-11 to 7-4-13 NMSA 1978, inclusive, and Parts 3.5.11 through 3.5.13 NMAC, inclusive.

(ii) Mobile property as defined in this section, which is located within and without this state during the income year, shall be included in the numerator of the property factor in the ratio which mobile property miles in the state bear to the total mobile property miles.

(3) The payroll factor.

(a) The denominator of the payroll factor is the compensation paid everywhere by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the total compensation paid in this state during the income year by the taxpayer. With respect to all personnel, except those performing services within and without this state, compensation paid to such employees shall be included in the numerator as provided in Section 7-4-14 and 7-4-15 NMSA 1978 and Parts 3.5.14 and 3.5.15 NMAC.

(b) With respect to personnel performing services within and without this state, compensation paid to such employees shall be included in the numerator of the

payroll factor in the ratio which their services performed in this state bear to their services performed everywhere based on mobile property miles.

(4) The sales (revenue) factor.

(a) In general.

(i) All revenue derived from transactions and activities in the regular course of the taxpayer's trade or business which produce business income shall be included in the denominator of the revenue factor.

(ii) The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total state revenue of the taxpayer, other than from hauling freight, mail, and express, shall be attributable to this state in accordance with Sections 7-4-16 to 7-4-18 NMSA 1978 and Parts 3.5.16 through 3.5.18 NMAC.

(b) Numerator of the sales (revenue) factor from freight, mail, and express. The total revenue attributable to this state during the income year from hauling freight, mail, and express shall be:

(i) intrastate: All receipts from any shipment which both originates and terminates within this state; and

(ii) interstate: That portion of the receipts from movements or shipments passing through, into, or out of this state as determined by the ratio which the mobile property miles traveled by such movements or shipments in this state bear to the total mobile property miles traveled by movements or shipments from points of origin to destination.

E. *Records*. The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by such mobile property as those terms are used in this section. Such records are subject to review by the taxation and revenue department or its agents.

F. *De minimis nexus standard*. Notwithstanding any provision contained herein, this section shall not apply to require the apportionment of income to this state if the trucking company during the course of the income tax year neither:

(1) owns nor rents any real or personal property in this state, except mobile property; nor

(2) makes any pick-ups or deliveries within this state; nor

(3) travels more than twenty-five thousand mobile property miles within this state; provided that the total mobile property miles traveled within this state during the

income tax year do not exceed 3 percent of the total mobile property miles traveled in all states by the trucking company during that period; nor

(4) makes more than twelve trips into this state.

G. The provisions of Section 3.5.19.15 NMAC apply to any taxable year beginning on or after January 1, 1990.

[12/29/89, 9/20/93, 1/15/97; 3.5.19.15 NMAC - Rn & A, 3 NMAC 5.19.15, 6/29/01]

3.5.19.16 [RESERVED]

[12/29/89, 3/17/94, 1/15/97; R 5/31/98; 3.5.19.16 NMAC - Rn, 3 NMAC 5.19.16, 6/29/01]

3.5.19.17 SPECIAL RULES - FINANCIAL INSTITUTIONS:

A. *Apportionment and allocation*.

(1) Except as otherwise specifically provided, a financial institution whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this section. All items of nonbusiness income (income which is not includable in the apportionable income tax base) shall be allocated pursuant to the provisions of Sections 7-4-5 through 7-4-9 NMSA 1978 and Parts 3.5.5 through 3.5.9 NMAC. A financial institution organized under the laws of a foreign country, the commonwealth of Puerto Rico, or a territory or possession of the United States whose effectively connected income (as defined under the federal Internal Revenue Code) is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this section.

(2) All business income (income which is includable in the apportionable income tax base) shall be apportioned to this state by multiplying such income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor (as described in Subsection C of this section), property factor (as described in Subsection D of this section), and payroll factor (as described in Subsection E of this section) together and dividing the sum by three. If one of the factors is missing, the two remaining factors are added and the sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero, but it is not missing merely because its numerator is zero.

(3) Each factor shall be computed according to the method of accounting used by the taxpayer for federal income tax purposes for the taxable year, except as provided in Section 3.5.14.8 NMAC.

(4) If the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the Secretary may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors,

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

B. *Definitions*. As used in this section, unless the context otherwise requires:

(1) "billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year (or on such later date in the taxable year when the customer relationship began) as the address where any notice, statement and/or bill relating to a customer's account is mailed;

(2) "borrower or credit card holder located in this state" means:

(a) a borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in this state; or

(b) a borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this state;

(3) "commercial domicile" means:

(a) the headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(b) if a taxpayer is organized under the laws of a foreign country, or of the commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile shall be deemed for the purposes of this section to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable year;

(4) "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services that are included in such employee's gross income under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, e.g., those employed in foreign countries, the determination of whether such payments would constitute gross income to such employees under the federal Internal Revenue Code shall be made as though such employees were subject to the federal Internal Revenue Code;

(5) "credit card" means credit, travel or entertainment card;

(6) "credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card;

(7) "employee" means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer;

(8) "financial institution" means:

(a) any corporation or other business entity registered under state law as a bank holding company or registered under the federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the federal National Housing Act, as amended;

(b) a national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. 21 et seq.;

(c) a savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(1);

(d) any bank or thrift institution incorporated or organized under the laws of any state;

(e) any corporation organized under the provisions of 12 U.S.C. Sections 611 to 631.

(f) any agency or branch of a foreign depository as defined in 12 U.S.C. Section 3101;

(g) a state credit union the loan assets of which exceed $50,000,000 as of the first day of its taxable year;

(h) a production credit association organized under the federal Farm Credit Act of 1933, all of whose stock held by the federal production credit corporation has been retired;

(i) any corporation whose voting stock is more than fifty percent (50%) owned, directly or indirectly, by any person or business entity described in items (a) through (h) of this paragraph other than an insurance company taxable under the Insurance Code, Chapter 59A NMSA 1978;

(j) a corporation or other business entity that derives more than fifty percent (50%) of its total gross income for financial accounting purposes from finance leases. For purposes of this subparagraph, a "finance lease" shall mean - any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any "direct financing lease" or "leverage lease" that meets the criteria of financial accounting standards board statement No. 13, "accounting for leases" or any other lease that is accounted for as a financing by a lessor under generally accepted accounting principles. No corporation or other business entity will be classified as a financial institution under this subparagraph unless the income from finance leases exceeds fifty percent of gross income for the current year and each of the two immediately preceding years and gross income from non-recurring, extraordinary items is disregarded; and

(k) any other person, other than an insurance company or a reciprocal or inter-insurance exchange that pays a premium tax to this state, that derives more than fifty percent of its gross income from activities that a person described in subparagraphs (b) through (h) and (j) of this paragraph is authorized to transact. For the purpose of this subparagraph, the computation of gross income shall not include income from non-recurring, extraordinary items;

(9) "gross rents" means the actual sum of money or other consideration payable for the use or possession of property. "Gross rents" shall include, but not be limited to:

(a) any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise;

(b) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement; and

(c) a proportionate part of the cost of any improvement to real property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other arrangement. The amount to be included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer;

(d) The following are not included in the term "gross rents":

(i) reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(ii) reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(iii) reasonable amounts payable for storage, provided such amounts are payable for space not designated and not under the control of the taxpayer; and

(iv) that portion of any rental payment which is applicable to the space subleased from the taxpayer and not used by it;

(10) "loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans shall not include: properties treated as loans under Section 595 of the federal Internal Revenue Code; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items;

(11) "loan secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property;

(12) "merchant discount" means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder;

(13) "participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower;

(14) "person" means an individual, estate, trust, partnership, corporation and any other business entity;

(15) "principal base of operations" with respect to transportation property means the place of more or less permanent nature from which said property is regularly

directed or controlled; with respect to an employee, the "principal base of operations" means the place of more or less permanent nature from which the employee regularly

(a) starts his or her work and to which he or she customarily returns in order to receive instructions from his or her employer;

(b) communicates with his or her customers or other persons; or

(c) performs any other functions necessary to the exercise of his or her trade or profession at some other point or points;

(16) "real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively, on which the taxpayer may claim depreciation for federal income tax purposes or property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes (or could claim depreciation if subject to federal income tax). Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure;

(17) "regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees or authorized representatives of the taxpayer;

(18) "state" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States or any foreign country;

(19) "syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount;

(20) "taxable" means either:

(a) that a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax (including a bank shares tax), a single business tax, or an earned surplus tax, or any tax which is imposed upon or measured by net income; or

(b) that another state has jurisdiction to subject the taxpayer to any of such taxes regardless of whether, in fact, the state does or does not;

(21) "transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers or the like.

C. *Receipts factor*.

(1) General. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor shall include only those receipts described in this subsection which constitute business income and are included in the computation of the apportionable income base for the taxable year.

(2) Receipts from the lease of real property. The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer if the property is located within this state or receipts from the sublease of real property if the property is located within this state.

(3) Receipts from the lease of tangible personal property.

(a) Except as described in Subparagraph (b) of this paragraph, the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(b) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of receipts that is to be included in the numerator of this state's receipts factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(4) Interest from loans secured by real property.

(a) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subparagraph are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the receipts described in this subparagraph shall be included in the numerator of the receipts factor if the borrower is located in this state.

(b) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made and any and all subsequent substitutions of collateral shall be disregarded.

(5) Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(6) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

(a) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Paragraph (4) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(b) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Paragraph (5) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(7) Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(8) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to Paragraph (7) of this subsection and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(9) Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to Paragraph (7) of this subsection and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(10) Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(11) Loan servicing fees.

(a) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Paragraph (4) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property. The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Paragraph (5) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(b) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include such fees if the borrower is located in this state.

(12) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection if the service is performed in this state. If the service is performed both within and without this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection, if a greater proportion of the income-producing activity is performed in this state based on cost of performance.

(13) Receipts from investment assets and activities and trading assets and activities.

(a) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities shall be included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities and foreign currency transactions. With respect to the investment and trading assets and activities described in Items (i) and (ii) of this subparagraph, the receipts factor shall include the amounts described in such items.

(i) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(ii) The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(b) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities described in Subparagraph (a) of this paragraph that are attributable to this state.

(i) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in Item (i) of Subparagraph (a) of this paragraph from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(iii) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, (but excluding amounts described in Item (i) or (ii) of this subparagraph), attributable to this state and included in the numerator is determined by multiplying the amount described in Item (ii) of Subparagraph (a) of this paragraph by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(iv) For purposes of this item, average value shall be determined using the rules for determining the average value of tangible personal property set forth in Subsection D of this section.

(c) In lieu of using the method set forth in Subparagraph (b) of this paragraph, the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this item.

(i) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in Item (i) of Subparagraph (a) of this paragraph from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(iii) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in Item (i) or (ii) of this subparagraph), attributable to this state and included in the numerator is determined by multiplying the amount described in Item (ii) of Subparagraph (a) of this paragraph by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(d) If the taxpayer elects or is required by the department to use the method set forth in Subparagraph (c) of the paragraph, it shall use this method on all subsequent returns unless the taxpayer receives prior permission from the department to use, or the department requires a different method.

(e) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

(14) All other receipts. The numerator of the receipts factor includes all other receipts pursuant to the rules set forth in Sections 7-4-17 and 7-4-18 NMSA 1978 and Parts 3.5.17 and 3.5.18 NMAC.

(15) Attribution of certain receipts to commercial domicile. All receipts which would be assigned under this subsection to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

D. *Property factor*.

(1) General. The property factor is a fraction, the numerator of which is the average value of real property and tangible personal property rented to the taxpayer that is located or used within this state during the taxable year, the average value of the taxpayer's real and tangible personal property owned that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year, and the denominator of which is the average value of all such property located or used within and without this state during the taxable year.

(2) Property included. The property factor shall include only property the income or expenses of which are included (or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount) in the computation of the apportionable income base for the taxable year.

(3) Value of property owned by the taxpayer.

(a) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation or amortization.

(b) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines which is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes of this subsection.

(c) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

(4) Average value of property owned by the taxpayer. The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the

taxable year and dividing the sum by two. If averaging on this basis does not properly reflect average value, the department may require averaging on a more frequent basis. The taxpayer may elect to average on a more frequent basis. When averaging on a more frequent basis is required by the department or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the department or the department requires a different method of determining average value.

(5) Average value of real property and tangible personal property rented to the taxpayer.

(a) The average value of real property and tangible personal property that the taxpayer has rented from another and which is not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

(b) Where the use of the general method described in this subparagraph results in inaccurate valuations of rented property, any other method which properly reflects the value may be adopted by the department or by the taxpayer when approved in writing by the department. Once approved, such other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the department or the department requires a different method of valuation.

(6) Location of real property and tangible personal property owned by or rented to the taxpayer.

(a) Except as described in Subparagraph (b) of this paragraph, real property and tangible personal property owned by or rented to the taxpayer is considered to be located within this state if it is physically located, situated or used within this state.

(b) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of value that is to be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(7) Location of loans.

(a) A loan is considered to be located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(i) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if the taxpayer has assigned, in the regular course of its business, such loan on its records to a regular place of business consistent with federal or state regulatory requirements; such assignment on its records is based upon substantive contacts of the loan to such regular place of business; and the taxpayer uses said records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(ii) The presumption of proper assignment of a loan provided in Item (i) of Subparagraph (a) of this paragraph may be rebutted upon a showing by the department, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When such presumption has been rebutted, the loan shall then be located within this state if the taxpayer had a regular place of business within this state at the time the loan was made and the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur within this state.

(b) In the case of a loan which is assigned by the taxpayer to a place without this state which is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined by Paragraph (3) of Subsection B of this section, was within this state.

(c) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis and consideration shall be given to such activities as the solicitation, investigation, negotiation, approval and administration of the loan. The terms "solicitation", "investigation", "negotiation", "approval" and "administration" are defined as follows:

(i) "Solicitation". Solicitation is either active or passive. Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. Such activity is located at the regular place of business which the taxpayer's employee is regularly connected with or working out of, regardless of where the services of such employee were actually performed. Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(ii) "Investigation". Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. Such activity is located at the regular

place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(iii) "Negotiation". Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement (e.g., the amount, duration, interest rate, frequency of repayment, currency denomination and security required). Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(iv) "Approval". Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the commercial domicile of the taxpayer.

(v) "Administration". Administration is the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default. Such activity is located at the regular place of business which oversees this activity.

(8) Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to the provisions of Paragraph (7) of this subsection.

(9) Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to said state for the length of the original term of the loan. Thereafter, said loan may be properly assigned to another state if said loan has a preponderance of substantive contact to a regular place of business there.

E. *Payroll factor*.

(1) General. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid both within and without this state during the taxable year. The payroll factor shall include only that compensation which is included in the computation of the apportionable income tax base for the taxable year.

(2) Compensation relating to nonbusiness income and independent contractors. The compensation of any employee for services or activities which are connected with the production of nonbusiness income (income which is not includable in

the apportionable income base) and payments made to any independent contractor or any other person not properly classifiable as an employee shall be excluded from both the numerator and denominator of the factor.

(3) When compensation paid in this state. Compensation is paid in this state if any one of the following tests, applied consecutively, is met.

(a) The employee's services are performed entirely within this state.

(b) The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.

(c) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(i) if the employee's principal base of operations is within this state; or

(ii) if there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(iii) if the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

F. Section 3.5.19.17 NMAC applies to taxable years beginning on or after January 1, 1996.

[12/22/95, 1/15/97, 3/31/99; 3.5.19.17 NMAC - Rn & A, 3 NMAC 5.19.17, 6/29/01]

3.5.19.18 SPECIAL RULES - TELEVISION AND RADIO BROADCASTING:

A. The following special rules are established in respect to the apportionment of income from television and radio broadcasting by a broadcaster that is taxable both in this state and in one or more other states.

B. *In general*. When a person in the business of broadcasting film or radio programming, whether through the public airways, by cable, direct or indirect satellite transmission or any other means of communication, either through a network (including owned and affiliated stations) or through an affiliated, unaffiliated or independent television or radio broadcasting station, has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to Article IV. of the multistate tax compact and the regulations issued thereunder by this state, except as modified by Section 3.5.19.18 NMAC.

C. *Business and nonbusiness income*. For definitions and regulations for determining whether income shall be classified as "business" or "nonbusiness" income, see Part 3.5.1 NMAC.

D. *Definitions*. The following definitions are applicable to the terms contained in this section, unless the context clearly requires otherwise.

(1) "Film" or "film programming" means any and all performances, events or productions telecast on television, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, through the use of video tape, disc or any other type of format or medium. Each episode of a series of films produced for television shall constitute a separate "film" notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.

(2) "Outer-jurisdictional" property means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of telecasting or broadcasting, but which are not physically located in any particular state.

(3) "Radio" or "radio programming" means any and all performances, events or productions broadcast on radio, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, through the use of an audio tape, disc or any other format or medium. Each episode of a series of radio programming produced for radio broadcast shall constitute a separate "radio programming" notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.

(4) "Release" or "in release" means the placing of film or radio programming into service. A film or radio program is placed into service when it is first broadcast to the primary audience for which the program was created. Thus, for example, a film is placed into service when it is first publicly telecast for entertainment, educational, commercial, artistic or other purpose. Each episode of a television or radio series is placed into service when it is first broadcast. A program is not placed into service merely because it is completed and therefore in a condition or state of readiness and availability for broadcast or merely because it is previewed to prospective sponsors or purchasers.

(5) "Rent" shall include license fees or other payments or consideration provided in exchange for the broadcast or other use of television or radio programming.

(6) A "subscriber" to a cable television system is the individual residence or other outlet which is the ultimate recipient of the transmission.

(7) "Telecast" or "broadcast" (sometimes used interchangeably with respect to television) means the transmission of television or radio programming, respectively, by

an electronic or other signal conducted by radiowaves or microwaves or by wires, lines, coaxial cables, wave guides, fiber optics, satellite transmissions directly or indirectly to viewers and listeners or by any other means of communication.

E. *Apportionment of business income*.

(1) In general. The property factor shall be determined in accordance with Parts 3.5.11 through 3.5.13 NMAC, the payroll factor in accordance with Parts 3.5.14 and 3.5.15 NMAC and the sales factor in accordance with Parts 3.5.16 and 3.5.17 NMAC, except as modified by Section 3.5.19.18 NMAC.

(2) The property factor.

(a) In general.

(i) In the case of rented studios, the net annual rental rate shall include only the amount of the basic or flat rental charge by the studio for the use of a stage or other permanent equipment such as sound recording equipment and the like; except that additional equipment rented from other sources or from the studio not covered in the basic or flat rental charge and used for one week or longer (even though rented on a day-to-day basis) shall be included. Lump-sum net rental payments for a period which encompasses more than a single income year shall be assigned ratably over the rental period.

(ii) No value or cost attributable to any outer-jurisdictional, film or radio programming property shall be included in the property factor at any time.

(b) Property factor denominator.

(i) All real property and tangible personal property (other the outer-jurisdictional and film or radio programming property), whether owned or rented, which is used in the business shall be included in the denominator of the property factor.

(ii) Audio or video cassettes, discs or similar medium containing film or radio programming and intended for sale or rental by the taxpayer for home viewing or listening shall be included in the property factor at their original cost. To the extent that the taxpayer licenses or otherwise permits others to manufacture or distribute such cassettes, discs or other medium containing film or radio programming for home viewing or listening, the value of said cassettes, discs or other medium shall include the license, royalty or other fees received by the taxpayer capitalized at a rate of eight times the gross receipts derived therefrom during the income year.

(iii) Outer-jurisdictional, film and radio programming property shall be excluded from the denominator of the property factor.

(c) Property factor numerator.

(i) With the exception of outer-jurisdictional, film and radio programming property, all real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor as provided in Section 3.5.11.11 NMAC.

(ii) Outer-jurisdictional, film and radio programming property shall be excluded from the numerator of the property factor.

(3) The payroll factor.

(a) Payroll factor denominator. The denominator of the payroll factor shall include all compensation, including residual and profit participation payments, paid to employees during the income year, including that paid to directors, actors, newscasters and other talent in their status as employees.

(b) Payroll factor numerator. Compensation for all employees shall be attributed to the state or states as may be determined by the application of Parts 3.5.14 and 3.5.15 NMAC.

(4) The sales factor.

(a) Sales factor denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under Section 3.5.19.11 NMAC.

(b) Sales factor numerator. The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to the following:

(i) gross receipts, including advertising revenue, from television film or radio programming in release to or by television and radio stations located in this state;

(ii) gross receipts, including advertising revenues, from television or radio programming in release to or by a television or radio station (independent or unaffiliated) or network of stations for broadcast shall be attributed to this state in the ratio (hereafter the "audience factor") that the audience for such station (or owned and affiliated stations in the case of networks) located in this state bears to the total audience for such station (of owned and affiliated stations in the case of networks). The audience factor for film or radio programming shall be determined by the ratio of the taxpayer’s in-state viewing or listening audience bears to its total viewing or listening audience. Such audience factor shall be determined either by reference to the books and records of the taxpayer or by reference to published rating statistics, provided that the method used by the taxpayer is consistently used from year to year for such purpose and fairly represents the taxpayer’s activity in the state;

(iii) gross receipts from film programming in release to or by a cable television system shall be attributed to this state in the ratio (hereafter "audience factor") that the subscribers for such cable television system located in this state bears to the total subscribers of such cable television system. If the number of subscribers cannot be determined accurately from the books and records maintained by the taxpayer, such audience factor ratio shall be determined on the basis of the applicable year's subscription statistics located in published surveys, provided that the source selected is consistently used from year to year for that purpose; and

(iv) receipts from the sale, rental, licensing or other disposition of video or audio cassettes, discs or similar medium intended for home viewing or listening shall be included in the sales factor as provided in Part 3.5.17 NMAC.

[1/29/99; 3.5.19.18 NMAC - Rn & A, 3 NMAC 5.19.18, 6/29/01]

3.5.19.19 SPECIAL RULES: PUBLISHING:

The following special rules are established with respect to the apportionment of income derived from the publishing, sale, licensing or other distribution of books, newspapers, magazines, periodicals, trade journals or other printed material.

A. *In General*. Except as specifically modified by this regulation, when a person in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without this state, the amount of business income from sources within this state from such business activity shall be determined pursuant to the provisions of the Uniform Division of Income for Tax Purposes Act, Section 7-4-1 through 7-4-21, NMSA 1978.

B. *Definitions*. The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.

(1) "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but which are not physically located in any particular state.

(2) "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression including, without limitation, a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any medium or property.

(3) "Purchaser" and "subscriber" mean the individual, residence, business or other outlet which is the ultimate or final recipient of the print or printed material. Neither of such terms shall mean or include a wholesaler or other distributor of print or printed material.

(4) "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

C. *Apportionment of business income*.

(1) The property factor.

(a) Property factor denominator. All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, which is used in the business shall be included in the denominator of the property factor.

(b) Property factor numerator.

(i) All real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor.

(ii) Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio which the value of such property that is attributable to its use by the taxpayer in business activities in this state bears to the total value of such property that is attributable to its use in the taxpayer's business activities everywhere. The value of outer-jurisdictional property to be attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks (sometimes referred to as "half-circuits") that were used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total number of uplinks and downlinks or half-circuits that the taxpayer used for transmissions everywhere. Should information regarding such uplink and downlink or half-circuit usage not be available or should such measurement of activity not be applicable to the type of outer jurisdictional property used by the taxpayer, the value of such property to be attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time (in terms of hours and minutes of use) or such other measurement of use of outer jurisdictional property that was used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions everywhere.

(iii) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when such property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located in this state.

(2) The payroll factor. The payroll factor shall be determined in accordance with Sections 7-4-14 and 7-4-15, NMSA 1978 and the regulations promulgated thereunder.

(3) The sales factor.

(a) Sales factor denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under NMAC 3.5.19.11.

(b) Sales factor numerator. The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to, the following:

(i) Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state.

(ii) Except as provided in subparagraph Item iii of Subparagraph b of Paragraph 3 of Subsection C, gross receipts derived from advertising and the sale, rental or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's ''circulation factor'' during the tax period. The circulation factor shall be determined for each individual publication by the taxpayer of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere. The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as audit bureau of circulations or other comparable sources, provided that the source selected is consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor shall be determined from the taxpayer's books and records.

(iii) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the department may require, that a portion of such receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation

factor and not upon the basis of the circulation factor provided by Item ii of Subparagraph b of Paragraph 3 of Subsection C. Such attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing such specific items of advertising bears to its total circulation of such printed material to purchasers and subscribers located within such regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that such receipts are not double counted or otherwise included in the numerator of any other state.

(iv) In the event that the purchaser or subscriber is the United States government or that the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer's lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for such state, shall be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

[3.5.19.19 NMAC - N, 10/31/05]

PART 20: AGREEMENTS AUTHORIZED IN UNUSUAL CASES [RESERVED]

PART 21: CONSTRUCTION OF ACT

3.5.21.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.5.21.1 NMAC - Rn, 3 NMAC 5.21.1, 6/29/01]

3.5.21.2 SCOPE:

This part applies to every taxpayer having income which is taxable for income tax purposes both within and without New Mexico.

[1/15/97; 3.5.21.2 NMAC - Rn, 3 NMAC 5.21.2, 6/29/01]

3.5.21.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.5.21.3 NMAC - Rn, 3 NMAC 5.21.3, 6/29/01]

3.5.21.4 DURATION:

Permanent.

[1/15/97; 3.5.21.4 NMAC - Rn, 3 NMAC 5.21.4, 6/29/01]

3.5.21.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.5.21.5 NMAC - Rn & A, 3 NMAC 5.21.5, 6/29/01]

3.5.21.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Uniform Division of Income for Tax Purposes Act.

[1/15/97; 3.5.21.6 NMAC - Rn, 3 NMAC 5.21.6, 6/29/01]

3.5.21.7 DEFINITIONS:

[Reserved.]

[1/15/97; 3.5.21.7 NMAC - Rn, 3 NMAC 5.21.7, 6/29/01]

3.5.21.8 APPLICATION:

Regulations issued under the Uniform Division of Income for Tax Purposes Act are applicable to Article IV of the multistate tax compact to the extent they are not inconsistent with the provisions of the multistate tax compact.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.21.8 NMAC - Rn, 3 NMAC 5.21.8, 6/29/01]

CHAPTER 6: PROPERTY TAXES

PART 1: GENERAL PROVISIONS

3.6.1.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[8/31/96; 3.6.1.1 NMAC - Rn, 3 NMAC 6.1.1, 4/30/01]

3.6.1.2 SCOPE:

The sections under this part apply to all property subject to property taxation under the Property Tax Code, owners and agents of owners of such property and all county officials and personnel of the taxation and revenue department charged with administration of the Property Tax Code.

[8/31/96; 3.6.1.2 NMAC - Rn, 3 NMAC 6.1.2, 4/30/01]

3.6.1.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[8/31/96; 3.6.1.3 NMAC - Rn, 3 NMAC 6.1.3, 4/30/01]

3.6.1.4 DURATION:

Permanent.

[8/31/96; 3.6.1.4 NMAC - Rn, 3 NMAC 6.1.4, 4/30/01]

3.6.1.5 EFFECTIVE DATE:

8/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[8/31/96; 3.6.1.5 NMAC - Rn & A, 3 NMAC 6.1.5, 4/30/01]

3.6.1.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Property Tax Code.

[8/31/96; 3.6.1.6 NMAC - Rn, 3 NMAC 6.1.6, 4/30/01]

3.6.1.7 DEFINITIONS

A. **"BUFFALO" DEFINED:** The terms "buffalo" and "livestock" include the American bison (*Bison bison*) and any offspring from a crossbreeding of the American bison and domestic cattle.

B. **"DIRECTOR" AND "DIVISION":** As used in Parts 1 through 7 of Chapter 3.6 NMAC:

(1) "Director" means the director of the property tax division of the taxation and revenue department;

(2) "Division" or "property tax division" means the property tax division of the taxation and revenue department, the director of the division or any employee of the division exercising authority lawfully delegated to that employee through the director.

C. **EQUITABLE OWNER IS AN "OWNER":** An "owner" as that term is defined in Section 7-35-2 NMSA 1978 includes, but is not limited to, a person who has equitable ownership of property by reason of being the purchaser or buyer of the property under a conditional sale contract.

D. **INTANGIBLE PROPERTY EXCLUDED FROM "PROPERTY":** The term "property" as defined in Section 7-35-2 NMSA 1978 does not include intangible property including, but not limited to, shares of stock, bonds, bills, notes, checks, drafts, bills of exchange, certificates of deposit, letters of credit and negotiable instruments.

E. **"LEGAL ENTITY" DEFINED:** A "legal entity", as that phrase is used in Section 7-35-2 NMSA 1978 defining "person", includes, but is not limited to, the following: an estate, a trust, a receiver, a cooperative association, a club, a corporation, a company, a firm, a partnership, a joint venture, a limited partnership, a limited liability company, an association and to the extent permitted by law, a state or its political subdivisions, other than New Mexico and its political subdivisions.

F. **"LIVESTOCK" - "OTHER DOMESTIC ANIMALS USEFUL TO MAN":** Classes of livestock and the value of each class are required to be established by order each tax year pursuant to Section 7-36-21 NMSA 1978. Particular classes or types of "domestic animals useful to man" which are named in the order establishing classes of livestock are "livestock" as that term is defined in Section 7-35-2 NMSA 1978. Poultry and fish are not "livestock" as that term is defined in Section 7-35-2 NMSA 1978.

G. **"THESE REGULATIONS":** The phrase "these regulations" means Parts 1 through 7 of Chapter 3.6 NMAC.

[3/23/83, 8/10/94, 12/29/94, 8/31/96; 3.6.1.7 NMAC - Rn & A, 3 NMAC 6.1.7, 4/30/01]

3.6.1.8 SPECIAL NOTE CONCERNING SCOPE AND EFFECTIVE DATE OF RULINGS - CITATION OF STATUTES IN 3 NMAC 6:

A. All rulings pertaining to the Property Tax Code issued by the secretary of taxation and revenue prior to the effective date of Parts 1 through 7 of Chapter 3.6 NMAC are superseded by Parts 1 through 7 of Chapter 3.6 NMAC as to tax liability incurred subsequent to the effective date of Parts 1 through 7 of Chapter 3.6 NMAC or as to any act done subsequent thereto. If, however, a prior ruling is not changed in substance by a provision of Parts 1 through 7 of Chapter 3.6 NMAC, such prior ruling shall remain in effect.

B. Unless otherwise stated, all citations of statutes in Parts 1 through 7 of Chapter 3.6 NMAC are to the New Mexico Statutes Annotated, 1978 (NMSA 1978).

[8/31/96; 3.6.1.8 NMAC - Rn & A, 3 NMAC 6.1.8, 4/30/01]

3.6.1.9 CONSTRUING THE PROPERTY TAX CODE:

The Property Tax Code must be read and construed in its entirety.

[12/29/94, 8/31/96; 3.6.1.9 NMAC - Rn, 3 NMAC 6.1.9, 4/30/01]

3.6.1.10 DELEGATION OF AUTHORITY:

A. Except as to duties under Section 7-35-6 NMSA 1978 and where otherwise prohibited by statute and where otherwise specifically reserved in Parts 1 through 7 of Chapter 3.6 NMAC to the secretary of taxation and revenue or the taxation and revenue department, authority for discharging the taxation and revenue department's duties under the Property Tax Code is delegated either, where indicated, to the director of the property tax division or to that division. when in Parts 1 through 7 of Chapter 3.6 NMAC an authority is assigned to the "director" alone, that constitutes a delegation to the director personally and may not be further delegated by the director. When in Parts 1 through 7 of Chapter 3.6 NMAC an authority is assigned to the division or to the director or the director's delegate, that constitutes a delegation to the director and to any other employee of the taxation and revenue department to whom the director in turn delegates the authority.

B. Where permitted by law, the secretary of taxation and revenue may make any necessary and proper delegation to the director of the property tax division personally, to an employee of the property tax division or to any other member of the department in addition to those made in Parts 1 through 7 of Chapter 3.6 NMAC. The secretary may require that certain responsibilities or authorities delegated to the division under Section 3.6.1.10 NMAC in turn be delegated to other members of the department.

C. Any delegation may be oral; it is not required to be in writing.

[12/29/94, 8/31/96; 3.6.1.10 NMAC - Rn & A, 3 NMAC 6.1.10, 4/30/01]

3.6.1.11 NET TAXABLE VALUE - EXAMPLE:

The phrase "net taxable value" as defined in Section 7-35-2 NMSA 1978 is calculated for residential property in the manner shown in the following example:

Value of property upon which property tax is imposed (full value)	$ 100,000
Times the Tax Ratio	x .333333
Taxable value	$ 33,333
Less the Head of Household Exemption	- 2,000
Net taxable value	$ 31,333

[3/23/83, 12/29/94, 8/31/96; 3.6.1.11 NMAC - Rn & A, 3 NMAC 6.1.11, 4/30/01]

3.6.1.12 TAX IDENTIFICATION NUMBER ISSUED BY INTERNAL REVENUE SERVICE:

A tax identification number issued by the internal revenue service to individuals not qualified to be issued a social security number will be accepted by the department in lieu of the social security number in all cases in which reporting a social security number is required under the Property Tax Code.

[3/31/98; 3.6.1.12 NMAC - Rn, 3 NMAC 6.1.12, 4/30/01]

PART 2: [RESERVED]

PART 3: COUNTY INVOLVEMENT IN PROPERTY TAX

3.6.3.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[8/31/96; 3.6.3.1 NMAC - Rn, 3 NMAC 6.3.1, 4/30/01]

3.6.3.2 SCOPE:

The sections under this part apply to all property subject to property taxation under the Property Tax Code, owners and agents of owners of such property and all county officials and personnel of the taxation and revenue department charged with administration of the Property Tax Code.

[8/31/96; 3.6.3.2 NMAC - Rn, 3 NMAC 6.3.2, 4/30/01]

3.6.3.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[8/31/96; 3.6.3.3 NMAC - Rn, 3 NMAC 6.3.3, 4/30/01]

3.6.3.4 DURATION:

Permanent.

[8/31/96; 3.6.3.4 NMAC - Rn, 3 NMAC 6.3.4, 4/30/01]

3.6.3.5 EFFECTIVE DATE:

8/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[8/31/96; 3.6.3.5 NMAC - Rn & A, 3 NMAC 6.3.5, 4/30/01]

3.6.3.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Property Tax Code.

[8/31/96; 3.6.3.6 NMAC - Rn, 3 NMAC 6.3.6, 4/30/01]

3.6.3.7 DEFINITIONS: [RESERVED]

[8/31/96; 3.6.3.7 NMAC - Rn, 3 NMAC 6.3.7, 4/30/01]

3.6.3.8 DIRECTOR'S SUPERVISORY POWER OVER COUNTY ASSESSORS - DUTY TO EVALUATE PERFORMANCE AND PROVIDE TECHNICAL ASSISTANCE - PROPERTY VALUATION FUND CREATED

A. **ANNUAL EVALUATION OF ASSESSORS:** The division will conduct, during each calendar year, an evaluation of each county assessor's operations during that calendar year. The evaluation will include, but not be limited to, a review of the performance of the county assessor's functions on the basis of:

(1) The department's copy of the written report the assessor is required to submit to the board of county commissioners pursuant to Section 7-36-16 NMSA 1978;

(2) The assessor's and assessor's employees' possession of, compliance with, and knowledge of regulations, orders, rulings and instructions pertaining to the Property Tax Code, valuation manuals, and cost and valuation schedules;

(3) The assessor's compliance with the training requirement set forth in Subsection B of Section 7-35-5 NMSA 1978;

(4) The assessor's and assessor's employees' attendance at and participation in training programs on the technical, legal and administrative aspects of property taxation;

(5) The assessor's maintenance of current tax maps and property record cards;

(6) The assessor's allowance or disallowance of exemptions;

(7) A field review by one or more division employees of the operations of the assessor's office; and

(8) Any other information which may aid the division in evaluating the county assessor's operation.

B. **APPROPRIATE TECHNICAL ASSISTANCE:** The phrase "appropriate technical assistance" does not require department attorneys to represent county assessors at hearings.

C. **REQUESTS FOR TECHNICAL ASSISTANCE:** Requests by county assessors for technical assistance in the form of appraisal of property by department employees or mapping by department employees are required to be in writing.

[3/23/83, 12/29/94, 8/31/96; 3.6.3.8 NMAC - Rn & A, 3 NMAC 6.3.8, 4/30/01]

3.6.3.9 VALUATION MANUALS - COST AND VALUATION SCHEDULES:

Department employees, county assessors and their employees are required to use the most current department valuation manuals and cost and valuation schedules. Alternative cost and valuation schedules and alternative valuation manuals may be used with the director's written approval.

[3/23/83, 12/29/94, 8/31/96; 3.6.3.9 NMAC - Rn, 3 NMAC 6.3.9, 4/30/01]

3.6.3.10 APPROVAL OF REIMBURSEMENT:

Written approval by the director or the director's delegate for reimbursement of expenses incurred by assessors and employees of the state and its political subdivisions who attend training programs conducted or sponsored by the department is required to be obtained in advance of attendance at the training program.

[3/23/83, 12/29/94, 8/31/96; 3.6.3.10 NMAC - Rn, 3 NMAC 6.3.10, 4/30/01]

3.6.3.11 [RESERVED]

[3.6.3.11 NMAC - Rn, 3 NMAC 6.3.11, 4/30/01]

3.6.3.12 [RESERVED]

[3.6.3.12 NMAC - Rn, 3 NMAC 6.3.12, 4/30/01]

3.6.3.13 SECRETARY TO NOTIFY SECRETARY OF DEPARTMENT OF FINANCE AND ADMINISTRATION OF INFORMATION INDICATING NONCOMPLIANCE OF COUNTY TREASURER:

The secretary will immediately notify the secretary of finance and administration of any information the secretary acquires indicating that a county treasurer has failed to comply with the Property Tax Code or regulations, orders, rulings, or instructions of the department under the Property Tax Code or of the department of finance and administration. Department employees are required to notify the secretary of any information they acquire indicating such failure to comply by a county treasurer.

[3/23/83, 12/29/94, 8/31/96; 3.6.3.13 NMAC - Rn, 3 NMAC 6.3.13, 4/30/01]

3.6.3.14 [RESERVED]

[3.6.3.14 NMAC - Rn, 3 NMAC 6.3.14, 4/30/01]

3.6.3.15 REDUCTION OF REIMBURSABLE AMOUNT ONLY AFTER REPORT FROM DEPARTMENT OF FINANCE AND ADMINISTRATION:

The secretary will not consider reduction of the amount a county is required to reimburse the department until a report is obtained by the department from the department of finance and administration showing the extent to which county funds are available to make the reimbursement. If county funds are available to reimburse the actual costs of the services, no reduction in the amount required to be reimbursed will be made.

[3/23/83, 12/29/94, 8/31/96; 3.6.3.15 NMAC - Rn, 3 NMAC 6.3.15, 4/30/01]

3.6.3.16 NEW MEXICO CERTIFIED APPRAISER CERTIFICATION:

The purpose of the New Mexico certified appraiser certificate is to recognize professionalism and competency in the valuation of property for property taxation purposes. Certified appraisers may use this designation in conjunction with the valuation of a wide range of property as it is customarily defined in their assessment jurisdiction in accordance with New Mexico property tax division's commitment to excellence. To qualify for certification, the following general educational requirements must be fulfilled.

A. To receive a New Mexico certified appraiser certificate from the New Mexico taxation and revenue department an individual must have received credit for the following qualifying educational courses:

(1) IAAO Course 101, fundamentals of real property appraisal (30 hours);

(2) IAAO Course 102, income approach to valuation (30 hours);

(3) IAAO Course 300, fundamentals of mass appraisal (30 hours); and

(4) 30 hours of any of the following:

(a) IAAO Course 201, *appraisal of land*;

(b) IAAO Course 112, *income approach to valuation II*;

(c) IAAO Course 311, *residential modeling concepts*;

(d) IAAO Course 312, *commercial/industrial modeling concepts*; or

(e) IAAO Course 320, *multiple regression analysis*.

B. To receive qualifying credit for a course, an individual must pass the test with a score of seventy percent or better.

C. Courses taken to satisfy the qualifying educational requirements shall not be repetitive in nature; each course completed shall be credited toward the required number of qualifying education hours, shall represent an increase in appraiser's knowledge and none may be taken online.

D. Courses approved by the New Mexico board of real estate appraisers as qualifying education are allowed but must be at least 30 hours each, not taken online, similar to the above requirements and approved by property tax division prior to the completion of the course.

E. An individual who has received an equivalent real property appraiser certification or licensing from the New Mexico board of real estate appraisers and successfully completed the IAAO Course 300 may seek a waiver of all other educational requirements by submitting a copy of the individual's license/certificate to the property tax division for consideration.

F. An approved IAAO or New Mexico board of real estate appraisers, uniform standards of professional appraisal practice course is highly encouraged at any time during the certification process and for continuing education hours after certification.

G. A minimum of 30 hours of continuing education should be completed every three years by all certified appraisers. Continuing education hours may be completed online and can be IAAO or New Mexico board of real estate appraisers approved courses. Certified appraisers are responsible for maintaining the necessary documentation to demonstrate compliance with the continuing education requirements in this rule.

H. Courses for continuing education credit shall have significant intellectual or practical content and shall deal primarily with matters directly related to appraisal practice or to the ethical obligations of certificate holders. The primary objective of such courses shall be consistent with the taxation and revenue department's charge to protect the public and to increase the professional competency of certificate holders.

[3.6.3.16 NMAC - N, 1/31/14]

PART 4: VALUATION

3.6.4.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[8/31/96; 3.6.4.1 NMAC - Rn, 3 NMAC 6.4.1, 4/30/01]

3.6.4.2 SCOPE:

The sections under this part apply to all property subject to property taxation under the Property Tax Code, owners and agents of owners of such property and all county officials and personnel of the Taxation and Revenue Department charged with administration of the Property Tax Code.

[8/31/96; 3.6.4.2 NMAC - Rn, 3 NMAC 6.4.2, 4/30/01]

3.6.4.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[8/31/96; 3.6.4.3 NMAC - Rn, 3 NMAC 6.4.3, 4/30/01]

3.6.4.4 DURATION:

Permanent.

[8/31/96; 3.6.4.4 NMAC - Rn, 3 NMAC 6.4.4, 4/30/01]

3.6.4.5 EFFECTIVE DATE:

8/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[8/31/96; 3.6.4.5 NMAC - Rn & A, 3 NMAC 6.4.5, 4/30/01]

3.6.4.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Property Tax Code.

[8/31/96; 3.6.4.6 NMAC - Rn, 3 NMAC 6.4.6, 4/30/01]

3.6.4.7 DEFINITIONS:

A. As used in Parts 1 through 7 of Chapter 3.6 NMAC the following terms, which are not defined in Section 7-35-2 NMSA 1978, are defined as follows unless limited by another section of Parts 1 through 7 of Chapter 3.6 NMAC:

(1) "Airline." An airline is any business engaged in the transportation by aircraft of persons or property on a regularly scheduled basis.

(2) "Capitalization rate." A capitalization rate is either a market rate of return which shows the rate of return demanded by those who invest in a particular business or an interest rate on borrowed money or a combination of both rates. Acceptable methods of computing a capitalization rate are the market comparison method and the band of investment method. Either method may be used to determine a capitalization rate. The department will approve variations of these methods provided the variations are not inconsistent with generally accepted appraisal principles or techniques.

(3) "Correlation." Correlation is the final step in the appraisal process by which the evidences of value derived are analyzed and a final value determined based on the evidences of value as they relate to the subject property and to each other and, considering the amount and reliability of the data collected as to each evidence of value, the nature of the approach used to determine the evidence of value and the relevancy of the approach used to determine the evidence of value to the subject of the appraisal.

(4) "Microwave." A microwave is an electromagnetic wave between 100 centimeters and one centimeter in length.

(5) "Manufactured home." A "manufactured home" is defined in the Motor Vehicle Code at Section 66-1-4.11 NMSA 1978 and that definition is applicable to the phrase "manufactured home" as used in the Property Tax Code and Property Tax Code regulations.

(a) In determining the length of a manufactured home, the tow bar is included in the length dimension. If the tow bar has been removed, three (3) feet must be added to the length of the manufactured home to obtain the correct length.

(b) A manufactured home is personal property unless it is to be valued as real property in accordance with Subsection D of Section 3.6.5.33 NMAC, in which case it is real property for property taxation purposes.

(6) "Public utility." A public utility means a public utility as defined in Section 62-3-3 NMSA 1978.

(7) "Railroad." A railroad is an enterprise created and operated to transport on a fixed track passengers and freight or passengers or freight for rates or tolls without discrimination among those who demand transportation.

(8) "Trending." The term "trending" means the adjustment of the original cost of property to reflect the present cost of the same or similar property and is accomplished by the application of a factor which reflects the economic inflation or deflation occurring during a given period.

B. The phrase "used in the conduct of the following businesses" or "used in the conduct of a ... business" includes all property which is involved in a business including, but not limited to, property which is leased to or by the business, property which is used even though the work or function facilitated by the property is capable of being contracted to others and property which has a dual function such as being used both in the particular business and an unrelated business.

[3/23/83, 12/29/94, 8/31/96, 7/15/98; 3.6.4.7 NMAC - Rn & A, 3 NMAC 6.4.7, 4/30/01]

3.6.4.8 ALLOCATION OF RESPONSIBILITY FOR VALUATION AND DETERMINING CLASSIFICATION OF PROPERTY FOR PROPERTY TAXATION PURPOSES - COUNTY ASSESSOR AND DEPARTMENT:

A. **PIPELINES FOR IRRIGATION PURPOSES NOT EXEMPT:** Although community ditches and their laterals are exempted by Article VIII, Section 3 of the New Mexico Constitution, other irrigation works, water pipeline businesses or public utilities which use pipelines as a means of delivering water are not exempt.

B. **MINERAL RIGHTS AND INTERESTS NOT INCLUDED IN THE DEFINITIONS OF MINERAL PROPERTY:** Mineral rights or interests in minerals, including fractional mineral rights or interests in minerals in lands, which are not "... known to contain minerals in commercially workable quantities of such a character as add present value to the land in addition to its values for other purposes, ..." are not within the definition of "mineral property" found in the Property Tax Code and are not subject to assessment or taxation by the department under Section 7-36-22 NMSA 1978. These rights or interests are not to be placed on the tax schedules of any county as property separate from the surface rights.

C. **CERTAIN SUBSTANCES ARE MINERALS:** Sand, gravel and guano are each defined to be a "mineral" as that term is used in Subsection C of Section 7-36-2 NMSA 1978 and Sections 7-36-22 and 7-36-23 NMSA 1978.

D. **SEVERED MINERAL INTERESTS:**

(1) The owner, lessee or holder of the mineral estate or mineral interest is required to report to the division the mineral property and property held or used in connection with the mineral property when:

(a) the mineral estate or mineral interest in real property has been severed from the surface interest in the real property by sale, lease or other arrangement; and

(b) the mineral estate or mineral interest is "mineral property" as defined in Sections 7-36-22 through 7-36-25 NMSA 1978.

(2) The owner of the surface interest in the real property which is not used in connection with the mineral property is not required to report to the division unless the

surface interest is held in the same ownership as the mineral interests. The surface interest, however, is required to be valued by the county assessor of the county in which the real property is located.

E. **USE OF CONSTRUCTION EQUIPMENT IN MORE THAN ONE COUNTY:** The phrase "that involves the use during a tax year of the machinery, equipment and other personal property in more than one county" does not limit the department's authority to value machinery, equipment and other personal property which is either moved or not moved between counties. The department's authority to value certain property of certain persons engaged in construction attaches if machinery, equipment and other personal property located in more than one county is used by the contractor in a tax year.

F. **"CONSTRUCTION" AS DISTINGUISHED FROM OTHER SERVICES:** The term "construction" is limited to the activities which are listed in Paragraph (3) of Subsection C of Section 7-36-2 NMSA 1978. "Construction" does not include services that are only incidentally related to a construction project such as renting or leasing construction equipment either with or without the operator, hauling to the construction site, maintenance work, landscape upkeep, or the repair of equipment or appliances.

G. **SPECULATIVE BUILDERS:** A person is "engaged in construction" if the person constructs improvements on real property which the person owns and which improved property is held for sale by the person in the ordinary course of the person's business.

H. **CONSTRUCTION INCLUDES:** The term "construction," as used in Paragraph (3) of Subsection C of Section 7-36-2 NMSA 1978, includes:

(1) building prefabricated houses, including modular homes, whether on or off site;

(2) the painting of structures;

(3) the installation of sprinkler systems;

(4) the building of irrigation pipelines; and

(5) seeding and laying sod in conjunction with a construction project.

I. **CONSTRUCTION DOES NOT INCLUDE:** The term "construction," as used in Paragraph (3) of Subsection C of Section 7-36-2 NMSA 1978, does not include:

(1) the installation of carpets;

(2) the installation of draperies; or

(3) the seeding of lawns or laying sod not in conjunction with a construction project.

J. **DELEGATION OF AUTHORITY TO THE COUNTY ASSESSOR:**

(1) The director may delegate authority to the county assessor for the valuation of:

(a) single county water utilities, and

(b) single county communications systems.

(2) Delegation is accomplished by issuing an order in the name of the secretary to the county assessor. The order shall contain the following:

(a) name of company,

(b) general location of company,

(c) general description of property to be valued,

(d) statutes applicable for valuation, and

(e) the first tax year for which the order is effective.

(3) Upon receipt of the order, the county assessor is responsible for entering the property on the tax schedule, maintaining valuation records regarding the property and valuing the property. Once issued, the order remains in effect as long as the company is located and operates solely in the county. A copy of the order shall be mailed to the taxpayer and instructions on reporting to the county assessor shall be attached.

[3/23/83, 12/13/85, 12/29/94, 8/31/96; 3.6.4.8 NMAC - Rn & A, 3 NMAC 6.4.8, 4/30/01, A, 6/29/01]

PART 5: CLASSIFICATION OF PROPERTY

3.6.5.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[8/31/96; 3.6.5.1 NMAC - Rn, 3 NMAC 6.5.1, 4/30/01]

3.6.5.2 SCOPE:

The sections under this part apply to all property subject to property taxation under the Property Tax Code, owners and agents of owners of such property and all county

officials and personnel of the taxation and revenue department charged with administration of the Property Tax Code.

[8/31/96; 3.6.5.2 NMAC - Rn, 3 NMAC 6.5.2, 4/30/01]

3.6.5.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[8/31/96; 3.6.5.3 NMAC - Rn, 3 NMAC 6.5.3, 4/30/01]

3.6.5.4 DURATION:

Permanent.

[8/31/96; 3.6.5.4 NMAC - Rn, 3 NMAC 6.5.4, 4/30/01]

3.6.5.5 EFFECTIVE DATE:

8/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[8/31/96; 3.6.5.5 NMAC - Rn & A, 3 NMAC 6.5.5, 4/30/01]

3.6.5.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Property Tax Code.

[8/31/96; 3.6.5.6 NMAC - Rn, 3 NMAC 6.5.6, 4/30/01]

3.6.5.7 DEFINITIONS:

[RESERVED]

[8/31/96; 3.6.5.7 NMAC - Rn, 3 NMAC 6.5.7, 4/30/01]

3.6.5.8 CLASSIFICATION OF PROPERTY - MULTIPLE USE PROPERTIES:

A. Property shall be classified as residential or nonresidential in accordance with the definitions found in Section 7-35-2 NMSA 1978.

B. Multiple use properties are properties which contain both residential and non-residential components. Multiple use properties shall be classified according to their individual components if it is possible to separate the property into discrete entities. If it is not feasible to separate a multiple-use property into discreet entities, then that

property shall be classified according to the predominant use of the property. Examples: a ranch which can be separated into residential and non-residential components exemplifies a multiple use property divisible into discrete parts. A single building with an apartment and a store, however, generally cannot be separated into its discrete components.

C. Predominant usage of a property may be arrived at by calculating the value of each component through the generally accepted methods of valuation-comparable sales, income or cost-as applicable.

[3/23/83, 12/29/94, 8/31/96; 3.6.5.8 NMAC - Rn & A, 3 NMAC 6.5.8, 4/30/01]

3.6.5.9 [RESERVED]

[3.6.5.9 NMAC - Rn, 3 NMAC 6.5.9, 4/30/01]

3.6.5.10 [RESERVED]

[3.6.5.10 NMAC - Rn, 3 NMAC 6.5.10, 4/30/01]

3.6.5.11 [RESERVED]

[3.6.5.11 NMAC - Rn, 3 NMAC 6.5.11, 4/30/01]

3.6.5.12 LICENSE NOT A FRACTIONAL INTEREST:

Because it does not constitute an interest in real property, a license which does not confer the dominion and control necessary to constitute a leasehold is not included within the definition of "fractional interest" as that term is defined in Section 7-36-4 NMSA 1978.

[12/29/94, 8/31/96; 3.6.5.12 NMAC - Rn & A, 3 NMAC 6.5.12, 4/30/01]

3.6.5.13 [RESERVED]

[3.6.5.13 NMAC - Rn, 3 NMAC 6.5.13, 4/30/01]

3.6.5.14 [RESERVED]

[3.6.5.14 NMAC - Rn, 3 NMAC 6.5.14, 4/30/01]

3.6.5.15 PROPERTY SUBJECT TO VALUATION FOR PROPERTY TAXATION PURPOSES:

A. CERTAIN DISTRICT PROPERTY EXEMPT:

(1) Section 73-17-22 NMSA 1978 provides that title to all rights and property acquired by any conservancy district shall immediately and by operation of law vest in such district in its corporate name. Further, such property is held for uses and purposes of the district and is exempted from all taxation.

(2) The property of a water and sanitation district formed in accordance with Section 73-21-9 NMSA 1978 is exempt from property taxation because the district is a governmental subdivision of the state.

B. RURAL ELECTRIC COOPERATIVES ARE NOT EXEMPT: Property of rural electric cooperatives, formed pursuant to the Rural Electric Cooperative Act, is not exempted from property taxation by Section 62-15-28 NMSA 1978. Such a property tax exemption is not authorized by the New Mexico Constitution.

C. PERSONAL PROPERTY EXEMPTION FROM EXECUTION NOT APPLICABLE: The exemption from execution granted by Section 42-10-1 or 42-10-2 NMSA 1978 does not apply to taxes imposed pursuant to the Property Tax Code.

D. HOMESTEAD EXEMPTION FROM EXECUTION NOT APPLICABLE: The homestead exemption from execution granted by Section 42-10-9 or 42-10-10 NMSA 1978 does not grant an exemption from taxes imposed pursuant to the Property Tax Code.

E. URBAN RENEWAL, MUNICIPAL PROPERTY EXEMPT:

(1) Section 3-46-37 NMSA 1978 of the Urban Development Law, which provides an exemption from property taxation, is sufficiently supported by Article VIII, Section 3 of the New Mexico Constitution.

(2) When the exemption terminates pursuant to Section 3-46-37 NMSA 1978, the purchaser or lessee which is not a public body is required to report the property in accordance with Section 7-38-8 NMSA 1978 to the county assessor or to the division if the property is to be valued by the department, and the public body is required to report the termination as provided in Section 7-38-15 NMSA 1978.

(3) If the exemption terminates after January l of the tax year, the county assessor is required to value the property for the next tax year. No proration of values or taxes is to be made as to this exemption.

F. PROPERTY OWNED BY ANOTHER STATE NOT EXEMPT: Property located within the boundaries of New Mexico which is either fully or partially leased, used or owned by another state is not exempted from taxes imposed by the Property Tax Code solely by reason of the fact that the other state has leased, uses or owns the property.

G. MAUSOLEUMS WITHIN THE DEFINITION OF "CEMETERY": The term "cemetery" as it is used in Article VIII, Section 3 of the New Mexico Constitution

includes burial parks for earth interments, mausoleums for vault or crypt interments, crematories and columbariums.

H. NONRESIDENT ACTIVE-DUTY MILITARY PERSONNEL - EXEMPTION FOR CERTAIN PERSONAL PROPERTY: The personal property of active-duty military personnel, except personal property used in or arising from a trade or business, when such personnel are present in New Mexico and are absent from the state of their residence or domicile solely by reason of compliance with military or naval orders, is exempt from the taxes imposed by the Property Tax Code. Manufactured homes owned by active-duty military personnel and rented to another person are personal property used in a trade or business.

I. COMMUNITY WATER ASSOCIATIONS NOT EXEMPT: The property of a community water association formed pursuant to the provisions of the Sanitary Projects Act (Chapter 3, Article 29, NMSA 1978) is not exempted from taxes imposed by the Property Tax Code by reason of the portion of Article VIII, Section 3 of the New Mexico Constitution which exempts from taxation the property of "towns, cities and ... other municipal corporations".

J. INTERCOMMUNITY WATER OR NATURAL GAS SUPPLY ASSOCIATIONS NOT EXEMPT: An intercommunity water or natural gas supply association formed pursuant to the provisions relating to water or natural gas associations (Article 3, Chapter 28, NMSA 1978) is not exempted from taxes imposed by the Property Tax Code by reason of the portion of Article VIII, Section 3 of the New Mexico Constitution which exempts from taxation the property of "towns, cities and ... other municipal corporations".

K. EXEMPTIONS FOR PROPERTY USED FOR EDUCATIONAL OR CHARITABLE PURPOSES: County assessors shall grant exempt status to property contended to be used for educational or charitable purposes pursuant to Article VIII, Section 3 of the New Mexico Constitution if an exemption has been authorized under a ruling or order in force of the department or a ruling of the predecessor property appraisal department issued subsequent to December 11, 1973 and not withdrawn.

L. EXEMPTIONS FOR CHURCH PROPERTY NOT USED FOR COMMERCIAL PURPOSES:

(1) County assessors shall extend exempt status to property contended to be "all church property not used for commercial purposes" pursuant to Article VIII, Section 3 of the New Mexico Constitution if the exemption has been authorized by a ruling or order of the department in force or by a ruling of the predecessor property appraisal department issued subsequent to December 11, 1973 and not withdrawn.

(2) The county assessor, in other cases, may determine whether the property is church property not used for commercial purposes. The phrase "church property not used for commercial purposes" as used in Article VIII, Section 3 of the New Mexico

Constitution means property which is owned by a church and which is required for the use of the church, such as buildings with land they occupy and furnishings therein, used for religious purposes or for residences of the priests, ministers, chaplains, pastors or rabbis, together with adjacent land reasonably necessary for convenient use of such buildings. Land on which it is the intention of a religious society or church to erect a church building, but on which no work of construction has been commenced on January 1 of the tax year, is not within the meaning of "church property" and is not exempted by Article VIII, Section 3 of the New Mexico Constitution.

M. POLLUTION CONTROL REVENUE BOND ACT - PUBLIC UTILITY PROPERTY NOT EXEMPT: The property of a public utility, with respect to which property the municipality has issued revenue bonds pursuant to the Pollution Control Revenue Bond Act and financed the construction of improvements on the property or financed the acquisition of the property, is not exempted from taxes imposed by the Property Tax Code by reason of Section 3-59-12 NMSA 1978 or Subsection B of Section 7-36-3 NMSA 1978.

N. PROPERTY HELD UNDER COMMUNITY DEVELOPMENT LAW - LESSEE NOT EXEMPT:

(1) The exemption under Subsection B of Section 3-60-32 NMSA 1978 of property acquired or held by a municipality for purposes of the Community Development Law is sufficiently supported by Article VIII, Section 3 of the New Mexico Constitution, because the property referred to is property of a "city" or a "municipal corporation".

(2) The exemption terminates when the municipality sells or leases the property to a person not a public body. Therefore, the interest of a lessee that is not a public body in such property is subject to valuation and taxation.

O. CREDIT UNION SHARE INSURANCE CORPORATION - PERSONAL PROPERTY EXEMPT:

(1) Section 58-12-14 NMSA 1978 of the Credit Union Share Insurance Corporation Act provides that the "corporation" is exempt from all state and local taxation, except in respect to any real estate owned and used by it for its corporate purposes.

(2) This exemption for personal property of the credit union share insurance corporation of this state is sufficiently supported by the last paragraph of Article VIII, Section 3 of the New Mexico Constitution.

P. FLOOD CONTROL ENTITIES - PROPERTY EXEMPT: Section 72-16-97 NMSA 1978 of the Arroyo Flood Control Act, Section 72-17-97 NMSA 1978 of the Las Cruces Arroyo Flood Control Act, Section 72-18-67 NMSA 1978 of the Flood Control District Act and Section 72-19-97 NMSA 1978 of the Southern Sandoval County Flood control Act grant property tax exemptions to certain flood control entities. These exemptions are

sufficiently supported by Article VIII, Section 3 of the New Mexico Constitution because the authority or district referred to in these sections as "quasi-municipal corporations" are political subdivisions of the state of New Mexico.

Q. PRIVATE, NON-INDIAN PROPERTY ON INDIAN RESERVATION OR PUEBLO GRANT NOT EXEMPT: The property of a person who is not a part of or a member of an Indian nation, tribe or pueblo is not exempt from property taxation merely because the property is located on land leased from that Indian nation, tribe or pueblo.

R. PRIVATE LESSEE OF FEDERAL LAND NOT EXEMPT: The property of a private person is not exempt from property taxation when the property is located on land leased from the federal government. The interest of a private lessee under a lease of federal land to construct military housing is subject to property taxation.

S. PERSONAL PROPERTY OF TRIBAL MEMBER: Personal property of a member of an Indian nation, tribe or pueblo is exempt from property taxation if the property is located on January 1 on the tribal territory of the member's Indian nation, tribe or pueblo, except that livestock and construction equipment and machinery owned by the member may be subject to property taxation if located or used outside the tribal territory of the member's Indian nation, tribe or pueblo at any other time.

T. OWNER'S USE OF LEASED PROPERTY: It is the owner's use of leased property that must be educational or charitable in nature to qualify for exemption under Article VIII, Section 3 of the state constitution. For example in a true lease, the lessee's use of the property is immaterial in determining the owner/lessor's use.

U. "OIL AND GAS" INCLUDES LIQUID HYDROCARBONS AND CARBON DIOXIDE: The phrase "oil and gas" as used in Paragraph 2 of Subsection B of Section 7-36-7 NMSA 1978 and 7-36-22 NMSA 1978 includes liquid hydrocarbons and carbon dioxide.

V. OIL, GAS, LIQUID HYDROCARBONS AND CARBON DIOXIDE NOT SEVERED AND SOLD AND OIL AND GAS LEASES NOT SUBJECT TO VALUATION: Oil, natural gas, liquid hydrocarbons and carbon dioxide which have not yet been severed and sold and oil and gas leases and rights to explore for, develop, drill for, severe and sell oil, gas, liquid hydrocarbons and carbon dioxide incident to those leases, are not subject to valuation for property taxation purposes under the Property Tax Code. The oil, natural gas, liquid hydrocarbons and carbon dioxide, upon severance and sale, are subject to valuation and taxation under the Oil and Gas Ad Valorem Production Tax Act. The ad valorem tax levied by that Act is the only ad valorem tax to be levied against oil, natural gas liquid hydrocarbon or carbon dioxide.

W. OIL AND GAS EQUIPMENT OTHER THAN THAT WITHIN THE DEFINITION OF "EQUIPMENT" UNDER SUBSECTION G OF SECTION 7-34-2 NMSA 1978:

(1) Equipment used in the oil and gas industry which does not fall within the definition of "equipment" found in Subsection G of Section 7-34-2 NMSA 1978 of the Oil and Gas Production Equipment Ad Valorem Tax Act is subject to valuation for property taxation purposes under the Property Tax Code.

(2) Drilling rigs are not "equipment" as that term is defined in Subsection G of Section 7-34-2 NMSA 1978.

X. STATE PROPERTY - GENERAL:

(1) As a general matter tax liens existing at the time of acquisition of the property by the state or any of its political subdivisions are extinguished and merged into the title held by the state or its subdivision. An exception to this rule is provided by Article VIII, Section 3 of the state constitution. The tax lien survives whenever a government acquires property by outright purchase or trade and the tax secures payment of principal or interest on bonded indebtedness. Because property acquired by bequest or condemnation is not acquired by outright purchase or trade, the exception does not apply to property acquired through bequest or condemnation.

(2) The exemption for property owned by subdivisions of the state under Article VIII, Section 3 of the state constitution does not require the property to be located within the boundaries of the subdivision. Ownership by the subdivision is sufficient for the exemption.

Y. MORTGAGE FINANCE AUTHORITY PROPERTY: Property of the New Mexico mortgage finance authority is exempt from property taxation as property owned by a state instrumentality.

[3/23/83, 12/29/94, 8/31/96; 3.6.5.15 NMAC - Rn & A, 3 NMAC 6.5.15, 4/30/01, A, 6/29/01]

3.6.5.16 CERTAIN PERSONAL PROPERTY EXEMPT FROM PROPERTY TAX:

A. PROPERTY SUBJECT TO INTERNAL REVENUE CODE SECTION 179 DEDUCTION:

(1) A deduction claimed under Section 179 of the Internal Revenue Code for federal income tax purposes shall be considered to be depreciation for the purposes of Section 7-36-8 NMSA 1978. Any item of personal property for which the property owner claims a deduction under Section 179 of the Internal Revenue Code is subject to property taxation with respect to each year for which a Section 179 deduction was claimed with respect to that property in the same manner as if the property owner had claimed depreciation with respect to that property.

(2) Example: In March, 1994, Owner purchases for $5,000 a desktop computer and related equipment for business use. Owner reports federal income tax on

a calendar year basis. For the federal income tax year ending December 31, 1994, Owner elects to take advantage of the provisions of Internal Revenue Code Section 179 to fully expense the computer and related equipment. Owner must report the value of the computer and related equipment for the property tax year beginning January 1, 1995, but not for subsequent property tax years.

B. INVENTORIES - EXCEPTION: The phrase "inventory for sale or resale at wholesale, retail or on consignment" as used in Section 7-36-8 NMSA 1978 does not include property used by a person in his profession, business or occupation which may be periodically traded in on new equipment or sold because of obsolescence, but does include motor vehicles as defined in Section 66-1-4.11 NMSA 1978 which are not registered, but are held for sale or resale at wholesale, retail or on consignment.

C. INVENTORIES - GENERAL: Except for inventories described in Subsection B of Section 7-36-8 NMSA 1978, inventories of tangible personal property held for sale or resale at wholesale, retail or on consignment are exempt from property taxation.

D. ANIMALS WHICH ARE NOT LIVESTOCK: Animals which are not livestock, as defined in Section 7-35-2 NMSA 1978, are tangible personal property. Unless such animals are described in Subsection B of Section 7-36-8 NMSA 1978, the animals are exempt from taxation.

E. INVENTORIES - AIRCRAFT OWNED BY DEALER: Aircraft not registered under the Aircraft Registration Act but owned by a person who holds an aircraft dealer's license, issued pursuant to Section 64-4-12 NMSA 1978 and valid for the property tax year in which the property tax is imposed, are exempt from property taxation by the provisions of Section 64-4-12 NMSA 1978 if the aircraft are held and operated only for sale.

F. INVENTORIES CONNECTED WITH PROPERTY VALUED BY SPECIAL METHOD: Inventories connected with property subject to valuation under one or more of the special methods of valuation described in Sections 7-36-22 through 7-36-25 and 7-36-27 through 7-36-32 NMSA 1978 are not exempt from property taxation under Section 7-36-8 NMSA 1978.

G. INVENTORIES - VEHICLES: Vehicles not registered under the Motor Vehicle Code but owned by a person who holds a license, valid for the property tax year in which the property tax is imposed, as a dealer of vehicles issued pursuant to Section 66-4-2 NMSA 1978 shall be deemed to be registered under the provisions of the Motor Vehicle Code for the purposes of Section 7-36-8 NMSA 1978 if the vehicles are held and operated only for sale. Vehicles deemed to be registered under Subsection G of 3.6.5.16 NMAC are exempt from property taxation.

H. PROPERTY "DEPRECIATED FOR FEDERAL INCOME TAX PURPOSES": For each property tax year, the property tax lien date (January 1) and the statutory deadline for reporting property (last day of February) both occur before the filing dates

for federal corporate or individual income taxes for the prior year. Because of this, a property taxpayer must include in the report of property for a property tax year as property depreciated for federal income tax purposes any personal property acquired before the lien date for the property tax year but which will be reported and depreciated on federal income tax returns for any part of the calendar year preceding the property tax lien date.

[3/23/83, 6/10/93, 12/29/94, 8/31/96; 3.6.5.16 NMAC - Rn & A, 3 NMAC 6.5.16, 4/30/01]

3.6.5.17 [RESERVED]

[3.6.5.17 NMAC - Rn, 3 NMAC 6.5.17, 4/30/01]

3.6.5.18 [RESERVED]

[3.6.5.18 NMAC - Rn, 3 NMAC 6.5.18, 4/30/01]

3.6.5.19 [RESERVED]

[3.6.5.19 NMAC - Rn, 3 NMAC 6.5.19, 4/30/01]

3.6.5.20 [RESERVED]

[3.6.5.20 NMAC - Rn, 3 NMAC 6.5.20, 4/30/01]

3.6.5.21 TAXABLE SITUS - ALLOCATION OF VALUE OF PROPERTY:

A. INTERESTS IN REAL PROPERTY SUBJECT TO VALUATION FOR PROPERTY TAXATION PURPOSES: Under Section 7-36-7 NMSA 1978, property, except that listed in Subsection B of that section, which has a taxable situs in New Mexico is subject to valuation for property taxation purposes. Therefore, an interest in real property located in New Mexico, having situs in New Mexico by reason of Paragraph (2) of Subsection A of Section 7-36-14 NMSA 1978, is subject to valuation for property taxation purposes.

B. PROPERTY USED TO TRANSPORT PROPERTY HAS SITUS: The phrase "property being transported in interstate commerce that is physically present in the state only while being transported through or over the state" as used in Subparagraph (a) of Paragraph (3) of Subsection A of Section 7-36-14 NMSA 1978 does not include properties used as instrumentalities of interstate commerce, such as railroad engines and cars and commercial aircraft, even though these properties may move in interstate commerce.

C. LIVESTOCK IN FEEDLOTS NOT INCLUDED UNDER FREEPORT PROVISIONS: The terms "warehouse" and "factory" as used in Subparagraph (b) of Paragraph (3) of Subsection A of Section 7-36-14 NMSA 1978, do not include livestock

feedlots. Therefore, livestock in New Mexico feedlots are not excepted from the acquisition of taxable situs in New Mexico by reason of Subparagraph (b) of Paragraph (3) of Subsection A of Section 7-36-14 NMSA 1978.

D. ORIGINAL PACKAGE DOCTRINE NOT APPLICABLE UNDER FREEPORT PROVISIONS: The property referred to in Subparagraph (b) of Paragraph (3) of Subsection A of Section 7-36-14 NMSA 1978 does not acquire taxable situs in this state because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

E. OUT OF STATE DESTINATION NOT SPECIFIED OR SPECIFIED IN ALTERNATIVES:

(1) If the original transportation of the property referred to in Subparagraph (b) of Paragraph (3) of Subsection A Section 7-36-14 NMSA 1978 has ceased and a final destination for the property outside New Mexico has not been specified, the property will be presumed to have a taxable situs in New Mexico. This presumption may be overcome by a showing that:

(a) a final destination for the property, outside the state, has been specified, or

(b) that the property is part of a percentage of property, based on a preceding five-year average, which has been transported outside the state after storage, manufacturing, processing or fabricating.

(2) Final destination for property is specified when information showing alternative destinations, depending on the use of the property or other definite circumstances, is provided.

F. "FARM CROPS" DO NOT INCLUDE SEVERED TIMBER OR LIVESTOCK: The phrase "farm crops" as used in Subparagraph (c) of Paragraph (3) of Subsection A of Section 7-36-14 NMSA 1978 does not include livestock, severed timber or forest products.

G. INTANGIBLE PROPERTY NOT SUBJECT TO VALUATION: Intangible property is not subject to valuation or taxation under the Property Tax Code because it is not within the definition of "property" found in Section 7-35-2 NMSA 1978. Pursuant to 7-37-2 NMSA 1978, tax is imposed only on "property".

[3/23/83, 12/29/94, 8/31/96; 3.6.5.21 NMAC - Rn & A, 3 NMAC 6.5.21, 4/30/01, A, 6/29/01]

3.6.5.22 METHODS OF VALUATION FOR PROPERTY TAXATION PURPOSES - GENERAL PROVISIONS:

A. INCOME METHOD OF VALUATION - IMPLEMENTATION:

(1) The income method of valuation is a method used to value property by capitalizing its income when the market value method cannot be used due to lack of data on sales of comparable properties and no special method specified in Sections 7-36-20 through 7-36-33 NMSA 1978 is applicable. The value of the property under the income method of valuation is determined by dividing the annual income by the applicable capitalization rate.

(2) Income is predicated on estimated future income which could be realized from the legally permitted highest and best use or uses of the property.

(3) Where sufficient evidence of the rental value of the property being valued is available, the income is based upon the fair rent which can be imputed to the property being valued based upon rent actually received for the property by the owner and upon typical rentals received in the area for similar property in similar use, provided that use is the legally permitted highest and best use. When the property being valued is actually encumbered by a lease, the cash rent or its equivalent considered in determining the fair rent of the property is the amount for which the property would be expected to rent at its legally permitted highest and best use were the rental payment to be renegotiated in the light of conditions as they exist at the time the property is being valued.

(4) Where sufficient evidence as to rental value of the property being valued is not available, the income used is based upon the fair rent which the property being valued reasonably can be expected to yield under prudent management. The imputed fair rent is developed from market information which reflects the probable rental value of the property being valued in the open market at its legally permitted highest and best use.

(5) "Income" as that term is used in Section 3.6.5.22 NMAC is net income or the difference between annual revenue or receipts, actual or imputed, from rental of the property and the annual expenses relating to the property.

(6) "Expenses", as that term is used in Section 3.6.5.22 NMAC, is the outlay or average annual allocation of money or money's worth that can fairly be charged against the revenue or receipts from the property. Expenses are limited to those which are ordinary and necessary in the production of the revenue and receipts from the property and do not include debt retirement, interest on funds invested in the property or income taxes.

B. COST METHODS OF VALUATION - IMPLEMENTATION: Generally, the cost methods of valuation are methods for valuing improvements or personal property by determining the costs of reproduction or replacement of property with property which is as good as, but no better than, the improvements or personal property being valued. The reproduction or replacement may be duplicate or equally good substitute property. If the improvements or personal property being valued are not in a new condition, the

appropriately depreciated value of a new reproduction or replacement, as circumstances justify, is used to determine the value of the used items. In the case of newly constructed improvements, original cost, in an arm's length transaction, is the closest approximation of value. Trending may be used to implement the cost method of valuation.

C. IMPLEMENTATION BY MEANS OF SCHEDULES AND MANUALS: Implementation of the valuation methods authorized in Subsection B of Section 7-36-15 NMSA 1978 may be by means of schedules and manuals approved by the division.

D. IMPROVEMENTS AND RIGHTS NOT VALUED SEPARATELY FROM THE LAND THEY SERVE: Subsection C of Section 7-36-15 NMSA 1978 requires that the improvements and rights listed therein be considered as appurtenances to all land they serve, regardless of whether or not the improvements and rights are owned by the owner or owners of all the land they serve. The value of those rights and improvements are included in the determination of the value of the land served and are not valued separately.

E. PIPELINES USED SOLELY FOR IRRIGATION OR STOCK-WATERING PURPOSES: Pipelines used primarily for irrigation or stock-watering purposes shall not be valued separately from the land they serve, shall be considered as appurtenances to the land they serve and their value shall be included in the determination of value of the land they serve.

F. SUBDIVISIONS - IMPLEMENTATION OF VALUATION METHODS:

(1) The term "subdivision" as used in Section 3.6.5.22 NMAC means "subdivision" as defined by Section 47-6-2 NMSA 1978, except that, for lands within a municipality or the extraterritorial zone of a municipality, the term means "subdivision" as defined in Section 3-20-1 NMSA 1978.

(2) Lots or tracts within a subdivision are valued for property taxation purposes on the basis of sales or other dispositions of comparable unsubdivided property until sales in the subdivision as of January 1 of the tax year have exceeded the percentage specified for the purpose for the class or type of subdivision in applicable schedules, manuals or instructions of the division. Sales of comparable unsubdivided property are adjusted to reflect expenditures made by the developer, such as the addition of roads, utilities and other subdivision improvements and related engineering and similar costs. If the roads within a subdivision have not been dedicated to a municipality or a county, the roads are not valued separately from the land they serve but are included in the value of the land they serve.

(3) After sales within a subdivision have exceeded the specified percentage, the lots or tracts within the subdivision are valued on the basis of sales of comparable lots or tracts in subdivisions or, if that method cannot be used due to the lack of comparable sales data, the income or cost method. Lots in a subdivision which have

been sold or disposed of by a developer, but which are owned or held on January 1 of the tax year by the developer because of breach by the consumer of the agreement transferring the developer's interest, shall be considered as lots in which the developer has sold or disposed of his interest for purposes of determining the percentage of sales.

(4) In implementing the market value method of valuation for subdivisions, reference shall be made to disclosure statements filed with the county clerk pursuant to Section 47-6-17 NMSA 1978 of the New Mexico Subdivision Act. The "proposed range of selling or leasing prices, including financing terms" set forth in that statement, however, are not used as a substitute for sales of comparable property in determining value under the market value method of valuation.

G. MARKET VALUE METHOD OF VALUATION - IMPLEMENTATION:

(1) The market value method of valuation is a process of analyzing sales of similar recently sold properties in order to derive an indication of the most probable sales price of the property being appraised. The reliability of this technique is dependent upon:

(a) the availability of comparable sales data;

(b) the verification of the sales date;

(c) the degree of comparability or extent of adjustment necessary for differences in time of sale and time of appraisal; and

(d) the absence of nontypical conditions affecting the sales price.

(2) "Market value" means a price which a willing and informed buyer, not obligated to buy, would pay a willing and informed seller, not obligated to sell, taking into consideration all uses including the highest and best use to which the property is adapted and might reasonably be applied.

(3) Comparable property is property similar to the property being valued and which recently has been sold or is currently being offered for sale in the same or similar areas. Similarity to the property being valued is determined by examining the characteristics of the properties being compared to discover likenesses or differences between those properties and the property being valued.

(4) Cash market value reflected by recent sales of comparable property, if there have been such sales, may be relevant for determining market value. Proof of the purchase price alone of the comparable property is not sufficient to fix market value without evidence of the terms and conditions of the sale.

(5) This approach to value may be implemented by means of schedules and manuals approved by the division.

(6) Evidence of the sale price of the property being valued is not sufficient to establish a market value under Section 7-36-15 NMSA 1978 if the evidence of the sales of comparable property indicates the sales price was not the market value.

[3/23/83, 12/29/94, 8/31/96, 3/31/2000; 3.6.5.22 NMAC - Rn & A, 3 NMAC 6.5.22, 4/30/01]

3.6.5.23 RESPONSIBILITY OF COUNTY ASSESSORS TO DETERMINE AND MAINTAIN CURRENT AND CORRECT VALUES OF PROPERTY:

A. COST SHARING PROVISIONS IN VALUATION MAINTENANCE CONTRACTS: The department will not enter a contract pursuant to Subsection C of Section 7-36-16 NMSA 1978 which provides for sharing of the costs of valuation maintenance programs with counties unless the department has a report from the secretary of finance and administration showing the amount of county funds available or which could be made available for a valuation maintenance program. In the event the report indicates that the county has available sufficient funds for a valuation maintenance program, the contract will provide for only a minimal amount as the department's share of the program costs.

B. SALES RATIO REPORT: The written report which assessors are required to provide under Subsection E of Section 7-36-16 NMSA 1978 includes " ... the relationship of sales prices of property sold to values for property taxation purposes ...". This portion of the report is referred to as the "sales ratio report." The sales ratio report is prepared in accordance with the instructions of the division. In its instruction or by its order to particular county assessors, the division may permit the sales ratio report to be prepared on the basis of sampling. The division instruction will provide for a "uniform sales data card" to be used by each county assessor in recording sales. These cards, or copies of these cards, will be provided the division by the county assessor upon direction by the division.

C. CURRENT AND CORRECT VALUES OF PROPERTY DEFINED: Assessors shall re-appraise properties either once per year (one-year reappraisal cycle), or once every two years (two-year reappraisal cycle). Assessor’s may only change the current reappraisal cycle in their respective county after written approval is granted by the director. The phrase "current and correct values of property" as used in Section 7-36-16 NMSA 1978 means:

(1) for residential property purchased in the year prior to the current tax year the phrase means its market value during the year of purchase;

(2) for residential property not purchased in the year prior to the current tax year, when utilizing a one year reappraisal cycle, the phrase means its’ market value of the year prior to the current tax year, and

(3) for residential property not purchased in the year prior to the current tax year, and non-residential locally assessed property, when utilizing a two year reappraisal cycle, the phrase means its market value in the tax year 2001 and, for each of the following odd-numbered tax year, its market value during the preceding odd-numbered tax year.

[3/23/83, 11/5/85, 5/10/93, 12/29/94, 8/31/96; 3.6.5.23 NMAC - Rn & A, 3 NMAC 6.5.23, 4/30/01; A, 6/13/03]

3.6.5.24 VALUATION OF RESIDENTIAL PROPERTY-COUNTIES WHOSE RATIO IS 85%:

A. Valuation for property tax year 2001: For counties whose sales ratio for residential property is at least 85 percent for the 2000 property tax year, valuations for residential properties in the county for the 2001 property tax year shall be determined under this subsection.

(1) For residential properties being valued for the first time or that underwent in 2000 a change of ownership, as that term is defined in Section 7-36-21.2 NMSA 1978, use or zoning, the valuation for property taxation purposes for 2001 shall be the property's current and correct value.

(2) For all other residential properties, the valuation for 2001 shall not exceed 106.1 percent of the sum of the property's valuation for property taxation purposes in 1999 plus the contributory value of physical changes made to the property not already recognized in the property record or 103 percent of the sum of the property's valuation for property taxation purposes in 2000 plus the contributory value of physical changes made to the property not already recognized in the property record.

B. Valuation in the 2002 and subsequent property tax years: For counties whose sales ratio for residential property is at least 85% for the 2000 property tax year and, beginning with the property tax year following the property tax year for which the county's sales ratio was at least 85%, for counties whose sales ratio for residential property is less than 85% for property tax year 2000 but whose sales ratio is at least 85% for any subsequent property tax year, the current and correct values of residential property for property tax years subsequent to 2001 shall be:

(1) For a single-family dwelling owned and occupied by an individual who is at least sixty-five years old on the valuation date, who meets the income requirements of Section 7-36-21.3 NMSA 1978 for the property tax year and who has claimed for the property tax year entitlement to the provisions of Section 7-36-21.3 NMSA 1978 in accordance with applicable regulations and instructions, the valuation shall be lesser of (i) the current and correct value of the property or (ii) the valuation of the property either in 2001 if the individual was aged 65 or older in 2001 or, if subsequent to 2001, the year in which the individual's sixty-fifth birthday occurred.

(2) For a residential property that underwent in the prior year a change of ownership, as that term is defined in Section 7-36-21.2 NMSA 1978, use or zoning or is being valued for the first time, the valuation shall be the current and correct value for the property.

(3) For residential property not described in the preceding two subparagraphs, the valuation may not exceed the current and correct value for the property tax year, 103 percent of the sum of the valuation for the property for the preceding year plus the contributory value of any physical changes not already recognized in the property record or 106.1 percent of the sum of the property's valuation for property taxation purposes in the property tax year two years prior plus the contributory value of physical changes made to the property not already recognized in the property record. This includes residential property owned and occupied by individuals sixty-five years of age or older in both the current and the prior property tax years and who, having met the income requirements for the prior property tax year, do not meet the income requirements for the current property tax year.

C. To be eligible for the limitation on valuation pursuant to Section 7-36-21.3 NMSA 1978, the claimant shall complete and submit to the county assessor appropriate forms required by the department. Such forms may require attachment of true copies of New Mexico income tax returns showing the claimant's modified gross income. Failure to submit to the county assessor completed forms, including any required attachments, shall result in denial of eligibility for the valuation limitation pursuant to Section 7-36-21.3 NMSA 1978.

D. If, prior to the setting of property tax rates for the property tax year, the department of finance and administration or the department determines that the valuation maintenance amount for residential property in a jurisdiction exceeds a limit set by Section 7-36-23.2 NMSA 1978, the department shall order the valuations on the affected residential properties to be reduced pro rata by an aggregate amount just sufficient to eliminate the excess.

[3.6.5.24 NMAC - N, 4/30/01]

3.6.5.25 SALES RATIO STUDY:

A. The department sales ratio study is prepared on the basis of information provided in the assessors' sales ratio reports or sales data cards referred to in Parts 1 through 7 of Chapter 3.6 NMAC.

B. The sales ratio study shall compare the last assessed value of property prior to the sale of that property, not including any limitation on an increase in value pursuant to Section 7-36-21.2 NMSA 1978, to the sales price of the same property. For example, the 2009 sales ratio study compares the value of property determined by the county assessor for 2008, not including the limitation on increases in value pursuant to Section 7-36-21.2 NMSA 1978, to the sales price of the same property, which sold in 2008.

C. The sales ratio study shall compare the last assessed value of property prior to the sale of that property, including the limitation on an increase in value pursuant to Section 7-36-21.2 NMSA 1978, to the sales price of the same property. For example, the 2009 sales ratio study compares the value of property determined by the county assessor for 2008, including the limitation on increases in value pursuant to Section 7-36-21.2 NMSA 1978, to the sales price of the same property, which sold in 2008.

D. The sales ratio study shall compare the first assessed value of property after its sale, including the limitation on an increase in value pursuant to Section 7-36-21.2 NMSA 1978, to the sales price of the same property. For example, the 2009 sales ratio study compares the value of property determined by the county assessor for 2009, including the limitation on increases in value pursuant to Section 7-36-21.2 NMSA 1978, to the sales price of the same property, which sold in 2008.

[3/23/83, 12/29/94, 8/31/96; 3.6.5.25 NMAC - Rn, 3 NMAC 6.5.25, 4/30/01; A, 9/15/09]

3.6.5.26 REQUESTS BY ASSESSORS FOR TECHNICAL ASSISTANCE SERVICES:

Requests by county assessors to the department for technical assistance, such as appraisals by division employees in the valuation of major industrial or commercial properties, are required to be in writing. The assessor's written request is also required to be signed by at least one member of the board of county commissioners who certifies that the board of county commissioners concurs in the request.

[3/23/83, 12/29/94, 8/31/96; 3.6.5.26 NMAC - Rn & A, 3 NMAC 6.5.26, 4/30/01]

3.6.5.27 SPECIAL METHOD OF VALUATION - LAND USED PRIMARILY FOR AGRICULTURAL PURPOSES:

A. APPLICATION FORM FOR VALUATION AS AGRICULTURAL LAND:

(1) Applications by owners of land for valuation pursuant to Section 7-36-20 NMSA 1978 must be on a form which has been approved by the director of the division. The form shall contain the following requirements for information to be provided:

(a) description of the land;

(b) the use of the land during the year preceding the year for which the application is made;

(c) whether the land was held for speculative land subdivision and sale or has been subdivided;

(d) whether the land was used for commercial purposes of a nonagricultural character;

(e) whether the land was used for recreational purposes and if so, how; and

(f) whether the land was leased and if so, who was the lessee, did he report livestock for valuation and what was the lessee's use of the property.

(2) The form, or a separate document, may also contain requirements for providing information as to the owner's farm income and farm expenses reported to the United States internal revenue service for federal income tax purposes.

B. AGRICULTURAL PROPERTY - BURDEN OF DEMONSTRATING USE ON OWNER:

(1) To be eligible for the special method of valuation for land used primarily for agricultural purposes, the owner of the land bears the burden of demonstrating that the use of the land is primarily agricultural. This burden cannot be met without submitting objective evidence that:

(a) the plants, crops, trees, forest products, orchard crops, livestock, captive deer or elk, poultry or fish which were produced or which were attempted to be produced through use of the land were:

(i) produced for sale or subsistence in whole or in part; or

(ii) used by others for sale or resale; or

(iii) used, as feed, seed or breeding stock, to produce other such products which other products were to be held for sale or subsistence; or

(b) the use of the land met the requirements for payment or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government; or

(c) the owner of the land was resting the land to maintain its capacity to produce such products in subsequent years.

(2) The use of land for the lawful taking of game shall not disqualify land from a determination that it is used primarily for agricultural purposes. Any income to the landowner from the use of the landowner’s land for the lawful taking of game will not be considered for purposes of determining whether land is used primarily for agricultural purposes.

(a) The taking of game is lawful for purposes of this subsection if it complies with the requirements of NMSA 1978, Chapter 17.

(b) The land is used for the lawful taking of game if the landowner actively participates in the lawful taking of game on the landowner's land or authorizes others to use the landowner's land for the lawful taking of game.

(3) A presumption exists that land is not used primarily for agricultural purposes if income from nonagricultural use of the land exceeds the income from agricultural use of the land.

(4) A homesite is not land used for agricultural purposes and is not to be valued as agricultural land pursuant to Section 7-36-20 NMSA 1978. A "homesite" as that term is used in this section is the site used primarily as a residence, together with any appurtenant lands used for purposes related to residing on the site. It is more than the boundary of the foundation of an improvement used as a residence and includes land on which yards, swimming pools, tennis courts and similar nonagricultural facilities are located but does not include land on which agricultural facilities such as barns, pig pens, corrals, bunk houses, farm equipment sheds and outbuildings are located. A homesite shall be presumed to be a minimum of one acre, unless the property owner establishes that a portion of the acre allocated to classification as homesite is actually used for agricultural purposes under the conditions of this section. A homesite can exceed one acre if nonagricultural facilities extend beyond one acre.

(5) Once land has been classified as land used primarily for agricultural purposes, no application for that classification is required for any succeeding year so long as the primary use of the land remains agricultural. The land will retain its status for property taxation purposes in every succeeding year as land used primarily for agricultural purposes.

(6) When use of the land changes such that it is no longer used primarily for agricultural purposes, the owner of the land must report the change in use to the county assessor in which the land is located. A report by the owner that land classified as land used primarily for agricultural purposes in the preceding property tax year is not used primarily for agricultural purposes in the current property tax year rebuts the presumptions in Subsection A of Section 7-36-20 NMSA 1978. If subsequently use of the land again becomes primarily agricultural, the owner must apply for classification of the land as land used primarily for agricultural purposes.

(7) When the owner of the land has not reported that the use of the land is no longer primarily for agricultural purposes but the county assessor has evidence sufficient to rebut the presumptions in Subsection A of Section 7-36-20 NMSA 1978, the county assessor must change the classification of the land. In such a case the county assessor must also consider whether the penalty provided by Subsection H of Section 7-36-20 NMSA 1978 should be applied. The owner may protest the change in classification.

C. AGRICULTURAL LAND - MINIMUM SIZE: Tracts or parcels of land of less than one (1) acre, other than tracts or parcels used for the production of orchard crops,

poultry or fish, are not used primarily for agricultural purposes. Property used for grazing is only eligible for special valuation as land used primarily for agricultural purposes if the property meets the requirements of Paragraph (1) of Subsection B of this section, is stocked with livestock that are reported to the county assessor for valuation by either the property owner or the owner of the livestock, and contains the minimum number of acres capable of sustaining one animal unit as established in the order issued pursuant to Paragraph (5) of Subsection F of this section. Tracts or parcels of property smaller than the minimum number of acres capable of sustaining one animal unit may qualify as land used primarily for agricultural purposes as grazing land upon application to the county assessor. The county assessor shall consider the following in determining whether the property is eligible for special valuation as land used primarily for agricultural purposes as grazing land:

(1) whether the property owned or leased is of sufficient size and capacity to produce more than one-half of the feed required during the year for the livestock stocked on the property;

(2) the predominant use of the land has been continuous;

(3) the purchase price paid;

(4) whether an effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices;

(5) whether the property has been divided, without regard to whether such division was made pursuant to county or municipality subdivision regulations;

(6) whether the property is eligible for landowner hunting permits issued by the department of game and fish;

(7) whether the property is contiguous to land used primarily for agricultural purposes owned by a member or members of the immediate family of the owner; "immediate family" means a spouse, children, parents, brothers and sisters, and

(8) such other factors as may from time to time become applicable.

D. AGRICULTURAL PRODUCTS DEFINED: The phrase "agricultural products" as it is used in Section 7-36-20 NMSA 1978 and regulations under the Property Tax Code means plants, crops, trees, forest products, orchard crops, livestock, captive deer or elk, wool, mohair, hides, pelts, poultry, fish, dairy products and honey.

E. PRODUCTION CAPACITY OF AGRICULTURAL LAND - IMPLEMENTATION OF VALUATION METHOD:

(1) The production capacity of agricultural land shall be determined by the income method of valuation based on the income derived or capable of being derived

from the use of the land for agricultural purposes. If information about income amounts from the use of land for agricultural purposes is unavailable, then income shall be imputed to the land being valued on the basis of income amounts from the use of comparable agricultural lands for agricultural purposes. The comparability of the land used for purposes of imputing income shall be determined on the basis of class. A determination of income from agricultural land is not required to be restricted to income from actual production of agricultural products on the agricultural land, since the basis for determination of value is on the land's capacity to produce agricultural products.

(2) "Income" as that term is used in this section is generally the average for the preceding five tax years of:

(a) the amount reported for federal income tax purposes on Schedule F of the individual federal income tax return as net farm profit, excluding income and expenses not attributable to the agricultural land being valued; plus

(b) fees for rental of land or machinery less expenses relating thereto; plus

(c) the reasonable value of unpaid labor of the operator or the farm family; less

(d) the expense of depreciation on farm buildings and machinery.

(3) In lieu of calculating income in the manner set forth in Paragraph (2) of Subsection B of this section, income may be determined by either of the following methods.

(a) Income may be determined from reference services such as the New Mexico crop and livestock reporting service, the cooperative extension service, and the agriculture departments of state universities. If a source other than the reported federal farm income, referred to in Paragraph (2) of Subsection E of this section, is used, adjustments should be made to allow for costs allowable on the federal farm income tax return if such costs are not allowed in the income figure provided. Also, income from sources other than the federal farm income return are to be closely matched to the class of agricultural land being valued so that the income properly reflects income from the class of agricultural land being valued.

(b) The division by order may determine annual income from various classes of agricultural land based on the land's capacity to produce agricultural products, as provided in Subsection E of this section. This order or orders, if issued, would be issued before the last day of the tax year preceding the year in which the annual income amounts are to be used.

(4) The capitalization rate to be used in valuing land used primarily for agricultural purposes pursuant to this section may be set by the division by order. This order, if made, will be issued before the last day of the tax year preceding the year in

which the capitalization rate is to be used. The division shall review the capitalization rate used at least once every five tax years. In setting the capitalization rate, consideration is given to the current interest rates for government loans, federal land bank loans and production credit association loans.

(5) The capitalization rate is divided into the annual "income" per acre, except for grazing land, to arrive at the value per acre for property taxation purposes of the agricultural land being valued.

F. CLASSES OF AGRICULTURAL LAND:

(1) Pursuant to Section 7-36-20 NMSA 1978, the division shall annually issue an order establishing the carrying capacity of grazing land in accordance with the methods of classification contained in this subsection.

(2) Agricultural land is classified as either:

(a) "irrigated agricultural land", which is all agricultural land receiving supplemental water to that provided by natural rainfall; or

(b) "dryland agricultural land", which is all agricultural land without a supplemental water supply; or

(c) "grazing land" which is all agricultural land which is used solely for the grazing of livestock as established in Subsections B and C above; land the bona fide and primary use of which is the production of captive deer or elk shall be valued as grazing.

(3) All lands that were previously irrigated or dryland meeting the preceding classifications but which are now participating in any of the various crop retirement programs such as the soil bank or acreage set-aside program sponsored by the United States department of agriculture are still to be classified as irrigated or dryland until the program expires from the subject land and clear evidence is shown that a change in land use is occurring, unless there has been a sale of the water rights, the use of which permitted irrigation.

(4) Irrigated and dryland agricultural land is classified using the following sources:

(a) The land capability classification of the natural resources conservation service which is a rating of land according to its ability to produce permanently and the requirements of management to sustain production. It consists of eight (8) different land capability classes. Classes I through IV are considered suitable for cultivation; Classes V through VIII are considered to be not suitable for cultivation. Classes II through VIII are further modified by four (4) subclasses that are used to signify the particular kind of limitation affecting the soil. In addition, there are nine (9) land capability units which are

used to indicate a special kind of condition. This system is an interpretative rating that includes not only the physical factors of soil, but the availability of water and the effects of climate. It is designed primarily for soil management and conservation practices. Each land capability description carries with it specific recommendations for farming practices that were developed by actual farming experience to offset or allow for the existing production-limiting factors of the soil.

(b) Natural land classification of soil by physiographic groups based on their general topographic, or slope, position.

(c) Classification by series and type which is the classification used in the cooperative survey of New Mexico state university and the United States department of agriculture and by the natural resources conservation service and which classify in a series-type grouping.

(d) Soil characteristics shown by the current New Mexico county assessor's agricultural manual.

(e) Weather data. The general weather pattern of an area is usually well known and presents no special problems. However, the possible presence of microclimatic zones should be considered. Weather data can be obtained from the national weather service, agriculture experiments stations, extension service and others connected with growing conditions.

(f) Cost and availability of water. Irrigation districts and other water suppliers boundaries can be obtained from the local conservancy district office or the New Mexico state engineer's office. The supply of water and its cost is to be considered. Electric utility companies often have information on pumping costs and related charges. District taxes, where they are charged, are to be ascertained as well as other water costs. Many areas are subject to charges related to reclamation and drainage; information on such charges must be obtained.

(g) Cropping information. Knowledge of crop production, yields, prices received, costs and cultural practices is essential to many appraisal situations.

(5) The minimum carrying capacity of grazing land will be established in an order of the division by the number of animal units per section (conventionally 640 acres) that the grazing land will support under accepted management practices. The assessor can allocate acreage per animal unit for land parcels that are less than 640 acres as long as the allocation is proportionate and meets the criteria of Subsection C "agricultural land-minimum size" herein. In establishing carrying capacity, the division shall adhere to the definition of livestock in Subsection C of Section 7-35-2 NMSA 1978, as well as utilize the animal unit equivalencies recognized by and information obtained from livestock industry representatives, the bureau of land management, the natural resources conservation service, the forest service, agricultural departments of state universities and the state and federal departments of agriculture shall be used. The

division will consider drought and natural conditions which would tend to reduce the carrying capacity of grazing land. The division may establish in each county one or more carrying capacities based on different natural conditions within the county. Economic conditions, such as the market price of livestock, are not taken into consideration in determining carrying capacity of grazing land. The order is issued before the last day of the year preceding the tax year in which it is to be used.

(6) The division, by order, shall determine the values per animal, which values reflect the net income derived or capable of being derived from the use of the land (or fractional interests in real property) used for grazing being valued for the tax year for grazing purposes. These animal values are applied uniformly throughout the state and are calculated in a manner so that the tax ratio is applied. This amount or these amounts shall be reviewed by the division prior to the issuance of the annual order. The annual order is to be issued before the last day of the tax year preceding the tax year in which it is to be used; however, this deadline may be extended by order of the director.

G. IMPROVEMENTS ON AGRICULTURAL LAND - VALUATION: All improvements, other than those specified in Subsection C of Section 7-36-15 NMSA 1978, on land used primarily for agricultural purposes shall be valued separately, using the methods described in Section 7-36-15 NMSA 1978 and regulations thereunder, and the value of these improvements shall be added to the value of the land.

H. VALUATION OF CAPTIVE DEER AND ELK: The department shall establish the value of captive elk and deer under Section 7-36-21 NMSA 1978 and 3.6.5.28 NMAC. For purposes of the department's determination:

(1) captive deer shall be valued and taxed as sheep; and

(2) captive elk shall be valued and taxed as cattle.

[3/23/83, 12/29/94, 8/31/96, 12/31/97; 3.6.5.27 NMAC - Rn & A, 3 NMAC 6.5.27, 4/30/01; A, 8/15/06; A, 9/15/09]

3.6.5.28 SPECIAL METHOD OF VALUATION – LIVESTOCK:

A. LIVESTOCK OWNERS REPORT: The livestock owners report shall be on a form approved by the director of the division. The report requires the following information:

(1) the number of each class of livestock, by head, owned by the owner and located in New Mexico on January 1 of the tax year, the classes being consistent with those established in the division order referred to in Subsection D of Section 7-36-21 NMSA 1978;

(2) the numbers of each class of livestock, by head, owned by the owner and not located in New Mexico on January 1 but brought into New Mexico and located here

for more than twenty days subsequent to January l, the classes being consistent with those established in the division order referred to in Subsection D of Section 7-36-21 NMSA 1978; and

(3) a statement as to the length of time during the tax year that the livestock are expected to be in New Mexico and their location, such as a feedlot or grazing on pasture, with reference to school district in the county.

B. ISSUING OF ORDER DELEGATED: Authority to issue and sign the order establishing the classes of livestock and the value of each class is delegated to the director.

C. ALLOCATION OF VALUE OF LIVESTOCK:

(1) Livestock that are in New Mexico for a portion of a tax year exceeding twenty days will be valued at a prorated value determined by multiplying by a fraction, the numerator of which is the number of months or portions of a month the livestock are located in New Mexico and the denominator of which is twelve, the value of the livestock determined by the order referred to in Subsection D of Section 7-36-21 NMSA 1978. Therefore, if a head of livestock was in New Mexico for one month and five days during a tax year, the value of the head of livestock would be determined as follows: 2/12 x $100 (value per order) = $16.67 (value for property tax purposes).

(2) If livestock are imported for an indeterminate time or are exported for an indeterminate time but returned to New Mexico during the tax year and during this time of importation or exportation the cattle are:

(a) located in a feedlot, it shall be presumed that the livestock were in the feedlot for five months;

(b) used for racing, it shall be presumed that the livestock were used for racing for three months; and

(c) used for rodeos, it shall be presumed that the livestock were used for rodeos for one month; these presumptions may be overcome by a showing by the owner of the livestock of the actual time the livestock were or will be in New Mexico.

(3) Livestock, both resident and transient, which range on land in more than one governmental unit shall be allocated among the governmental units on the basis of the proportion of range land in each governmental unit. Therefore, if livestock valued at $1,000 range on ten acres of land located one-half in X county and one-half in Y county, the value allocated to X county would be $500 and the value allocated to Y county would be $500. This allocation may be adjusted to account for a difference in carrying capacity of the grazing land in different governmental units. Values of livestock may also be allocated on the basis of the time they range on land in a governmental unit during

the tax year, as that time relates to the total time the livestock are ranged on land in all governmental units in New Mexico.

[3/23/83, 12/29/94, 8/31/96; 3.6.5.28 NMAC - Rn & A, 3 NMAC 6.5.28, 4/30/01]

3.6.5.29 MINERAL PROPERTY - DEFINITIONS AND CLASSIFICATIONS FOR VALUATION PURPOSES:

A. MINERAL PROPERTY - MINERAL DEFINED: For purposes of Paragraph (2) of Subsection C of Section 7-36-2 NMSA 1978 and Sections 7-36-22 and 7-36-23 NMSA 1978, a mineral is any lifeless natural substance having sufficient value to be mined, quarried or extracted from the earth, except water, oil and gas.

B. MINERAL PROPERTY - DETERMINATION OF "CLASS ONE NONPRODUCTIVE MINERAL PROPERTY":

(1) If "development expenditures" as defined in Section 616 of the United States Internal Revenue Code of 1986, as amended or renumbered, are attributable to any land held in private ownership in fee during any of the ten years immediately preceding the tax year for which the property is being valued, the property is presumed to contain minerals in commercially workable quantities of such a character as add present value to the land in addition to its value for other purposes. If such property is not mined to the extent specified in Subsection A of Section 7-36-22 NMSA 1978, it is, unless the presumption is rebutted, to be classified as class one nonproductive mineral property under Subsection B of that section.

(2) If the per acre value determined pursuant to Subsection E of Section 7-36-23 NMSA 1978 for real property contended to be class one nonproductive mineral property is less than ten dollars ($10.00) per acre for the mineral in place, excluding the surface value of the property, the real property does not contain minerals in commercially workable quantities of such a character as add present value to the land in addition to its value for other purposes, is therefore outside the definition of "mineral property" and shall not be valued by the department, unless the property is held or used in connection with "mineral property".

C. MINERAL PROPERTY - CERTAIN LEASEHOLD INTERESTS NOT MINERAL PROPERTY: Leasehold interests in mineral lands held by possessory title under the laws of the United States and leasehold or contract mineral rights in mineral lands, the fee of which is vested in the United States or the state, from which no mineral products are severed are not "mineral property" as that phrase is used in Subsection C of Section 7-36-2 NMSA 1978 and Sections 7-36-22, 7-36-23, 7-36-24 and 7-36-25 NMSA 1978 and are not valued by the department and are not to be placed on the tax schedules of any county.

[3/23/83, 12/29/94, 8/31/96; 3.6.5.29 NMAC - Rn & A, 3 NMAC 6.5.29, 4/30/01]

3.6.5.30 SPECIAL METHOD OF VALUATION - MINERAL PROPERTY AND PROPERTY USED IN CONNECTION WITH MINERAL PROPERTY – GENERAL:

A. MINERAL PROPERTY - SURFACE VALUE FOR AGRICULTURAL OR OTHER PURPOSES: The valuation methods to be used in determining the "surface value for agricultural or other purposes or class one productive of nonproductive mineral property when the surface interest is held in the same ownership as the mineral interests" as that phrase is used in Paragraph (2) of Subsection B of Section 7-36-23 NMSA 1978 are those methods described in Section 7-36-15 NMSA 1978 and regulations thereunder except that, when the surface is used primarily for agricultural purposes, the land shall be valued in accordance with Section 7-36-20 NMSA 1978 and regulations thereunder. Subsection E of Section 7-36-23 NMSA 1978 applies only as a valuation method for the mineral in place in mineral property determined to be class one nonproductive mineral property.

B. MINERAL PROPERTY - IMPROVEMENTS, ETC., HELD OR USED IN CONNECTION WITH ALL CLASSES OF MINERAL PROPERTY:

(1) The valuation methods to be used in valuing "improvements, equipment, materials, supplies and other personal property held or used in connection with all classes of mineral property" as those terms are used in Paragraph (1) of Subsection B of Section 7-36-23 NMSA 1978 are those methods described in Section 7-36-33 NMSA 1978 and regulations thereunder. Equipment and other personal property used in "construction" as that term is defined in Paragraph (3) of Subsection C of Section 7-36-2 NMSA 1978 shall be valued pursuant to Section 7-36-33 NMSA 1978 and regulations thereunder.

(2) "Improvements,...held or used in connection with all classes of mineral property", as that phrase is used in Paragraph (1) of Subsection B of Section 7-36-23 NMSA 1978 includes, but is not limited to, improvements constructed on property other than mineral property as defined in Section 7-36-22 NMSA 1978 when those improvements are held or used in connection with any class of mineral property. The value of the land upon which such improvements are constructed is to be a part of the value of the improvements. Therefore, property such as office buildings, company houses and processing facilities affixed to the land which is held or used in connection with any class of mineral property is to be valued by the division either when such improvements are on mineral property or when such improvements are not on mineral property. The methods for valuation of these improvements are those methods described in Section 7-36-33 NMSA 1978 and regulations thereunder. The methods for valuation of the land upon which these improvements are located are those methods described in Section 7-36-15 NMSA 1978 and regulations thereunder.

(3) The valuation of construction work in progress for uncompleted improvements on mineral property subject to valuation under Section 7-36-23 or 7-36-25 NMSA 1978 is fifty percent of the actual amount expended for the uncompleted improvements as of January 1 of the tax year.

C. MINERAL PROPERTY - SAND, GRAVEL AND CALICHE - ANNUAL NET PRODUCTION VALUE: The "annual net production value", as that phrase is used in Subsection F of Section 7-36-23 NMSA 1978, for sand, gravel and caliche may be reported at a value of fifty cents ($.50) per ton, without any deductions, at the election of the person reporting this mineral property to the division. If the division determines that a value of fifty cents ($.50) per ton for this mineral property is less than the annual net production value calculated under Subsection F of Section 7-36-23 NMSA 1978, the division may disallow the election and require reporting of market values, royalties, direct costs, depreciation and other information determined necessary by the division.

D. MINERAL PRODUCT - SCORIA, PUMICE AND CINDERS - ANNUAL NET PRODUCTION VALUE:

(1) The "annual net production value", as that phrase is used in Subsection F of Section 7-36-23 NMSA 1978, for "construction grade" scoria, pumice and cinders may be reported at a value representing twenty five percent (25%) of the gross selling price, without any deductions, at the election of the person reporting this mineral property to the division. If the division determines that a value represented by twenty five percent (25%) of the gross selling price for this mineral property is less than the annual net production value calculated under Subsection F of Section 7-36-23 NMSA 1978, the division may disallow the election and require reporting of market values, royalties, direct costs, depreciation and other information determined necessary by the division.

(2) The "annual net production value", as that phrase is used in Subsection F of Section 7-36-23 NMSA 1978, for "landscape" scoria, pumice and cinders may be reported at a value representing thirty five percent (35%) of the gross selling price, without any deductions, at the election of the person reporting this mineral property to the division. If the division determines that a value represented by thirty five percent (35%) of the gross selling price for this mineral property is less than the annual net production value calculated under Subsection F of Section 7-36-23 NMSA 1978, the division may disallow the election and require reporting of market values, royalties, direct costs, depreciation and other information determined necessary by the division.

(3) For purposes of Section 3.6.5.30 NMAC , the term "construction grade" means all material sold for or used as concrete aggregate and similar purposes. The term "landscape" means all material sold for or used as a decorative material. The terms "scoria" and "cinders", as used in Section 3.6.5.30 NMAC, do not include "fines" which are the result of sorting certain mineral products.

E. MINERAL PROPERTY - MARKET VALUE:

(1) The phrase "market value" as used in Paragraphs (1) and (2) of Subsection F of Section 7-36-23 NMSA 1978 means the amount for which all mineral production was sold during the year in which net production value is being determined provided, the sale or sales were between willing buyers and willing sellers in the open

market in the usual and ordinary course of trade and competition and both sellers and buyers were equally free to bargain. The phrase "market value" includes bonus or subsidiary payments in whatever form they may be received.

(2) If the market value of all or a part of the mineral production, during the year in which net production value is being determined, cannot be determined under the preceding paragraph because the mineral production is not sold, is used or consumed or is not sold under the conditions described in the preceding paragraph, then the market value of the mineral production is that reflected by sales of comparable mineral production and the application of generally accepted appraisal techniques. In using the method of valuation described in this paragraph, the division considers and makes appropriate adjustments to the value reflected by sales of comparable mineral production to account for the existence of a demand for, and the accessibility of a market for, the mineral production. In determining market value under this method, the division also compares the "gross income from the property" determined for federal income tax purposes under Section 613 of the United States Internal Revenue Code of 1986, as amended or renumbered. Section 3.6.5.30 NMAC, however, does not adopt the valuation methods described in United States treasury regulations for Section 613, unless specifically indicated herein.

(3) If the market value of all or a part of the mineral production, during the year in which net production value is being determined, cannot be determined under the methods set forth in the preceding two paragraphs, then market value shall be determined through the use of the "proportionate profits method" as that phrase is described in United States treasury regulations, as amended or renumbered.

F. MINERAL PROPERTY - "PRODUCTION OF ALL MINERALS" AND "TREATING" DEFINED:

(1) The phrase "production of all minerals" as used in Paragraphs (1) and (2) of Subsection F of Section 7-36-23 NMSA 1978 means the mineral when and during the last extraction, milling, treating or reducing on it is performed by or for the account of the owner or operator, irrespective of when the mineral or the mineral in other material may have been mined or when the mineral or mineral in other material may be sold, exchanged, consumed or further processed by or for the account of the owner or operator.

(2) The term "treating" as used in Subparagraph (b) of Paragraph (1) and Subparagraph (b) of Paragraph (2) of Subsection F of Section 7-36-23 NMSA 1978 and Section 3.6.5.30 NMAC means a process which changes a mineral substance removed from the earth by making it easier to handle and eliminating unwanted fractions by any method, whether manipulative, thermal, chemical or electrolytic. "Treating" is not manufacturing. Therefore, activities such as making copper tubing, making steel (but not reducing ore to metallic iron) and manufacturing automobiles are not "treating".

G. MINERAL PROPERTY - DIRECT COSTS - DEDUCTION GUIDELINES:

(1) The phrase "direct costs" as used in Subparagraph (b) of Paragraph (1) and Subparagraph (b) of Paragraph (2) of Subsection F of Section 7-36-23 NMSA 1978, means the immediate or proximate costs of the activities described in the subsection as opposed to collateral or indirect costs. Evidence that the costs were actually incurred does not, without additional evidence, establish that the costs are direct costs.

(2) "Direct costs...determined under generally accepted accounting principles..." also means variable costs or costs that vary directly with the volume of production, as opposed to indirect costs which means fixed or period costs which are incurred regardless of the volume of production.

(3) Direct costs are required to have been actually incurred during the year in which they are claimed. Direct costs are required to be determined under generally accepted accounting principles and if this test is not met, the consistent application by the taxpayer of accounting principles which are not generally accepted does not qualify the cost as a deduction.

(4) Under generally accepted accounting principles, "direct costs" do not usually include:

(a) salaries of any persons not actually engaged in the extracting, milling, treating, reducing, transporting and selling of the minerals or in the immediate management or superintendence of these activities;

(b) any amounts paid for improvements or the purchase of machinery, equipment, appliances or for construction of mills, reduction works, transportation facilities or other buildings or structures;

(c) any amounts which, under generally accepted accounting principles consistently applied by taxpayer, are capitalized;

(d) property taxes;

(e) income taxes, both state and federal;

(f) sales or gross receipts taxes included in the cost of items which are not deductible as direct costs;

(g) insurance premiums for public liability and property damage insurance, except when this insurance is required by law, such as when taxpayer's trucks are using public highways;

(h) life insurance on executives;

(i) interest on borrowed monies;

(j) depletion of reserves;

(k) mine and mill development costs;

(l) mine and mill "startup" costs, such as calibration of plant and equipment;

(m) exploration costs;

(n) fire and extended coverage insurance;

(o) administrative costs incurred outside New Mexico;

(p) contract costs which are not incurred as "direct costs" for activities described in Subparagraph (b) of Paragraph (1) and Subparagraph (b) of Paragraph (2) of Subsection F of Section 7-36-23 NMSA 1978;

(q) royalties, other than those described in Subparagraph (a) of Paragraph (1) and Subparagraph (a) of Paragraph (2) of Subsection F of Section 7-36-23 NMSA 1978, and Subparagraph (a) of Paragraph (5) of Subsection G of Section 3.6.5.30 NMAC;

(r) franchise taxes;

(s) legal and accounting costs;

(t) dues and contributions;

(u) institutional advertising costs, which are not directly related to selling the mineral but are for the purpose of establishing goodwill; and

(v) other indirect costs.

(5) Under generally accepted accounting principles, "direct costs" do usually include:

(a) royalties paid to labor unions representing employees of the taxpayer if the royalties are direct costs of the activities described in Subparagraphs (b) of Paragraph (1) and Subparagraph (b) of Paragraph (2) of Subsection F of Section 7-36-23 NMSA 1978;

(b) severance and resources excise taxes;

(c) sales or gross receipts taxes included in the cost of items which are deductible as direct costs;

(d) payroll taxes and unemployment taxes, both federal and state, if the payroll services upon which these taxes are imposed are deductible as direct costs;

(e) workman's compensation insurance and employees health and accident insurance for the taxpayer's employees, the costs of whose services are direct costs;

(f) assaying and sampling; and

(g) other direct costs.

H. MINERAL PROPERTY - COSTS OF DEPRECIATION - DEDUCTION GUIDELINES: The phrase "costs of depreciation" as used in Subparagraphs (c) of Paragraph (1) and Subparagraph (c) of Paragraph (2) of Subsection F of Section 7-36-23 NMSA 1978 means a reasonable allowance for the exhaustion, wear and tear and obsolescence of property actually used in the activities described in those subsections. Property which is not actually used, such as property which is stored or held for future use, is not entitled to the deduction for costs of depreciation.

I. MINERAL PROPERTY - MICA - ANNUAL NET PRODUCTION VALUE: The "annual net production value", as that phrase is used in Subsection F of Section 7-36-23 NMSA 1978, for mica may be reported at a value of eight dollars ($8) per cubic yard, without any deductions, at the election of any person reporting this mineral property to the division. If the division determines that a value of eight dollars ($8) per cubic yard for this mineral property is less than the annual net production value calculated under Subsection F of Section 7-36-23 NMSA 1978, the division may disallow the election and require reporting of market values, royalties, direct costs, depreciation and other information determined necessary by the division.

[3/23/83, 8/28/86, 10/27/87, 12/29/94, 8/31/96; 3.6.5.30 NMAC - Rn & A, 3 NMAC 6.5.30, 4/30/01, A, 6/29/01]

3.6.5.31 SPECIAL METHOD OF VALUATION - MINERAL PROPERTY AND PROPERTY USED IN CONNECTION WITH MINERAL PROPERTY – POTASH:

A. POTASH MINERAL PROPERTY - MARKET VALUE:

(1) The "market value of all mineral production from potash mineral property" as that phrase is used in Subsections B, D, and E of Section 7-36-24 NMSA 1978, means the amount for which all mineral production from potash mineral property was sold during the year prior to the tax year provided that the sale or sales were between willing buyers and sellers in the open market in the usual and ordinary course of trade and competition and both seller and buyer were equally free to bargain. The phrase "all mineral production from potash mineral property" includes minerals produced other than potash.

(2) If the market value of all or a part of the mineral production from potash mineral property for the year prior to the tax year cannot be determined under the preceding paragraph because the mineral production is not sold, is used or consumed or is not sold under the conditions described in Paragraph (1) of Subsection A of

Section 3.6.5.31 NMAC, then the market value of the mineral production is that reflected by sales of comparable mineral production from potash mineral property and the application of generally accepted appraisal techniques. In using the method of valuation described in this paragraph, the division considers and makes appropriate adjustments to the value reflected by sales of comparable mineral production from potash mineral property to account for the existence of a demand for, and the accessibility of a market for, the mineral production. In determining market value under this method, the division compares the gross income from the property determined for federal income tax purposes under Section 613 of the United States Internal Revenue Code of 1986, as amended or renumbered. Section 3.6.5.31 NMAC, however, does not adopt the valuation methods described in the United States treasury regulations for Section 613, unless specifically indicated herein.

(3) If the market value of all or a part of the mineral production for the year prior to the tax year cannot be determined under the methods set forth in Paragraphs (1) and (2) of Subsection A of Section 3.6.5.31 NMAC, then the market value is determined through the use of the "proportionate profits method" as that phrase is described in United States treasury regulations, Section 1.613-3, as amended or renumbered.

(4) The market value of muriate of potash and sulphate of potash magnesia "fines" used in the manufacture of potassium sulphate, although subgrade mineral products without a commercial market, is determined on the basis of a computed sales price between that portion of a taxpayer which produces the fines and that portion of the same taxpayer which subsequently processes the fines. This computed sales price is determined by use of a formula which takes into consideration the relevant factors generally used in valuing the fines including, for example, but not as a limitation, the processing costs, mineral content and particle size of the fines.

B. POTASH MINERAL PROPERTY - SURFACE VALUE FOR AGRICULTURAL OR OTHER PURPOSES: The valuation methods used in determining the "surface value for agricultural or other purposes (of property) held in connection with class one productive or nonproductive potash mineral property, when the surface interest is held in the same ownership as the mineral interests", as that phrase is used in Subsection C of Section 7-36-24 NMSA 1978, are those methods described in Section 7-36-15 NMSA 1978 and regulations thereunder except that, when the surface is used primarily for agricultural purposes, the land shall be valued in accordance with Section 7-36-20 NMSA 1978 and regulations thereunder.

C. POTASH MINERAL PROPERTY - CLASS ONE NONPRODUCTIVE POTASH MINERAL PROPERTY: Class one nonproductive potash mineral property is valued on the basis of the value of the minerals in place on such property in addition to the value determined pursuant to Subsection C of Section 7-36-24 NMSA 1978.

D. POTASH MINERAL PROPERTY - ALLOCATION OF VALUES: The values of potash mineral property are allocated among the governmental units in accordance with

Subsection G of Section 7-36-24 NMSA 1978. The surface value for agricultural or other purposes (of property) held in connection with class one productive or nonproductive mineral property and the value of class one nonproductive potash mineral property is allocated to the governmental unit or units in which the property is located on the basis of the value for those properties determined for the tax year.

[3/23/83, 12/29/94, 8/31/96; 3.6.5.31 NMAC - Rn & A, 3 NMAC 6.5.31, 4/30/01]

3.6.5.32 SPECIAL METHOD OF VALUATION - MINERAL PROPERTY AND PROPERTY USED IN CONNECTION WITH MINERAL PROPERTY – URANIUM:

A. URANIUM MINERAL PROPERTY - IMPROVEMENTS, ETC., HELD OR USED IN CONNECTION WITH ALL CLASSES OF URANIUM MINERAL PROPERTY - SURFACE VALUE FOR AGRICULTURAL OR OTHER PURPOSES: The valuation methods used in valuing the property described in Paragraphs (1) and (2) of Subsection B of Section 7-36-25 NMSA 1978 are those methods referred to in Subsections A and B of Section 3.6.5.30 NMAC.

B. URANIUM MINERAL PROPERTY - CLASS ONE NONPRODUCTIVE URANIUM MINERAL PROPERTY: Class one nonproductive uranium mineral property is valued on the basis of the value of the minerals in place of such property in addition to the values determined pursuant to Subsection B of Section 7-36-25 NMSA 1978.

C. URANIUM MINERAL PROPERTY - REQUIREMENT FOR FIFTY PERCENT DEDUCTION: Paragraph (2) of Subsection E of Section 7-36-25 NMSA 1978 allows a fifty percent (50%) deduction for the cost of producing and bringing the output to the surface from an underground mine. Therefore, in the case of strip mining operations, after removal of the overburden, the taxpayer is not entitled to the deduction.

D. URANIUM MINERAL PRODUCTION - APPLICATION OF FIFTY PERCENT DEDUCTION: The fifty percent deduction for the costs of producing and bringing the output to the surface from an underground mine which is found in Paragraph (2) of Subsection E of Section 7-36-25 NMSA 1978 is deducted from a value which is comprised of:

(1) the units of uranium sold times either fifty percent of the taxpayer's average unit sales price or fifty percent of the representative sales price, the prices being determined consistently with Paragraph (2) of Subsection E of Section 7-36-25 NMSA 1978; and

(2) the units of all other minerals sold times fifty percent of the representative sales price of all other minerals produced and saved from the uranium-bearing material not disposed of as ore or solution.

[3/23/83, 12/29/94, 8/31/96; 3.6.5.32 NMAC - Rn & A, 3 NMAC 6.5.32, 4/30/01]

3.6.5.33 SPECIAL METHOD OF VALUATION - MANUFACTURED HOMES:

A. MANUFACTURED HOMES - REPORTING FORM:

(1) The information specified below is required to be furnished by manufactured home owners in reporting manufactured homes pursuant to Section 7-36-26 NMSA 1978:

(a) owner's name and mailing address;

(b) location of manufactured home, including the county and school district;

(c) name of the manufacturer;

(d) model, year and serial number of the manufacturer;

(e) size and number of axles of manufactured home;

(f) state registration number;

(g) number, if any, assigned for property tax purposes;

(h) date of purchase;

(i) price paid;

(j) whether the manufactured home acquired was new or used;

(k) whether the manufactured home is occupied by the owner or a tenant;

(l) if rented, the amount of the monthly rent.

(2) The report must by signed by the owner or the owner's authorized representative. Forms containing this information and approved by the director may be used.

B. MANUFACTURED HOMES - VALUATION METHOD: The phrase "initial costs" refers to the fair market value at the time of acquisition of a used manufactured home or the acquisition cost of a new manufactured home. Manufactured homes are classified and valued in accordance with the division's most current manufactured home valuation manual or any generally accepted appraisal method or technique approved by the director.

C. MANUFACTURED HOMES - VALUATION FOR PURPOSES OF MOVEMENT PERMITS: If certificates are requested pursuant to Subsection G of Section 66-7-413 NMSA 1978 for the current tax year and if tax rates have not yet been set or tax bills

have not yet been mailed, assessors shall proceed pursuant to Section 7-38-44 NMSA 1978. If tax rates have not been set, payment of taxes determined on the basis of the prior year's tax rates constitutes full payment of the taxes on the manufactured home for the current tax year.

D. MANUFACTURED HOMES - WHEN VALUED AS REAL PROPERTY

(1) A manufactured home becomes a housing structure that is to be valued and taxed for property taxation purposes as real property when:

(a) the valuation authority has received a request from the owner of a manufactured home that it be taxed as real property;

(b) the tongue and axle have been removed from the manufactured home and the manufactured home has been affixed to a permanent foundation in accordance with Part 14.12.2 NMAC;

(c) the owner of the manufactured home owns the real estate to which the manufactured home has been affixed; and

(d) title to the manufactured home, issued pursuant to the provisions of the Motor Vehicle Code, is deactivated in accordance with Section 18.19.3.16 NMAC and evidence of the deactivation has been provided to the valuation authority.

(2) A housing structure described in Paragraph (1) of this subsection is to be valued in accordance with the applicable provisions of the Property Tax Code and regulation and instructions of the department for valuing real property and not in accordance with the special method of valuation provided in Section 7-36-26 NMSA 1978. If the title to the housing structure as a manufactured home is reactivated in accordance with Section 18.19.3.18 NMAC and not subsequently deactivated by the time property is to be valued for property taxation purposes, the housing structure shall be valued in accordance with the special method of valuation provided in Section 7-36-26 NMSA 1978.

(3) For the first property tax year in which the housing structure is to be valued as real property at a site, the owner must report to the valuation authority the information required to be reported by Subsection A of Section 3.6.5.33 NMAC.

(4) Subsection D of Section 3.6.5.33 NMAC is applicable to valuations made on or after January 1, 1998.

[3/23/83, 12/29/94, 8/31/96, 7/15/98; 3.6.5.33 NMAC - Rn & A, 3 NMAC 6.5.33 & A, 4/30/01; A, 9/30/04]

3.6.5.34 SPECIAL METHOD OF VALUATION - PIPELINES, TANKS, SALES METERS AND PLANTS USED IN THE PROCESSING, GATHERING,

TRANSMISSION, STORAGE, MEASUREMENT OR DISTRIBUTION OF OIL, NATURAL GAS, CARBON DIOXIDE OR LIQUID HYDROCARBONS:

A. OIL & GAS PIPELINES - VALUATION METHOD:

(1) All pipelines, tanks, sales meters and plants as defined in Section 7-36-27 NMSA 1978 which are used in the processing, gathering, transmission, storage, measurement or distribution of oil, natural gas, carbon dioxide, or liquid hydrocarbons are valued by the division or county assessors in accordance with the valuation methods found in Section 7-36-27 NMSA 1978 and Section 3.6.5.34 NMAC.

(2) PIPELINES, DIRECT CUSTOMER DISTRIBUTION PIPELINES, LARGE INDUSTRIAL SALES METERS, TANKS AND PLANTS.

(a) Pipelines, direct customer distribution pipelines, large industrial sales meters, tanks and plants are valued in accordance with the method described in Subsection D of Section 7-36-27 NMSA 1978.

(b) For purposes of calculating depreciation or related accumulated provision for depreciation, straight line depreciation over the useful life of the property, as determined by the federal energy regulatory commission, is used. Property that does not fall within the federal energy regulatory commission's reporting requirements is assumed to have a useful life of twenty-five (25) years, unless substantial evidence of another useful life is accepted by the division.

(3) For purposes of Subsection B of Section 7-36-27 NMSA 1978, "other justifiable factors" includes, but is not limited to, functional and economic obsolescence.

(a) Functional obsolescence is the loss in value that is caused by functional inadequacies or deficiencies caused by factors within the property, and is a loss in value that is in addition to a loss in value attributable to physical depreciation.

(b) Economic obsolescence is the loss in value that is caused by unfavorable economic influences or factors outside the property, and is a loss in value that is in addition to a loss in value attributable to physical depreciation.

(c) Requests for economic or functional obsolescence must be made at the time the annual report is filed. The request must be supported with sufficient documentation, and must be based on a situation present at least six (6) months prior to January 1 of the tax year. In addition to other information that may be required pursuant to this section, an economic or functional obsolescence factor must be provided together with documentation to support and demonstrate how the factor was arrived at. Such documentation shall consist of objective evidence demonstrating functional or economic obsolescence such as comparisons to a documented industry standard, to a close competitor or to an engineer's or appraiser's valuation, or any other comparable objective evidence of functional or economic obsolescence.

(d) If requested by the taxpayer, the department shall provide guidance to a taxpayer as to the documents necessary to support a request for obsolescence for a pipeline, customer distribution pipeline, large industrial sales meter, tank or plant as defined in Section 7-36-27 NMSA 1978. Upon request, the department shall name, in addition to the other information required by this section, any specific documentation that would support a request for obsolescence. Such specific documentation may include:

(i) a report of audited or FASB writedowns;

(ii) partnership agreements and narrative explanations of the mechanism for distributing profits and maintenance responsibilities for the property;

(iii) for a functional obsolescence claim, an explanation of how scheduled depreciation will not sufficiently restore the cost of the property before its usefulness is over;

(iv) a report comparing the replacement cost new, less physical depreciation, with the value of the property as estimated under an income approach;

(v) a report comparing output, or cost of operation or capacity utilization of the property, to output, or cost of operation or capacity utilization of comparison property;

(vi) long term strategic plans for the property, including an analysis of market share, barriers to competitive entry and transportation alternatives; and

(vii) a report addressing the reasons the taxpayer has not sold or written off the property for which the obsolescence is claimed.

(e) The department shall provide guidance to a taxpayer as to documents necessary to support a request for obsolescence for a pipeline that may be in addition to any documents specified in Subparagraph (d) of this paragraph. Upon request, the department shall name, in addition to the other information required by this section, any specific documentation that would support a request for obsolescence. Such specific documentation may include:

(i) reserve estimates and projections made at the time the pipeline was planned and prior to construction;

(ii) current reserve estimates and projections;

(iii) income projections for the pipeline, including assumptions as to throughput, rates and customers, at the time that the pipeline was planned and prior to construction;

(iv) income and expense statements of the pipeline for each of the last three most recent years, including assumptions as to throughput, rates and customers; provided that the statement shall conform to the taxpayer's annual reports, FERC documents; or other audited sources;

(v) a statement of actual throughput for the past five years of operation; and

(vi) transportation contracts.

(f) In reviewing a request for obsolescence pursuant to Section 7-36-27 NMSA 1978, the department shall determine whether a taxpayer has provided documentation sufficient to establish a reduction in taxable value for functional obsolescence or economic obsolescence. If the department determines the documentation is not sufficient because the taxpayer failed to submit documents required by Subparagraph (c) of this paragraph, the department shall inform the taxpayer of that failure in a notice provided by April 1 or thirty days after the return is filed but no later than April 15 of the tax year. If the taxpayer does not file the report by March 15 of the property tax year, the department shall not be required to furnish a timely notice of deficiency by April 15 of the property tax year. In the case of properties regulated by the federal energy regulatory commission, the notice of deficiency shall be provided to the taxpayer within fifteen days after the filing of the report. Such notice shall the list the specific documents that the department would require to support the requested reduction for functional obsolescence or economic obsolescence.

(g) If a taxpayer is notified of a deficiency pursuant to Subparagraph (f) of this paragraph, the taxpayer shall have ten days to correct the deficiency. The department will determine whether the documentation timely submitted by the taxpayer adequately supports the taxpayer's request for obsolescence and cures the deficiency. The department's final valuation of the taxpayer's property will reflect the department's approval or denial of the taxpayer's request for obsolescence.

(h) In order to allocate value to the taxing jurisdiction wherein the property (valued in accordance with the method described in Subsection D of Section 7-36-27 NMSA 1978) is located the following formula is used, where:

A = Pipe size in inches

B = Miles of pipe

C = Inch miles

D = Total tangible property cost less depreciation (all sizes)

E = $ Per inch mile

F = Inch miles of pipe in taxing jurisdiction

G = $ Value of pipe in taxing jurisdiction

(i) A x B = C

(ii) $\frac{D}{\text{Total C}}$ = E

(iii) E x F = G; or

(iv) G = (D/(A x B)) x F

(4) SALES METERS.

(a) The value of sales meters, other than large industrial sales meters, is determined in accordance with the following schedule:

SCHEDULE

Sales Meters	Value per meter
Type I	$ 52.14
Type II	109.90
Type III	477.35

(b) In preparing the above schedule, all partial statutory exemptions have been considered. Therefore, no such exemptions are allowed in determining net taxable value by means of the above schedule. For purposes of the above schedule, the types of sales meters, other than large industrial sales meters, are:

(i) TYPE I - sales meters with a capacity of less than 250 cubic feet per hour at one-half inch differential. These generally include meters providing residential service.

(ii) TYPE II - sales meters with a capacity from 250 cubic feet to 950 cubic feet per hour at one-half inch differential. These generally include meters providing commercial or public authority service.

(iii) TYPE III - sales meters with a capacity greater than 950 cubic feet per hour at one-half inch differential and those meters providing industrial service with an installed cost including the associated regulator, appurtenances and devices of less than two thousand five hundred dollars ($2,500.00).

(5) CONSTRUCTION WORK IN PROGRESS.

(a) For those persons who maintain their records in accordance with a uniform system of accounts approved by the federal energy regulatory commission, the total amount entered into the construction work in progress account shall be reported to the assessing authority as construction work in progress.

(b) For other persons, the total of the balances of work orders for pipelines, plants, large industrial sales meters and tanks in the process of construction on the last day of the preceding calendar year, exclusive of land and land rights, is reported to the assessing authority. Construction work in progress is reported as follows:

(i) total construction work in progress;

(ii) fifty percent (50%) of the construction work in progress as the value for property taxation purposes; and

(iii) value of construction work in progress by taxing jurisdiction in which the construction is located.

(c) The value as stated in Item (iii) of Subparagraph (b) of this paragraph is the value reported. No deductions for depreciation or any other purposes apply. Exemptions have been considered. Therefore, the taxable value and the net taxable value are the same.

B. OIL & GAS PIPELINES - NONPIPELINE PROPERTY: Pipelines, tanks, sales meters and plants which are not used in the conduct of the pipeline business or public utility business, and which are not necessary to the proper functioning of the pipeline business or public utility business, are not subject to valuation by the division and are valued by the county assessor of the county in which the property is located.

C. OIL & GAS PIPELINES - VALUATION OF NONPIPELINE REAL PROPERTY: Residential housing, office buildings, warehouses and other real property excluded from the definitions of property found in Subsection B of Section 7-36-27 NMSA 1978 but used in the conduct of the pipeline or public utility business are valued in accordance with the method stated in Section 7-36-15 NMSA 1978 and regulations thereunder. The term "pipeline" as defined in Paragraph (5) of Subsection B of Section 7-36-27 NMSA 1978 does not include rights of way, easements and other fractional interests in real property. Therefore, the value of those interests is not included in the valuation determined under this section.

[3/23/83, 8/19/85, 12/29/94, 8/31/96; 3.6.5.34 NMAC - Rn & A, 3 NMAC 6.5.34, 4/30/01; A, 9/15/09]

3.6.5.35 SPECIAL METHOD OF VALUATION - PIPELINES, TANKS, SALES METERS, PLANTS AND HYDRANTS USED IN THE TRANSMISSION, STORAGE, MEASUREMENT OR DISTRIBUTION OF WATER:

A. WATER SYSTEMS - DEFINITIONS: As used in Section 7-36-28 NMSA 1978 and regulations thereunder:

(1) "Pipeline" means all pipe, appurtenances to pipe and devices attached to pipe used in systems for the commercial gathering, transmission or distribution of water, except tanks, sales meters, plants and hydrants;

(2) "Tank" means any storage tank, container or reservoir, other than a natural reservoir, used for the storage of water;

(3) "Plant" means any pumping station, purification facility or similar plant which is appurtenant to a pipeline;

(4) "Sales meter" means the meter, regulator and all appurtenances and devices used for measuring the sale of water to customers and includes the service pipe to the customer's property line from the point of connection or tap with the pipeline;

(5) "Hydrant" means a discharge pipe with a valve and a spout at which water may be withdrawn from a pipeline, but excludes hydrants which are not owned by a water pipeline business or public utility;

(6) "Material and supplies" means all materials, supplies and other tangible personal property not otherwise defined, including personal property inventories, to the extent they are excepted from the exemption under Section 7-36-8 NMSA 1978, which are on hand in New Mexico on January 1 of the tax year and used in the conduct of the water pipeline or public utility business for the purpose of transmitting, storing, measuring or distributing water for sale to the consuming public and owned by the water pipeline or public utility business; and

(7) "Property in the process of construction" means all property used in the conduct of the water pipeline or public utility business which is in the process of construction on January 1 of the tax year, other than "commercial water property" as defined in Paragraph (1) of Subsection B of Section 7-36-28 NMSA 1978 which includes certain property "under construction".

B. WATER SYSTEMS - VALUATION METHODS:

(1) "Commercial water property" as defined in Section 7-36-28 NMSA 1978 is valued in accordance with the method stated in Subsection C of Section 7-36-28 NMSA 1978.

(2) "Property in the process of construction" as defined in Paragraph (7) of Subsection A of Section 3.6.5.35 NMAC is valued pursuant to methods specified in Section 7-36-33 NMSA 1978 and regulations thereunder.

(3) "General buildings and improvements" as defined in Paragraph (3) of Subsection B of Section 7-36-28 NMSA 1978 and property (properties) which are not a part of commercial water property but which are used in the conduct of the water pipeline or public utility business is valued pursuant to the methods stated in Section 7-36-15 NMSA 1978 and regulations thereunder.

C. WATER FOR SECONDARY WATER FLOODING: A person engaged in the business of producing, transporting and selling water for use in secondary oil recovery through water flooding is subject to valuation by the department under Section 7-36-28 NMSA 1978.

[3/23/83, 12/29/94, 8/31/96; 3.6.5.35 NMAC - Rn & A, 3 NMAC 6.5.35, 4/30/01, A, 6/29/01]

3.6.5.36 SPECIAL METHOD OF VALUATION - PROPERTY USED FOR THE GENERATION, TRANSMISSION OR DISTRIBUTION OF ELECTRICAL POWER OR ENERGY:

A. ELECTRIC PLANT - PROPERTY TO BE VALUED:

(1) Property to be valued as property "used for the generation, transmission or distribution of electrical power or energy" includes property which is used in the conduct of a public utility business and property that is "an electricity generating plant, whether or not owned by a public utility, if all or part of the electricity is generated for ultimate sale to the consuming public";

(2) For purposes of Subsection B of Section 7-36-29 NMSA 1978, "other justifiable factors" for solar energy technologies includes, but is not limited to, the amount of;

(a) federal investment tax credit received by the property owner of the electric plant for the purchase of solar energy technologies; and

(b) federal grants awarded to a property owner under the 1603 Treasury Program in lieu of the federal investment tax credit for solar energy technologies.

B. ELECTRIC PLANT - DEPRECIATION:

(1) For calculating depreciation or related accumulated provision for depreciation, straight line depreciation over the useful life of the item of property, as determined by federal or state regulatory agencies having jurisdiction, shall be used;

(2) If the property does not fall under federal or state regulatory agency authority, the division establishes the useful life of the property in accordance with its class life under Section 167 of the Internal Revenue Code and regulations thereunder. The land portion of the tangible property costs of the plant is the total actual costs of acquisition of the land as of January 1 of the tax year in which the property is valued.

C. ELECTRIC PLANT - CONSTRUCTION WORK IN PROGRESS: "Construction work in progress" as that phrase is defined in Paragraph (3) of Subsection B of Section 7-36-29 NMSA 1978 is valued in accordance with the valuation method stated in Subsection D of Section 7-36-29 NMSA 1978. Those persons who maintain their records in accordance with a uniform system of accounts approved by state or federal regulatory agencies may use the amount entered on those accounts as construction work in progress as of December 31 of the preceding calendar year as the value of construction work in progress, provided that account is limited to work orders for "electric plant" as defined in Paragraph (2) of Subsection B of Section 7-36-29 NMSA 1978 and Section 3.6.5.36 NMAC.

D. ELECTRIC PLANT - GENERAL BUILDINGS AND IMPROVEMENTS - LAND:

(1) "General buildings and improvements" defined in Paragraph (2) of Subsection B of Section 7-36-29 NMSA 1978 are valued in accordance with the method stated in Section 7-36-15 NMSA 1978, and regulations thereunder;

(2) Land used in the conduct of a public utility business or which is a part of an electricity generating plant, whether or not owned by a public utility, if all or part of the electricity is generated for ultimate sale to the consuming public, is valued in accordance with the valuation methods stated in Section 7-36-15 NMSA 1978, and regulations thereunder.

[3/23/83, 12/29/94, 8/31/96; 3.6.5.36 NMAC - Rn & A, 3 NMAC 6.5.36, 4/30/01; A, 4/16/15]

3.6.5.37 SPECIAL METHOD OF VALUATION - PROPERTY THAT IS PART OF A COMMUNICATIONS SYSTEM:

A. COMMUNICATIONS SYSTEMS - MICROWAVE TRANSMISSION: Property that is used in the conduct of the communications business includes all property that is a part of a communications system, including, but not limited to, property which is used for purposes of microwave transmission or reception. It does not include the installation, operation or maintenance of microwave property incidental to the operation and conduct of radio and television broadcasting stations licensed by the federal communications commission, except when microwave transmission or reception is separately sold during the regular course of business, or when a two-way communication link is established and service provided by the link is sold to another person during the regular course of business, such as two-way cable television communications linkage.

B. COMMUNICATIONS SYSTEMS - VALUATION OF PROPERTY NOT "PLANT": If property does not fall within the definition of "plant", "construction work in progress" or "materials and supplies" as defined in Paragraphs (4), (5) and (7) of Subsection B of Section 7-36-30 NMSA 1978, then that property is valued pursuant to Section 7-36-15 NMSA 1978 and regulations thereunder.

C. COMMUNICATIONS SYSTEMS - DEPRECIATION AND TANGIBLE PROPERTY COSTS:

(1) For purposes of calculating depreciation or related accumulated provision for depreciation, straight line depreciation over the useful life of the item of property, as defined by federal or state regulatory agencies having jurisdiction, is used.

(2) If property does not fall under federal or state regulatory agency authority, the division establishes the useful life of said property in accordance with its class life under Section 167 of the Internal Revenue Code and regulations thereunder. The tangible property costs of the portion of the plant comprising land shall be the total actual costs of acquisition of the land as of January 1 of the tax year in which the property is valued.

D. COMMUNICATIONS SYSTEMS - CONSTRUCTION WORK IN PROGRESS: those persons who maintain their records in accordance with a uniform system of accounts approved by a state or federal regulatory agency may use the amounts entered on those accounts as construction work in progress as of December 31 of the preceding calendar year as the value of construction work in progress, provided that the account is limited to work orders for "plant" as defined in Paragraph (4) of Subsection B of Section 7-36-30 NMSA 1978, and regulations thereunder. Land and land rights included in construction work in progress accounts must be reported at the actual cost of acquisition as of January 1 of the tax year in which the property is valued.

E. COMMUNICATIONS SYSTEMS - VALUATION METHOD:

(1) Communications systems property may be valued by applying the unit rule of appraisal at the election of a taxpayer. The unit rule of appraisal is, generally, an appraisal of an integrated property as a whole without reference to the value of its component parts. At the election of a taxpayer, the unit rule of appraisal may be applied using the approaches to value set out in Section 3.6.5.37 NMAC.

(2) Capitalization of Earnings - Capitalization of earnings value is computed as follows: the net operating income derived from the operations of the communications business in all states is divided by a capitalization rate determined for the particular company being valued. The capitalization rate will be determined by the division using the band of investment method, or any other method that is consistent with generally accepted appraisal techniques. The quotient resulting from this division is the capitalized earnings value of the communications business. "Net operating income" as that phrase is used in the first sentence of this paragraph means the expected future

gross income of the business from operations after deduction of the operating costs of the business, including taxes and depreciation directly relating to the business. Net operating income is determined after an analysis of the preceding five years' net operating income. In determining net operating income, reference is made to reports which the business is required to make to federal and state regulatory agencies and taxing agencies. The division is not bound, however, by the income information shown on these reports in determining net operating income and may use information acquired from other sources. Net operating income may be adjusted to reflect future earnings ability of construction work in progress.

(3) Market Value of Stock and Debt - Market value of stock and debt is computed as follows:

(a) The market value of all the stock of the business is computed on the basis of the average of the monthly high and low market prices quoted in financial publications for the preceding tax year. If stock of the business is not traded or is not traded in sufficient volume to indicate value, the division may rely on a price earnings ratio, or other methods consistent with generally accepted appraisal techniques to determine the market value of the stock.

(b) The market value of the business' debt and other obligations is determined on the basis of the published quotations for each of the various types of obligations and current liabilities as reflected on the books and records of the business.

(c) The total of the market value of the stock as computed under Subparagraph (a) of this paragraph and the market value of debt and other obligations as computed under Subparagraph (b) of this paragraph produces the total system value of all the communications business property, both tangible and intangible. From this total system value, there is subtracted the value of non-communications property which is not used by the communications company in its communications operations, and the value of intangible property used in its operations. To this net total system value, there is added the value of all leased equipment to produce the total stock and debt value.

(4) Cost less Depreciation and Obsolescence - Cost less depreciation and obsolescence is computed as follows:

(a) The cost of all communications plant in service in all states, less depreciation and amortization as of January 1 of the tax year as reported to the federal communications commission of the United States or other state or federal regulatory agencies having jurisdiction; plus

(b) The cost of all materials and supplies in all states as of January 1 of the tax year; plus

(c) Fifty percent (50%) of the cost or amount expended for "construction work in progress" in all states on January 1 of the tax year, as reported to the federal

communications commission, or other state or federal regulatory agencies having jurisdiction. advance payments for work not partially completed or not commenced on January 1 of the tax year, however, may be excluded at one hundred percent (100%) upon a proper showing by the taxpayer.

(d) A deduction for functional or economic obsolescence may, upon presentation of substantial evidence and documentation, be made from the total of the cost computed under Subparagraph (a) of this paragraph.

(e) Functional obsolescence is the loss in value due to functional inadequacies or deficiencies caused by factors within the property.

(f) Economic obsolescence is the loss in value caused by unfavorable economic influences or factors outside the property.

(g) Requests for economic or functional obsolescence adjustments to the cost approach must be made at the time the annual report is filed. The request must be supported with sufficient documentation, and must be based on a situation present at least six (6) months prior to January 1 of the tax year. An economic or functional obsolescence factor must be provided, together with documentation to support and demonstrate how the factor was arrived at. Such documentation shall consist of objective evidence supporting functional or economic obsolescence. Failure to provide enough documentation or proof shall result in denial of an obsolescence adjustment.

(5) The division considers the values computed under the three evidences of value referred to in Paragraphs (2), (3) and (4) of this subsection and, either:

(a) assigns weights, in terms of percentage to each evidence of value, with a total of 100%, on the basis of the evidence which appear to be most indicative of market value, multiplies the values determined under the three evidences of value by the respective weights and adds the three totals to give the total system value of all property used in the conduct of the communications business; or

(b) correlates the values computed under the three evidences of value to determine the total system value of all property used in the conduct of the communications business.

(6) The total system value of all property used in the conduct of the communications business in all states is allocated to New Mexico by multiplying this total value by fractions, the numerators of which are the total gross investment, gross operating revenues, wire miles, and number of access lines of the communications company in New Mexico and the respective denominators of which are the total gross investment, gross operating revenues, wire miles, and number of access lines of the communications company in all states. The products of the multiplication by each of these fractions is considered by the division in determining the proper allocation of the total system value to New Mexico. Use of other factors to compute allocation of the total

system value to New Mexico or elimination of one or more of the required factors from consideration may be permitted by order of the director upon good cause shown. The correlated product of the multiplication of the total system value in all states by the fractions is New Mexico's allocated portion of property used in the conduct of the communications business and is the value for property taxation purposes of the communications property used in the conduct of the communications business in New Mexico.

F. COMMUNICATIONS SYSTEMS - ALLOCATIONS OF VALUE WITHIN NEW MEXICO:

(1) Distribution of the value of all communications system property allocated to New Mexico which is valued by the division is accomplished in the following manner:

(a) An equitable portion of the total unit value allocated to New Mexico is computed and distributed to the specific governmental unit or units wherein are located sizeable facilities, such as offices, shops, and other special facilities.

(b) The value computed under Subparagraph (a) of this paragraph is deducted from the total value as determined under Section 3.6.5.37 NMAC, and the remainder is distributed to the governmental unit or units in which the property is located on the basis of the proportion of wire miles and number of access lines in the governmental unit or units compared to the total of wire miles and number of access lines in New Mexico respectively.

(c) The division may vary the distribution methods described in Subparagraphs (a) and (b) of this paragraph to account for unusual or substantial changes in the operations or gross investment of the company within the governmental units.

(2) "Gross investment" as that phrase is used in Section 3.6.5.37 NMAC means the original cost, without deductions of any kind, of all kinds of property used in the conduct of communications business. Reference shall be made to reports made to federal or state regulatory agencies having jurisdiction in determining gross investment.

[3/23/83, 12/13/85, 12/29/89, 12/29/94, 8/31/96; 3.6.5.37 NMAC - Rn & A, 3 NMAC 6.5.37, 4/30/01]

3.6.5.38 SPECIAL METHOD OF VALUATION - OPERATING RAILROAD PROPERTY:

A. RAILROADS - PROPERTY TO BE VALUED AS PROPERTY USED BY A RAILROAD COMPANY IN THE OPERATION OF A RAILROAD:

(1) All property owned or leased and used by a railroad in its operation, which is subject to valuation for property tax purposes, is required to be valued except for

railway cars with respect to which the railroad is remitting payments to New Mexico under the Railroad Car Company Tax Act. "Property" means tangible property, real or personal.

(2) The following types of property used by a railroad company in the operation of a railroad are to be valued:

(a) "Road property" means all property owned or leased and used by a railroad company in the operation of a railroad and which may be partially or totally carried in accounts for this type of property, as prescribed by the interstate commerce commission of the United States;

(b) "Equipment" means locomotives, cars and other equipment owned or leased and used by a railroad company in the operation of a railroad which may be partially or totally carried in accounts for this type of property, as prescribed by the interstate commerce commission of the United States;

(c) "Material and supplies" means all material and supplies owned or leased and used by a railroad company in the operation of a railroad, the costs of which may be partially or totally carried in accounts or an account of this type of property, as prescribed by the interstate commerce commission of the United States;

(d) "Property in the process of construction" means all property owned or leased and used by a railroad company in the operation of a railroad which is in the process of construction on January l of the tax year; and

(e) "Other property" which means any other property not otherwise defined including, but not limited to, real property and tangible personal property used in the conduct of the railroad business.

B. RAILROADS - VALUATION METHOD:

(1) Property defined in Subsection A of Section 7-36-31 NMSA 1978 and Section 3.6.5.38 NMAC is valued by applying the unit value of appraisal to the valuation methods stated in Subsection B of Section 7-36-31 NMSA 1978. The unit rule of appraisal is, generally, an appraisal of an integrated property as a whole without reference to the value of its component parts.

(2) A "railroad business" as that term is used in regulations under Section 7-36-31 NMSA 1978 includes any entity owning a railroad or a railroad company including, but not limited to, holding companies, trustees or receivers.

(3) Capitalized earnings are computed as follows: the net operating income derived from the operations of the railroad business in all states is divided by a capitalization rate determined for the particular railroad being valued. The capitalization

rate is determined by the division using the band of investment method. The quotient resulting from this division is the capitalized earnings of the railroad company.

(4) "Net operating income" as that phrase is used in Paragraph (3) of this subsection means the expected future gross income of the railroad business from the operation of a railroad after deduction of the operating cost of the railroad, including taxes and depreciation directly relating to the railroad. Net operating income is determined after an analysis of the preceding five years' net operating income and that operating income is intended to reflect the future earning ability of the railroad business from the operation of the railroad. In determining that operating income, reference is made to reports which the railroad business is required to make to federal and state regulatory agencies and taxing agencies. The division is not bound, however, by the income information shown on these reports in determining net operating income and may use information acquired from other sources.

(5) Market value of stock and debt is computed as follows:

(a) The market value of all of the stock of the railroad business is computed on the basis of the average of the monthly high and low market prices quoted in financial publications for the preceding tax year. If stock of the railroad business is not traded or is not traded in sufficient volume to indicate value, the division may rely on a price earnings ratio or other acceptable appraisal technique to determine the market value of the stock.

(b) The market value of the railroad business' debt and other obligations is determined on the basis of the published quotations for each of the various types of obligations and current liabilities as reflected on the books and records of the railroad business.

(c) The total of the market value of stock as computed under Subparagraph (a) of this paragraph plus the market value of debt and other obligations as computed under Subparagraph (b) of this paragraph produces the total system value of all of the railroad business' property, both tangible and intangible. From this total system value, there is subtracted the system value of property not used by the railroad business in the operation of a railroad and the system value of intangible property used by the railroad business in the operation of a railroad.

(6) Original cost less depreciation is computed as follows:

(a) Original cost of all road property in all states less depreciation and amortization as reported to the interstate commerce commission of the United States, as of January 1 of the tax year, plus

(b) The original cost of all equipment in all states less depreciation and amortization, as reported to the interstate commerce commission of the United States, as of January 1 of the tax year; plus

(c) The original cost of other property including all leased property in all states, less depreciation and amortization as of January 1 of the tax year; plus

(d) The original cost of any property in the process of construction, in all states, on January 1 of the tax year; the original cost being 50% of the cost or amount expended for such construction work which is partially complete on January 1 of the tax year as shown on the books and records of the business. Advance payments for work not partially completed or not commenced on January 1 of the tax year, however, may be excluded from the original cost of property in the process of construction upon a proper showing by the taxpayer; plus

(e) The original costs of all materials and supplies in all states as of January 1 of the tax year; minus

(f) A deduction for economic obsolescence, functional obsolescence, or both, upon a showing by taxpayer of substantial evidence supporting the deduction from the total of the costs computed under Subparagraphs (a) through (c) of this paragraph. The division may consider the following factors to determine obsolescence:

(i) The actual rate of return on depreciated investment of the subject railroad property as compared to the average rate of return on the depreciated investment of other comparable railroad companies;

(ii) The difference between the system depreciated cost of a railroad business' property and the system capitalized income value of that business;

(iii) The difference between the system depreciated cost of a railroad business' property and the system stock and debt value of that business;

(iv) The "blue chip method", using a "best of the best", "blue chip", or "super blue chip" approach of comparison; or

(v) Any other recognized method which is a generally accepted appraisal technique.

(7) The division considers the values computed under the three evidences of value referred to in Paragraphs (3) through (6) of this subsection and either:

(a) assigns weights, in terms of percentage to each evidence of value with a total of 100%, on the basis of the evidences which appear to be most indicative of market value, multiplies the values determined under the three evidences of value by the respective weights and adds the three totals to give the total system value of all property used in the conduct of the railroad business; or

(b) correlates the values computed under the three evidences of value to determine the total system value of all property used in the conduct of the railroad business.

(8) The total system value of all property used in the conduct of the railroad business in all states is allocated to New Mexico by multiplying this total value by fractions, the numerators of which are the total gross investment, gross operating revenue, gross operating expenses, track miles, tonnage originated or terminated and ton miles of the railroad company in New Mexico and the respective denominators of which are the total gross investment, gross operating revenue, gross operating expense, track miles, tonnage originated or terminated and ton miles of the railroad company in all states. The products of the multiplication by each of these fractions are considered by the division in determining the proper allocation of the total system unit value to New Mexico. Use of other fractions or factors to compute allocation of the total system unit value to New Mexico, or elimination of one or more of the required fractions from consideration, may be permitted by order of the director upon good cause shown. The correlated product of the multiplication of the total system unit value in all states by the fractions is New Mexico's allocated portion of property used in the conduct of the railroad business and is the value for property taxation purposes of the railroad's property used in the conduct of the railroad business in New Mexico. Exemptions authorized by the Property Tax Code are not to be applied until a determination of net taxable value is made.

C. RAILROADS - ALLOCATION OF VALUE WITHIN NEW MEXICO:

(1) Distribution of the value of all property allocated to New Mexico for property taxation purposes used in the railroad business which is valued by the division pursuant to Subsection B of Section 3.6.5.38 NMAC is accomplished in the following manner:

(a) An equitable portion of the total unit value allocated to New Mexico as determined under Subsection B of Section 3.6.5.38 NMAC is computed and distributed to the specific governmental unit or units wherein are located sizeable terminal facilities, such as yards, shops and other special facilities not normally spread along the lines of railroad.

(b) The value computed under Subparagraph (a) of this paragraph is deducted from the total value as determined under Section 3.6.5.38 NMAC, and the remainder is distributed to the governmental unit or units in which the railroad is located on the basis of the proportion of main, branch and spur track miles in the governmental unit or units compared to the total of main, branch and spur track miles of the railroad in New Mexico. In making such allocations, consideration is given to the physical characteristics and traffic density patterns of such track miles.

(c) The division may vary the distribution methods described in Subparagraphs (a) and (b) of this paragraph to account for unusual or substantial

changes in the operations or gross investment of the railroad company within the governmental units.

(2) "Gross investment" as that phrase is used in Section 3.6.5.38 NMAC means the original cost, without depreciation or deduction, of any kind of property used in the conduct of a railroad. Reference is made to reports made to federal or state regulatory agencies in determining gross investment.

D. RAILROADS - DETERMINATION OF OPERATING AND NONOPERATING PROPERTY:

(1) To determine if a property is operating property, the division considers the use to which the property is put and whether it is subject to scrutiny by the interstate commerce commission. "Operating property" for purposes of Section 7-36-31 NMSA 1978 means all property, owned, leased, or used, which is reasonably necessary to the maintenance and operation of a railroad company's business.

(2) "Non-operating property" is all property owned or leased from others which is not necessary for the conduct of a railroad company's business.

(3) Non-operating property is valued by the county assessor of the county in which the property is located pursuant to the valuation method stated in Section 7-36-15 NMSA 1978, and regulations thereunder.

E. RAILROADS - DEFINITIONS:

(1) "Best of the best" means a comparison approach in which the appraiser compares eight quality and efficiency factors. The appraiser selects the highest figure for each of the quality and efficiency factors without regard to the make up or operations of any of the railroads.

(2) "Super blue chip" means a comparison approach in which the appraiser compares eight quality and efficiency factors. The appraiser selects the three (3) highest figures for each of the quality and efficiency factors without regard to the make up or operations of any of the railroads.

(3) "Blue chip" means a comparison approach in which the appraiser compares eight quality and efficiency factors. The appraiser selects a complete railroad by analyzing the make up and operations of all railroads and uses this as a standard for comparison. The eight quality and efficiency factors to be used in all three methods are: rate of return, freight traffic density, load factor, transportation performance, operating ratio, gross profit margin, revenue per mile, and transportation ratio.

[3/23/83, 12/13/85, 12/29/94, 8/31/96; 3.6.5.38 NMAC - Rn & A, 3 NMAC 6.5.38, 4/30/01]

3.6.5.39 SPECIAL METHOD OF VALUATION - COMMERCIAL AIRCRAFT:

A. COMMERCIAL AIRCRAFT - PROPERTY SUBJECT TO VALUATION - DEFINITIONS:

(1) A "commercial airline company" as that term is used in Section 3.6.5.39 NMAC means an "airline" as that term is used in Paragraph (5) of Subsection B of Section 7-36-2 NMSA 1978 and defined in Section 3.6.5.39 NMAC.

(2) Property valued by the division as commercial aircraft used by commercial airline companies in the operation of their business includes only a portion of the property which is used in the conduct of the airline business. The types of property valued by the division as property used in the conduct of the airline business are listed below, with definitions.

(a) "Commercial aircraft" means any contrivance used or designed for navigation of or flight in the air, including but not limited to airplanes, hydroplanes, helicopters and balloons when this contrivance is used by an airline; however, "commercial aircraft" excludes parachutes and other contrivances used primarily as safety equipment. Commercial aircraft are valued in accordance with Section 7-36-32 NMSA 1978.

(b) "Equipment" means all personal property other than commercial aircraft and material and supplies used by an airline in the conduct of its airline business, which personal property is located in New Mexico on January 1 of the tax year. Equipment located in New Mexico on January 1 of the tax year is valued in accordance with Section 7-36-33 NMSA 1978.

(c) "Material and supplies" means all material and supplies owned or leased and used by an airline in the conduct of its airline business, which material and supplies are located in New Mexico on January 1 of the tax year. Material and supplies located in New Mexico on January 1 of the tax year are valued in accordance with Section 7-36-33 NMSA 1978.

(d) "Related facilities" means office buildings, terminals, warehouses, shops, residential housing, land and any other real property other than construction work in progress, which property is located in New Mexico on January 1 of the tax year and used by an airline in the conduct of its airline business. Related facilities located in New Mexico on January 1 of the tax year are valued in accordance with Section 7-36-15 NMSA 1978.

(e) "Construction work in progress" means related facilities located in New Mexico on January 1 of the tax year which are in the process of construction. These related facilities are valued as construction work in progress in accordance with Section 7-36-33 NMSA 1978.

B. COMMERCIAL AIRCRAFT - DEPRECIATION ON JET AIRCRAFT: For a jet propelled aircraft, "depreciation computed on a monthly basis" means the accumulated depreciation for the aircraft as reported to the research and special programs administration of the U.S. department of transportation, or to any successor unit or agency, as of January 1 of the tax year.

C. COMMERCIAL AIRCRAFT - ALLOCATION OF NET TAXABLE VALUES:

(1) Allocation of the net taxable values of commercial aircraft to New Mexico and to the governmental units in the state is as follows:

(a) The net taxable value of an airline's commercial aircraft is multiplied by a fraction, the numerator of which is the total ground time of all commercial aircraft of an airline in New Mexico during the preceding tax year and the denominator of which is the total ground time of commercial aircraft of the airline for the preceding tax year. Also, the net taxable value is multiplied by a fraction, the numerator of which is the flight time of all commercial aircraft of an airline over New Mexico during the preceding tax year, and the denominator of which is the total flight time of all commercial aircraft of an airline, exclusive of flight time outside the continental limits of the United States, during the preceding tax year. The product of these two multiplications then is added and the sum divided by two, with the result being the allocation of net taxable values of commercial aircraft of an airline to New Mexico for the tax year.

(b) The net taxable value of commercial aircraft of an airline allocated to New Mexico is further allocated to the governmental units in New Mexico. For each jurisdiction in New Mexico in which the commercial aircraft of the airline landed during the preceding year, the allocation to that jurisdiction is determined by multiplication of the net taxable value allocated to New Mexico by a fraction, the numerator of which is the number of landings by commercial aircraft of the airline in the jurisdiction in New Mexico, and the denominator of which is the total number of landings by commercial aircraft of the airline in New Mexico. The product of this multiplication is the allocation of net taxable value of commercial aircraft of the airline to the jurisdiction.

(2) The net taxable value of "equipment", "material and supplies" and "related facilities" as defined in Subsection A of Section 3.6.5.39 NMAC is allocated to the governmental units in which the property is located.

[3/23/83, 1/8/91, 12/29/94, 8/31/96; 3.6.5.39 NMAC - Rn & A, 3 NMAC 6.5.39, 4/30/01]

3.6.5.40 SPECIAL METHOD OF VALUATION - CERTAIN INDUSTRIAL AND COMMERCIAL PERSONAL PROPERTY:

A. GENERAL - CONSTRUCTION WORK IN PROGRESS: The phrase "construction work in progress" as defined in Paragraph (6) of Subsection B of Section 7-36-33 NMSA 1978 and as valued pursuant to Subsection D of Section 7-36-33 NMSA 1978 does not include the value of the land upon which the construction work is in

progress. The land is valued pursuant to Section 7-36-15, 7-36-20, 7-36-23 or 7-36-25 NMSA 1978 and regulations thereunder, depending upon the nature and use of land.

B. GENERAL - LARGE OFF-THE-ROAD HIGHWAY CONSTRUCTION EQUIPMENT - CONTRACTORS' MACHINERY AND EQUIPMENT:

(1) The machinery and equipment, except "manufactured homes" and "well drilling rigs" as defined in Parts 1 through 7 of Chapter 3.6 NMAC, of all resident and nonresident persons engaged in "construction" as that term is defined in Paragraph (3) of Subsection C of Section 7-36-2 NMSA 1978, including such property of such persons whose property is subject to valuation by the county assessor and the division, is reported and valued in accordance with this subsection.

(2) Information required to be reported.

(a) The person reports each item of machinery and equipment owned or leased by that person by county in which the items were used during the preceding tax year and provide the following information with respect to each item:

(i) make, model and year of manufacture, if available;

(ii) capacity, if available;

(iii) serial number, if available;

(iv) where located by school district and county on January 1 of the tax year;

(v) eate purchased;

(vi) "tangible property cost" of the item as that term is defined in Subsection B of Section 7-36-33 NMSA 1978.

(b) This reporting requirement may be modified by division instruction to permit use of information found in the uniform system of accounts used for reporting by certain persons reporting to state or federal regulatory agencies.

(3) The tangible property cost reported above is multiplied by a percentage, shown in the following schedule, that reflects an "average related accumulated provision for depreciation per unit...and an average of other justifiable factors per unit". The product of the multiplication is the value of the machinery and equipment for property taxation purposes. The value determined using this procedure may be adjusted upon a sufficient showing to the division of a lesser value. In the case of persons required to report to it, the division may permit valuation on the basis of "book value" upon a showing that "book value" will result in substantially the same value arrived at by application of this procedure. The division may also permit or require valuation on the

basis of values found in the uniform system of accounts used by certain persons to report to certain state or federal regulatory agencies.

First calendar year immediately preceding current tax year of use after acquisition or purchase	1.25%
Second year of use after acquisition or purchase	3.75%
Third year of use after acquisition or purchase	6.25%
Fourth year of use after acquisition or purchase	8.75%
Fifth year of use after acquisition or purchase	1.25%
Sixth year and following years after acquisition or purchase	2.50%

(4) Manufactured homes of all resident and nonresident persons engaged in construction is valued and reported pursuant to Section 7-36-26 NMSA 1978 and regulations thereunder.

(5) Well drilling rigs of all resident and nonresident persons engaged in construction are valued pursuant to Section 3.6.5.40 NMAC.

C. GENERAL - CERTAIN PROPERTY OF REGULATED BUSINESSES: Industrial, manufacturing and commercial machinery, equipment and furniture is valued by the division, as a schedule value pursuant to Subsection E of Section 7-36-33 NMSA 1978, at the value shown on the person's reported uniform system of accounts if the property is required to be valued by the division pursuant to Section 7-36-2 NMSA 1978 and it is:

(1) not subject to valuation under the provisions of Sections 7-36-22 through 7-36-32 NMSA 1978;

(2) not valued pursuant to the methods implemented in Subsection B of Section 3.6.5.40 NMAC; and

(3) reported to a state or federal regulatory agency by a person regulated by such agency using a uniform system of accounts.

D. GENERAL - WELL DRILLING RIG UNITS:

(1) A "well drilling rig unit" means all of the component parts of a unit that normally are transported to a site and set up to make a complete rig that is to be used for drilling a well for oil, gas, carbon dioxide, water, geothermal or other minerals. A well drilling rig unit includes, but is not limited to derrick and substructure; crown blocks; traveling block; drilling line; sand line; rotary hose and standpipe; hook; tongs and swivel; elevators; kelly; rotary table; draw works; engine; instrument; slush and mudpumps; generators; electric lines and accessories; mud tanks; fuel tanks; boilers; feed pump; blowout preventer; tools and supplies; water pumps and lines; drill bits; stairs; railings; dog house; tool joints; and miscellaneous equipment.

(2) "Depth capacity" as that phrase is used in Section 3.6.5.40 NMAC means the maximum depth of a well that the well drilling rig unit is capable of drilling without exceeding its safe operating design limits.

(3) Well drilling rig units are valued using a "schedule value" as that phrase is defined in Subsection B(4) of Section 7-36-33 NMSA 1978 based on drilling capacity. The schedule applicable to well drilling rig units is as follows:

WELL DRILLING RIG UNIT VALUATION SCHEDULE

Depth Capacity in Feet	Value for Property Taxation Purposes
2,000 - 4,999	$ 55,840
5,000 - 7,499	111,607
7,500 - 9,999	167,412
10,000 - 12,499	223,215
12,500 - 14,999	279,019
15,000 - 17,999	334,824
18,000 - 19,999	379,466
20,000 - 24,999	491,071
25,000 - 29,999	580,355

E. GENERAL - MINE DEVELOPMENT COSTS: Except for property used in connection with mineral property when the primary production from the mineral property is potash, mine development costs are tangible property costs subject to valuation and taxation under the Property Tax Code. Such include labor, engineering, geological analysis, utility costs and equipment rental fees relating to the development and opening of the mine.

F. GENERAL - CLAIM OF OBSOLESCENCE - BURDEN OF PROOF - THRESHOLD AMOUNT:

(1) A deduction for obsolescence will not be allowed unless the taxpayer proves that functional or economic obsolescence has reduced the value of the property and the connection between the degree of obsolescence and the amount of deduction claimed.

(2) Because the process of determining obsolescence generally is imprecise, no claim for obsolescence will be allowed unless the functional or economic obsolescence exceeds ten percent of the value of the property prior to application of the amount of obsolescence.

G. GENERAL - METHODS OF CALCULATING DEPRECIATION: For purposes of Subsection G of Section 3.6.5.40 NMAC, "salvage value" means the minimum twelve and one-half percent value established by Paragraph (3) of Subsection C of Section 7-36-33 NMSA 1978. To calculate allowable depreciation for any year, first salvage value shall be deducted from the tangible property cost for each item of property. Then the remainder shall be divided by the useful life in order to obtain the allowable depreciation per year for each item. In the alternative, a "percent good" table can be used in lieu of determining the depreciation for each individual asset. If used, a percent good table shall be calculated using straight line depreciation and a half-year convention as defined by the internal revenue service in publication 946.

[3/23/83, 12/29/94, 8/31/96, 3/31/00; 3.6.5.40 NMAC - Rn & A, 3 NMAC 6.5.40, 4/30/01]

3.6.5.41 METHODS OF DETERMINING MARKET VALUE OF AFFORDABLE HOUSING:

A. Application for reduced valuation of affordable housing. Not later than the last day of February of the tax year for which a reduced valuation is claimed pursuant to Section 7-36-15(B)(2) NMSA 1978, a property owner shall file an application with the county assessor, in a form prescribed by the division.

B. Value of residential housing property affected by affordable housing subsidies; taxpayer required documents. Except as otherwise provided by this section, an owner of residential property that qualifies for a reduced valuation for a tax year pursuant to Section 7-36-15(B)(2) NMSA 1978 shall submit to the county assessor, not later than the last day of February of that tax year:

(1) a copy of each document that establishes the type, amount and term of the affordable housing subsidy, covenant or encumbrance imposed pursuant to a federal, state or local affordable housing program; or

(2) a copy of the property owner’s purchase agreement for the residential housing and a copy of the property owner’s real estate closing agreement for the residential housing.

C. County assessor waiver of required documents. A county assessor may waive submission of the documents that an owner of residential housing is required to submit by Subsection B of this section if that county assessor independently verifies the type, amount and term of each affordable housing subsidy, covenant or encumbrance that results in a decrease in value for the residential housing pursuant to Section 7-36-15(B)(2) NMSA 1978. The county assessor may obtain and verify such information by

examining records of the county clerk. The county assessor shall request documents from the property owner as required by Subsection A of this section with respect to an affordable housing subsidy, covenant or encumbrance for which the county clerk has no record.

D. Apartments classified as residential property. Property owners who own apartment buildings classified as residential property shall submit, in addition to documents required by this section, evidence satisfactory to the county assessor, of the amount and source of income per unit, including, but not limited to, federal Title VIII vouchers.

E. Reporting changes in subsequent years. If a property owner receives a reduced valuation with respect to an affordable housing subsidy, covenant or encumbrance pursuant to Section 7-36-15(B)(2) NMSA 1978 for a property tax year, the property owner shall, no later than the last day of February of each subsequent property tax year, report any change in the type, amount and term of any affordable housing subsidy, covenant or encumbrance imposed pursuant to a federal, state or local affordable housing program.

F. Certification of no change. If a property owner receives a reduced valuation with respect to an affordable housing subsidy, covenant or encumbrance pursuant to Section 7-36-15(B)(2) NMSA 1978 for a property tax year, and the type, amount and term of that subsidy, covenant or encumbrance has not changed for five property tax years subsequent to the filing of an application, reported change, or certification of no change pursuant to this section, the property owner shall certify to the county assessor that no such change has occurred during that period. A property owner is not required to file a certification of no change with the county assessor anytime prior to the date that occurs five property tax years after the last application, reported change, or certification of no change is filed with the county assessor.

G. County assessor use of required documents. A county assessor shall use the documents submitted by a property owner in accordance with this section to determine the value of property for property taxation purposes pursuant to Sections 7-36-15 and 7-36-16 NMSA 1978. The county assessor shall use the documents to complete a statement of adjusted value that:

(1) is in a form prescribed by the division; and

(2) contains a calculation of the property owner's equity in the property, in accordance with Section 7-36-15 NMSA 1978, as of the first day of the applicable tax year; that calculation shall account for:

(a) the unencumbered market value of the property for the applicable property tax year; and

(b) any decrease in the value that would be realized by the owner in a sale of the property because of the effects of any affordable housing subsidy, covenant, or encumbrance imposed pursuant to a federal, state or local affordable housing program that restricts the future use of the property or the resale price of the property or would otherwise prohibit the owner from fully benefiting, excluding shared appreciation features, from any enhanced value of the property.

H. Title company provision of documents to property owners. Title companies shall be encouraged to provide documents required in Subsection B of this section to property owners. A county assessor shall request each title company in its county to provide documents required in Subsection B of this section to the county assessor in accordance with applicable laws.

[3.6.5.41 NMAC - N, 1/30/09]

PART 6: PROVISIONS FOR IMPOSITION OF TAX - APPLICABILITY

3.6.6.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.6.6.1 NMAC - Rp, 3 NMAC 6.6.1, 7/30/2024]

3.6.6.2 SCOPE:

The sections under this part apply to all property subject to property taxation under the Property Tax Code, owners and agents of owners of such property and all county officials and personnel of the taxation and revenue department charged with administration of the Property Tax Code.

[3.6.6.2 NMAC - Rp, 3 NMAC 6.6.2, 7/30/2024]

3.6.6.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.6.6.3 NMAC - Rp, 3 NMAC 6.6.3, 7/30/2024]

3.6.6.4 DURATION:

Permanent.

[3.6.6.4 NMAC - Rp, 3 NMAC 6.6.4, 7/30/2024]

3.6.6.5 EFFECTIVE DATE:

July 30,2024, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.6.6.5 NMAC - Rp, 3 NMAC 6.6.5, 7/30/2024]

3.6.6.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Property Tax Code.

[3.6.6.6 NMAC - Rp, 3 NMAC 6.6.6, 7/30/2024]

3.6.6.7 DEFINITIONS:

[RESERVED]

3.6.6.8 [RESERVED]

3.6.6.9 [RESERVED]

3.6.6.10 APPLICATION OF TAX RATIO:

The tax ratio is applied to the value of property determined for property taxation purposes by dividing that value by three. The quotient resulting from this division is the "taxable value" of the property.

[3.6.6.10 NMAC - Rp, 3 NMAC 6.6.10, 7/30/2024]

3.6.6.11 HEAD OF FAMILY EXEMPTION:

A. Claiming the exemption: Exemptions are claimed by filing proof of eligibility for the head of family exemption with the county assessor.

B. Special benefit assessments and certain taxes - exemption inapplicable: The head of family exemption is not effective against impositions or levies of taxes on specific classes of property outside the Property Tax Code and special benefit assessments authorized by laws outside the Property Tax Code, such as conservancy district assessments.

C. Dependents not required: A claimant is not required to have dependent children or other dependents to be entitled to the benefits of the head-of-family exemption.

D. Absence from state: Mere absence from state does not deprive a taxpayer who is head of a family of the exemption. The qualifying taxpayer may claim the head of family exemption as long as the taxpayer does not establish residence elsewhere and intends to return to New Mexico.

E. Nonresident property owner: A property owner who is not a resident of New Mexico is not entitled to claim head of family exemption on property subject to property tax within New Mexico. A New Mexico resident is a person who is domiciled in New Mexico with a bona fide intention of continuing to reside in New Mexico even though the person may be temporarily absent from New Mexico.

F. Military person claiming legal residence in another state: If a military person claims legal residence in another state for voting and other purposes although he or she physically resides in this state, the person may not claim the head of family exemption because the claim of residence in another state indicates an intent to depart New Mexico.

[3.6.6.11 NMAC - Rp, 3 NMAC 6.6.11, 7/30/2024]

3.6.6.12 VETERAN EXEMPTION:

A. Property taxes authorized by laws outside the property tax code and special benefit assessments: The veteran exemption applies to property taxes imposed by laws other than the Property Tax Code, such as the ad valorem tax on taxable property within a hospital district Section 4-48A-16 NMSA 1978; the property tax on taxable property within a college district Section 21-2A-5 NMSA 1978; the property tax on all property subject to taxation within a flood control district Section 72-18-20 NMSA 1978; and, the general ad valorem tax on all property subject to taxation within a solid waste authority Section 74-10-27 NMSA 1978. The veteran exemption is not effective against impositions or levies of taxes on specific classes of property authorized by laws outside the property tax code or impositions of special benefit assessments authorized by laws outside the Property Tax Code.

B. Application of veteran exemption - general:

(1) Married persons. Where both persons are veterans within the meaning of Subsection C of Section 7-37-5 NMSA 1978, they may each claim the exemption allowed in Subsection A of Section 7-37-5 NMSA 1978.

(2) Military relationship:

(a) The veteran's exemption contained in Section 7-37-5 NMSA 1978 requires that claimant has been honorably discharged from membership in the armed forces of the United States. A person has been "honorably discharged" if he or she has been discharged and has not received either a dishonorable discharge or a discharge for misconduct.

(b) Any veteran who did not serve at least 90 continuous days on active duty is not entitled to the exemption; except for failure to have served in the armed forces continuously for 90 days is considered to have met that qualification if the reason for not

having served for that period was a discharge brought about by service-connected disablement.

(c) A veteran does not lose their right to a veteran's exemption by re-enlisting immediately after receiving his or her honorable discharge.

(d) A person whose civilian service has been recognized as service in the armed forces of the United States under federal law as determined under Title 32, Part 47 of the Code of Federal Regulations, as amended, shall be considered to have serviced in the armed forces of the United States.

(3) Residency. Pursuant to Section 7-37-5 NMSA 1978, it is required that a person be a current New Mexico resident to qualify for the veteran's exemption.

(4) Veteran's interest in property:

(a) A veteran who qualifies under Section 7-37-5 NMSA 1978, who is a life tenant of real estate, is entitled to exemption on taxation on the property in which the veteran is a life tenant.

(b) A veteran cannot claim exemption from taxation on land where the veteran holds no title to the land, either legal or equitable.

(c) If a veteran entitled to claim the exemption owns property on January 1, it remains exempt even though the veteran sells it during the year.

(d) A veteran who has purchased property on an executory contract with legal title remaining in escrow pending the final payment under the purchase contract is the beneficial owner of the property and is the owner for purposes of taxation and may apply the exemption to the property.

(e) A veteran cannot claim exemption from taxation for his or her spouse's separate property or his or her spouse's portion of community property.

(f) A veteran cannot claim exemption from taxation when the veteran is one of the partners in a partnership, and the partnership owns the property on which the exemption is claimed.

(5) Surviving spouse:

(a) A resident unmarried surviving spouse of a veteran who died in service is entitled to the veteran's exemption.

(b) If a veteran's surviving spouse remarries and thereafter obtains a divorce from the subsequent spouse, he or she does not revert to the status of an unmarried surviving spouse entitled to claim the exemption.

(c) A surviving spouse of an eligible veteran is not, if a subsequent marriage is annulled, entitled to the exemption.

(d) An unmarried surviving spouse of a deceased veteran who is also a veteran may receive a tax exemption as veteran and also as a surviving spouse of a veteran.

(e) An unmarried surviving spouse of a veteran who at the time of the veteran's death was legally separated from the veteran is entitled to the exemption.

C. Application of veteran exemption - certain taxes and fees outside property tax code:

(1) Aircraft registration fees: The veteran's exemption may not be applied to aircraft registration fees.

(2) Motor vehicle registration fees: Under Section 66-6-7 NMSA 1978, a veteran who has claimed any portion of the veteran's exemption on real or personal property for the year in which the veteran may be liable for the payment of a registration fee for a motor vehicle is not entitled to the reduction in rate for the motor vehicle registration fee. However, if the exemption for motor vehicle registration fees is taken prior to the claiming of the exemption on real and personal property, both exemptions may be claimed to the extent permitted by Section 7-37-5 NMSA 1978.

D. Activities which are not service in the armed forces: Medical laboratory technician. A medical laboratory technician, subject to orders of the war department, but not in uniform and not given a formal discharge when terminated from hospital service, is a civilian employee and not entitled to the veteran's exemption.

[3.6.6.12 NMAC - Rp, 3 NMAC 6.6.12, 7/30/2024]

3.6.6.13 DISABLED VETERAN EXEMPTION:

A. Property taxes authorized by laws outside the property tax code and special benefit assessments.

(1) The disabled veteran exemption applies to property taxes imposed by laws other than the Property Tax Code, such as the ad valorem tax on taxable property within a hospital district Section 4-48A-16 NMSA 1978; the property tax on taxable property within a college district Section 21-2A-5 NMSA 1978; the property tax on all property subject to taxation within a flood control district Section 72-18-20 NMSA 1978; and, the general ad valorem tax on all property subject to taxation within a solid waste authority Section 74-10-27 NMSA 1978.

(2) The disabled veteran exemption applies to special benefit assessments. Special benefit assessments are assessments or levies on specific classes of property

that are specially benefited by the assessment or levy, rather than general property taxes on all property benefiting all property owners and residents of the taxing district. Special benefit assessments include assessments and levies outside the Property Tax Code, which consists of Articles 35 through 38 of Chapter 7 NMSA 1978.

B. Residency: Section 7-37-5.1 NMSA 1978 requires that the property for which the exemption is claimed must be occupied by the disabled veteran (or the disabled veteran's surviving spouse) as his or her principal place of residence. Therefore, a person claiming the disabled veteran exemption must be a current New Mexico resident to qualify for the exemption.

C. Surviving spouse:

(1) A surviving spouse of a disabled veteran may apply for the exemption even if the disabled veteran did not apply for the exemption during his or her lifetime if the surviving spouse meets the requirements of Subsection C of Section 7-37-5.1 NMSA 1978.

(2) After the disabled veteran's death, his or her resident unmarried surviving spouse is entitled to the disabled veteran exemption if he or she continuously occupies the property, on which the disabled veteran exemption was claimed, as the surviving spouse's principal place of residence.

(3) If a disabled veteran's surviving spouse remarries and thereafter obtains an annulment of the marriage or a divorce from the subsequent spouse, he or she does not revert to the status of an unmarried surviving spouse entitled to claim the disabled veteran exemption.

(4) An unmarried surviving spouse of a disabled veteran who at the time of the disabled veteran's death was legally separated from the veteran is entitled to the disabled veteran exemption.

D. Continuously occupies principal place of residence. Subsection B of Section 7-37-5.1 NMSA 1978 provides for an exemption from property tax of a disabled veteran's principal place of residence when it is occupied by the disabled veteran. Subsection C of Section 7-37-5.1 NMSA 1978 allows the surviving spouse of a disabled veteran to claim the exemption is the surviving spouse continues to occupy the property continuously as the surviving spouse's principal place of residence. "Principal place of residence" means the dwelling owned and occupied by the disabled veteran and so much of the land surrounding it, not to exceed five acres, as is reasonably necessary for use of the dwelling as a home and may consist of a part of a multidwelling or a multipurpose building and a part of the land upon which it is built. "Occupy the property continuously" means that the individual is physically present in the residence for a total of 185 days or more in aggregate during the prior year and is domiciled in New Mexico as of January 1 of the property tax year for which the exemption is claimed. The

definition of "domicile" in Subsections C and D of 3.3.1.9 NMAC is incorporated herein by reference.

[3.6.6.13 NMAC - Rp, 3 NMAC 6.6.13, 7/30/2024]

3.6.6.14 TAX RATES AUTHORIZED – LIMITATIONS:

A. Ceding prohibited: Ceding of authorized rates by one governmental unit to another is prohibited.

B. Rates subject to yield control:

(1) Every rate or imposition authorized under Paragraph (2) or (3) of Subsection C of Section 7-37-7 NMSA 1978 and every benefit assessment authorized by law is subject to the provisions of Section 7-37-7.1 NMSA 1978 except for:

(a) any rate, imposition or benefit assessment specifically exempted by law from the provisions of Section 7-37-7.1 NMSA 1978;

(b) any rate or imposition of an assessment for the payment of a definite amount for a specific benefit;

(c) any rate not imposed against the value of the property.

(2) Example 1: The following rates, impositions and benefit assessments are some of the rates subject to the provisions of Section 7-37-7.1 NMSA 1978:

(a) the rates for general operating purposes authorized under Subsection B of Section 7-37-7 NMSA 1978;

(b) the municipal flood control rate authorized by Section 3-41-2 NMSA 1978;

(c) the special hospital district rate authorized by Section 4-48A-16 NMSA 1978;

(d) the rates for branch community colleges authorized by Sections 21-14-6 and 21-14-6.1 NMSA 1978;

(e) the rate for technical and vocational institutes authorized by Section 21-16-12 NMSA 1978; and

(f) the portion of an assessment for general operations of a conservancy district authorized by Items 3 and 4 of Subsection A of Section 73-18-8 NMSA 1978 to be imposed against Class B property.

(3) Example 2: The following rates, impositions and benefit assessments are not subject to the provisions of Section 7-37-7.1 NMSA 1978 because they are specifically exempted:

(a) rates used to pay principal and interest on public general obligation debt, which includes rates authorized to guarantee payment of indebtedness such as the rate authorized by Section 73-16-42 NMSA 1978 for a "guarantee fund"; and

(b) the portion of the rate authorized for Class A counties in Paragraph (1) of Subsection A of Section 4-48B-12 NMSA 1978 to meet the requirements of the Statewide Health Care Act but the rest of the rate is subject to Section 7-37-7.1 NMSA 1978.

(4) Example 3: Some rates are imposed to pay, or to reimburse a public entity the amount of, a specific sum for a benefit to the persons upon whom the rate is levied. Such impositions are not subject to the provisions of Section 7-37-7.1 NMSA 1978 because the rate necessary is calculated by dividing the fixed amount to be raised by the net taxable value or taxable value of the property against which the rate is imposed. The necessary rate varies inversely with changes in net taxable value or taxable value. Thus the result achieved by yield control is achieved without its application. Further, application of the provisions of Section 7-37-7.1 NMSA 1978 in such cases would produce a revenue insufficient to meet the purposes of the imposition, possibly impairing contracts. Examples of such rates are:

(a) the assessment for county improvement districts authorized by Section 4-55A-17 NMSA 1978;

(b) the assessment for drainage districts authorized by Section 73-7-14 NMSA 1978; and

(c) the assessment for conservancy districts authorized by Item 2 of Subsection A of Section 73-18-8 NMSA 1978 for amounts due under contract with the United States.

(5) Example 4: Rates not subject to the provisions of Section 7-37-7.1 NMSA 1978 because they are imposed on a basis other than the value of the property include:

(a) an assessment for business improvement districts authorized by Section 3-63-13 NMSA 1978 when imposed on a square footage, street frontage or similar basis; and

(b) the portion of an assessment for general operations of a conservancy district authorized by Items 3 and 4 of Subsection A of Section 73-18-8 NMSA 1978 to be imposed against Class A property when assessed on a per acre basis.

[3.6.6.14 NMAC - Rp, 3 NMAC 6.6.13, 7/30/2024]

PART 7: ADMINISTRATIVE PROVISIONS

3.6.7.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[8/31/96; 3.6.7.1 NMAC - Rn, 3 NMAC 6.7.1, 4/30/01]

3.6.7.2 SCOPE:

The sections under this part apply to all property subject to property taxation under the Property Tax Code, owners and agents of owners of such property and all county officials and personnel of the taxation and revenue department charged with administration of the Property Tax Code.

[8/31/96; 3.6.7.2 NMAC - Rn, 3 NMAC 6.7.2, 4/30/01]

3.6.7.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[8/31/96; 3.6.7.3 NMAC - Rn, 3 NMAC 6.7.3, 4/30/01]

3.6.7.4 DURATION:

Permanent.

[8/31/96; 3.6.7.4 NMAC - Rn, 3 NMAC 6.7.4, 4/30/01]

3.6.7.5 EFFECTIVE DATE:

8/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[8/31/96; 3.6.7.5 NMAC - Rn & A, 3 NMAC 6.7.5, 4/30/01]

3.6.7.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Property Tax Code.

[8/31/96; 3.6.7.6 NMAC - Rn, 3 NMAC 6.7.6, 4/30/01]

3.6.7.7 DEFINITIONS:

[Reserved.]

[8/31/96; 3.6.7.7 NMAC - Rn, 3 NMAC 6.7.7, 4/30/01]

3.6.7.8 TAXES IMPOSED UNDER THE PROPERTY TAX CODE - APPLICABILITY OF ADMINISTRATION AND ENFORCEMENT PROVISIONS:

A. The taxes imposed under the Property Tax Code are those taxes imposed pursuant to Article 37 of Chapter 7, NMSA 1978 and do not include taxes to which the provisions of Article 37 do not apply.

B. The administration and enforcement provisions of this article apply to impositions or levies of taxes on specific classes of property authorized by laws outside the Property Tax Code, special benefit assessments authorized by laws outside the Property Tax Code and to laws outside the Property Tax Code authorizing the imposition of levies to pay tort or workers compensation judgments but only to the extent that laws outside the Property Tax Code so provide.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.8 NMAC - Rn & A, 3 NMAC 6.7.8, 4/30/01]

3.6.7.9 INVESTIGATIVE AUTHORITY AND POWERS:

A. **SUBPOENA POWER IN AID OF COUNTY ASSESSORS:** the secretary may issue subpoenas for the purposes of determining whether property is subject to property taxation, its value and the amount of any property taxes due and in enforcing any statute administered by the division or administered by county officers under the supervision of the division regardless of whether it is the division or the county assessor who is charged by law with the responsibility to determine the value of the property in question.

B. **FAILURE TO PERMIT EXAMINATION OF RECORDS OR INSPECTION OF PROPERTY:** Refusal by a property owner or the owner's authorized agent to permit lawful examinations of records or inspection of property pursuant to Subsection C of Section 7-38-2 NMSA 1978 may result in the issuance of subpoenas to require the production of records and to require persons to appear and testify under oath pursuant to Subsection A of Section 7-38-2 NMSA 1978.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.9 NMAC - Rn & A, 3 NMAC 6.7.9, 4/30/01]

3.6.7.10 INFORMATION REPORTS:

A. **PROPERTY OWNER OR OWNER'S AUTHORIZED AGENT TO REPORT INFORMATION CONCERNING THE PROPERTY TO THE DIVISION OR THE COUNTY ASSESSOR:** Upon the request of the department or the county assessor for establishing the value of property for property taxation purposes, any property owner or the owner's authorized representative shall report information concerning the property to

the division or the county assessor at the times and in the manner requested. Refusal by a property owner or the owner's authorized agent to respond adequately to such a request for information may result in the issuance of subpoenas to require the production of records and to require persons to appear and testify under oath pursuant to Subsection A of Section 7-38-2 NMSA 1978. The reports required pursuant to this subsection shall be in addition to any reports otherwise required pursuant to the Property Tax Code.

B. **INFORMATION REPORTS FROM LESSORS:** For the purposes of establishing or determining the value of property for property taxation purposes, the department may require in-state or out-of-state lessors of tangible personal property located in New Mexico to provide information reports to the division and to the county assessor of the county in which the property is located. Refusal to submit these reports may result in initiation of enforcement actions authorized under the Property Tax Code.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.10 NMAC - Rn & A, 3 NMAC 6.7.10, 4/30/01]

3.6.7.11 CONFIDENTIALITY OF INFORMATION:

A. **INSPECTION OF PUBLIC RECORDS LAW:** The provisions of Section 7-38-4 NMSA 1978 constitute an exception to Section 14-2-1 NMSA 1978 which provides for the inspection of public records.

B. **REQUESTS FOR INFORMATION:** All requests for information, including requests for information to be used for statistical purposes, which may lawfully be released by the department must conform to the requirements of the Inspection of Public Records Act. Requests must be sufficiently specific to identify the property or properties to which the request relates.

C. **INFORMATION WHICH MAY BE RELEASED BY THE DEPARTMENT:** Pursuant to a request in compliance with Subsection B of 3.6.7.11 NMAC, any information associated with the property required by law to be contained in the valuation records may be released, except as provided otherwise by Subsection E of Section 7-38-19 NMSA 1978.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.11 NMAC - Rn & A, 3 NMAC 6.7.11, 4/30/01]

3.6.7.12 [RESERVED]

[3.6.7.12 NMAC - Rn, 3 NMAC 6.7.12, 4/30/01]

3.6.7.13 EFFECT OF THE PRESUMPTION OF CORRECTNESS:

A. To overcome the presumption of correctness provided in Section 7-38-6 NMSA 1978, the taxpayer has the burden of coming forward with evidence showing that values for property taxation purposes determined by the division or the county assessor or

determination of tax rates, classifications, allocations of net taxable values of property to governmental units and the computation and determination of property taxes made by the officer or agency responsible therefor under the Property Tax Code are incorrect. Failure to present evidence tending to dispute the factual correctness of the above determinations in any hearing pursuant to the provisions of the Property Tax Code may result in a denial of relief sought by a taxpayer.

B. Where the only evidence presented by the taxpayer is the purchase price of the property which is the subject of the dispute over value for tax purposes and the evidence of comparable sales indicates the sales price was not the market value, the presumption of correctness of the determination of the division or the county assessor is not overcome.

C. Once the presumption of correctness is overcome, the burden of showing a correct valuation shifts to the division or to the county assessor.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.13 NMAC - Rn & A, 3 NMAC 6.7.13, 4/30/01]

3.6.7.14 VALUATION DATE:

A. **TAXABLE STATUS OF PROPERTY FIXED AS OF JANUARY 1 OF EACH YEAR:** January 1 of each year is the date which determines the tax status of all property subject to valuation for property taxation purposes, except livestock valued as of the date and in the manner prescribed under Section 7-36-21 NMSA 1978. This status includes determination of whether the property is exempt from property taxation. Therefore, if property is not entitled to exemption from property taxation under the Property Tax Code on January 1 of the tax year, it is not exempted from taxation for that tax year. The sale or transfer of the property to a tax exempt owner at a later date during the tax year does not entitle the property to exemption for that tax year.

B. **PROPERTY DESTROYED OR IMPROVED DURING THE YEAR:** If property is destroyed or improved during the year, any resulting increase or decrease in valuation will not be reflected until January 1 of the following year, and no correction, reassessment, or proration of taxes is authorized because of such increase or decrease in valuation.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.14 NMAC - Rn & A, 3 NMAC 6.7.14, 4/30/01]

3.6.7.15 REPORTING OF PROPERTY FOR VALUATION - PENALTIES FOR FAILURE TO REPORT:

A. **ANNUAL REPORT TO THE DIVISION - FORM AND REQUIRED INFORMATION:**

(1) The report required by Subsection A of Section 7-38-8 NMSA 1978 shall be made by the owner of the property or any other person who has written authorization from the owner to make the report on behalf of the owner.

(2) In the case of mineral property valued pursuant to Sections 7-36-23 through 7-36-25 NMSA 1978, the operator of the mineral property may be required to report the property rather than the owner of the property.

(3) The report shall be made on a form or forms approved by the division and shall contain all information required by the division to determine:

(a) the value of the property pursuant to the Property Tax Code and these regulations;

(b) the identification of the property; and

(c) the owner or person in possession of the property.

(4) The form may require the attachment of copies of reports made to other agencies or departments of the state of New Mexico or agencies or departments of the United States.

(5) Additionally, all railroad companies shall submit, on a yearly basis, a report of operations for the preceding year containing the following information:

(a) copies of all New Mexico right-of-way maps;

(b) complete legal description of all land parcels which are located in New Mexico, along with plats, if available; and

(c) a statement setting forth, by individual counties, the total acreage of New Mexico real property and right of way.

B. **PROPERTY NOT VALUED IN THE TAX YEAR WHICH AGAIN BECOMES SUBJECT TO VALUATION - REPORT:** The report required under Subsection B of Section 7-38-8 NMSA 1978 shall include:

(1) the property owner's name and address;

(2) the description of the property valued such that, if the description were included in a deed to the property, title would pass;

(3) the description of any improvements on the property;

(4) the cost of the land, as evidenced by the most recent sale of the land, and the date of sale;

(5) the cost of the improvements, as evidenced by the most recent sale of the improvements, and the date of sale;

(6) the dates and reason for which the property was not previously subject to valuation; and

(7) the date and reason for which the property again became subject to valuation.

C. **REPORTS TO COUNTY ASSESSOR:**

(1) Reports required under Subsection E of Section 7-38-8 NMSA 1978 shall be made either by the owner of the real or personal property or by any other person having written authorization from the owner to report on behalf of the owner.

(2) When reporting property subject to valuation to the county assessor for property tax purposes, the report of or on behalf of the owner shall include, in the case of real property, both a complete legal description of the property and the improvements made to that property and, in the case of personal property, a description of both the personal property and its location sufficient to identify its site and the proper taxing jurisdictions.

(3) A report shall be made on a form or forms approved by the department and shall contain all information required by the department or the county assessor to:

(a) determine the value of the property pursuant to the Property Tax Code and Parts 1 through 7 of Chapter 3.6 NMAC;

(b) identify the property and its location;

(c) identify the owner or person in possession of the property.

(4) A form may require the attachment of copies of reports made to the department, other agencies of the state of New Mexico or to agencies, departments or instrumentalities of the United States.

D. **FORM OF STATEMENT OF IMPROVEMENTS:** The statement of improvements required by Subsection C of Section 7-38-8 NMSA 1978 must be on a standard preprinted form, prepared and paid for by the county assessor and in form and content prescribed by the director. The standard preprinted form shall be mailed to each person to whom the notice of value is mailed pursuant to Subsection A of Section 7-38-20 NMSA 1978 at the time of the mailing of the notice of value. Any form other than the standard form prescribed by the director and any method of making the form available to property owners other than the method directed by this subsection will be used only after submitting the form, and the method, in writing to the director and receiving written approval from the director for the use of such form and method.

E. **LEASED PROPERTY.** Property leased under a true lease is to be reported by the owner/lessor of the property. When the form of the document is that of a lease but the transaction is in substance a conditional sale or the document serves primarily to secure a lender's interest in the property, the property shall be reported by the lessee.

[3/23/83, 12/13/85, 10/2/92, 12/29/94, 8/31/96; 3.6.7.15 NMAC - Rn & A, 3 NMAC 6.7.15, 4/30/01, A, 6/29/01]

3.6.7.16 PROPERTY OWNED BY NONGOVERNMENTAL ENTITIES - PRESUMPTION OF TAXABILITY - CLAIMING OF EXEMPTION:

A. Real property owned by a nongovernmental entity is presumed to be subject to taxation under the provisions of the Property Tax Code unless an exemption has been claimed and allowed in accordance with this section with respect to the property.

B. For the purposes of this section:

(1) "exemption" means an exemption, other than the head-of-family and veteran exemptions authorized under Sections 7-37-4 and 7-37-5 NMSA 1978, from property taxation authorized by the New Mexico Constitution, the Property Tax Code or other law; and

(2) "nongovernmental entity" means a property owner who is not the United States, an Indian nation, tribe or pueblo, the state of New Mexico or a political subdivision of the state of New Mexico or a department, agency or instrumentality of the United States, an Indian nation, tribe or pueblo, the state of New Mexico or a political subdivision of the state of New Mexico.

C. For the 1991 and succeeding property tax years, no exemption shall be allowed for any real property owned by a nongovernmental entity unless a completed "claim for exemption of property - nongovernmental entities" form has been filed with and approved by the valuation authority. The claim form shall provide for the following:

(1) a description of the property;

(2) a description of the owner's activities or tax status for federal purposes if relevant to the claim for exemption;

(3) the legal basis upon which the claim is made;

(4) evidence to support the claim and, if exemption is claimed because the property is used for educational or charitable purposes, evidence that such use is the "primary and substantial use" of the property must be presented; and

(5) such other information as the department may require.

D. A written statement containing all required information may be submitted in lieu of the standard form. The claim must be signed under oath by the property's owner or authorized agent.

E. Once an exemption has been claimed and allowed, a new claim must be submitted for approval whenever the ownership of the property changes. If no claim is submitted upon change of ownership, the property is subject to valuation and taxation under the Property Tax Code beginning with the property tax year in which the ownership changed if the change occurred on January 1; if ownership changed on a date other than January 1, the property is subject to valuation and taxation beginning with the property tax year immediately following the year in which ownership changed.

F. Once an exemption has been claimed and allowed, no further report need be made to the valuation authority so long as the eligibility and ownership remain unchanged. Should the eligibility status or ownership of the property change, the change shall be reported to the valuation authority not later than the last day of February of the property tax year if the change occurred on January 1; if the change occurred on any other day of the year, the change shall be reported by the last day of February of the year immediately following the year in which the changed occurred.

G. If a nongovernmental entity has claimed and been allowed, in substantial compliance with the provisions of this section, an exemption for a property for any property tax year in the period 1983 through 1990 and the eligibility status and ownership of the property have not changed, the nongovernmental entity shall be deemed to have complied with the provisions of this section with respect to that property for the 1991 and subsequent property tax years so long as the eligibility status and ownership do not change.

[10/15/90, 12/29/94, 8/31/96; 3.6.7.16 NMAC - Rn & A, 3 NMAC 6.7.16, 4/30/01]

3.6.7.17 DESCRIPTION OF PROPERTY FOR PROPERTY TAXATION PURPOSES:

A. **DESCRIPTION SUFFICIENTLY ADEQUATE AND ACCURATE TO IDENTIFY REAL PROPERTY - IMPROVEMENTS MUST BE DESCRIBED:** A description sufficiently adequate and accurate to identify real property is a description such that, if the description were included in a deed, title would pass and which identifies it sufficiently to permit it to be located on the ground and its boundaries determined.

B. **UNIFORM SYSTEM OF REAL PROPERTY DESCRIPTION TO BE USED BY THE DEPARTMENT AND ALL COUNTY ASSESSORS:** The department and all county assessors shall substantially comply with the current "New Mexico mapping manual" prepared by the division pursuant to Section 7-35-4 NMSA 1978. The system described in that manual replaces the "unit tax system" and any other system now in use in any county for the description, indexing or identification of real property. The director may permit, however, a reasonable time for replacement of these other

systems. The department may insure substantial compliance with this subsection by installation of the required system by the department pursuant to Section 7-38-10 NMSA 1978.

C. **REAL PROPERTY DESCRIPTIONS RECORDED WITH THE COUNTY CLERK:** Legal descriptions or plats of real property filed pursuant to Section 14-8-16 NMSA 1978, for record in the office of the county clerk, certified as correct by a professional engineer or land surveyor licensed in the state and delivered to the county assessor are, in the case of legal descriptions, adequate descriptions for property taxation purposes, and in the case of plats, adequate documents for reference in descriptions for property taxation purposes.

D. **MAPS PREPARED BY THE STATE ENGINEER PURSUANT TO THE LAND SURVEY ACT OF 1969:** Where the state engineer has prepared maps containing a legal description of tracts of land surveyed pursuant to the Land Survey Act of 1969 and assigned each such tract a number, such lands for taxation shall be described by reference to the tract number and map number that designate the land and the date the map was filed and placed on record in the office of the county clerk.

E. **DESCRIPTIONS BY REFERENCE TO RECORDED INSTRUMENTS:** Descriptions by reference to instruments fully recorded with the county clerk and containing a description of the property sufficiently adequate and accurate to identify it, unless otherwise ordered by the secretary, are adequate descriptions for property taxation purposes when the instruments meet the conditions of this subsection. The instrument containing any such description by reference must show the time and place of filing or recordation of the instrument containing the description referred to, or other similar information, so that the instrument containing the description referred to can be located and identified.

F. **DESCRIPTION BY CO-ORDINATES:** Descriptions pursuant to the New Mexico coordinate system established by Sections 47-1-49 through 47-1-56 NMSA 1978 are adequate descriptions for property taxation purposes, provided they are otherwise adequate pursuant to Section 3.6.7.17 NMAC. In the event, however, there is a conflict in a legal description where state plane co-ordinates are used to describe any tract of land which in the same document is also described by reference to any subdivision, line or corner of the United States public land surveys, the description based on the public land survey will prevail.

G. **SUBDIVISION DESCRIPTIONS BY NUMBER AND PLAT DESIGNATION:** Description of parcels by number and plat designation are valid for the purpose of taxation for subdivisions approved pursuant to the New Mexico Subdivision Act (Sections 47-6-1 NMSA 1978 et seq.) provided they are otherwise adequate pursuant to these regulations.

H. **EFFECT OF SUBSECTION B OF SECTION 7-38-9 NMSA 1978:** The effect of Subsection B of Section 7-38-9 NMSA 1978 is to validate assessments, records and

instruments maintained or issued by tax officers prior to the effective date of the Property Tax Code. This provision in no way authorizes the use of past practices of description, mapping or coding after January 1, 1975. However, certain subsections of this section do authorize the use of past practices of description and coding but only to the extent and subject to the conditions stated in those subsections.

I. **GEOGRAPHIC INFORMATION SYSTEMS:**

(1) A "geographic information system" consists of three parts:

(a) a digitized map or set of maps for the county in a format conforming to standards set by the department, with smart points, lines and areas;

(b) a computerized database or databases containing required valuation information for each property in the county; and

(c) a set of rules relating the map features to each other and to the property valuation database or databases such that every parcel mapped is identified with a property in the database.

(2) Every county shall have a digitized set of maps for the county in place by June 2002. Every such set shall meet the specifications and standards set by the department for such sets. The department shall review each set to ensure conformance with requirements of this subsection and directives of the director.

(3) Beginning in 2002, every county shall transmit to the department in accordance with instructions of the department but at least annually a copy of the county's digitized county maps and property database. Such copies shall be retained by the department as back-up for the county system until replaced by a subsequent copy.

[3/23/83, 12/29/94, 8/31/96, 2/14/00; 3.6.7.17 NMAC - Rn & A, 3 NMAC 6.7.17, 4/30/01]

3.6.7.18 INSTALLATION OF REQUIRED SYSTEM BY DEPARTMENT:

Tax maps are maps showing the location, shape and size of each parcel of property that the county assessor must value. An identification number is usually applied to each parcel of property to correlate the numbered parcels with the ownership list. Because tax maps are essential to the appraisal process, the department may take whatever action is necessary, including having the maps prepared and installed in a county and billing the county for the costs of preparing and installing, to ensure that every county has adequate tax maps.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.18 NMAC - Rn, 3 NMAC 6.7.18, 4/30/01]

3.6.7.19 [RESERVED]

[3.6.7.19 NMAC - Rn, 3 NMAC 6.7.19, 4/30/01]

3.6.7.20 [RESERVED]

[3.6.7.20 NMAC - Rn, 3 NMAC 6.7.20, 4/30/01]

3.6.7.21 STATEMENT OF DECREASE IN VALUE:

The statement of decrease in value provided for in Section 7-38-13 NMSA 1978 must be on a standard preprinted form, prepared and paid for by the county assessor and in form and content prescribed by the director. The standard, preprinted form shall be mailed to each person to whom the notice of value is mailed pursuant to Subsection A of Section 7-38-20 NMSA 1978 at the time of the mailing of the notice of value. Any form other than the standard form prescribed by the director and any method of making the form available to property owners other than the method directed by this section must be approved in writing by the director prior to such use. A request must be in writing and include the reason for the proposed use.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.21 NMAC - Rn & A, 3 NMAC 6.7.21, 4/30/01]

3.6.7.22 [RESERVED]

[3.6.7.22 NMAC - Rn, 3 NMAC 6.7.22, 4/30/01]

3.6.7.23 [RESERVED]

[3.6.7.23 NMAC - Rn, 3 NMAC 6.7.23, 4/30/01]

3.6.7.24 PROPERTY ACQUIRED BY THE STATE BY OUTRIGHT PURCHASE OR TRADE:

The property of the state is exempt from taxation by Section 3 of Article VIII, New Mexico Constitution. If property is acquired by the state by outright purchase or trade, where such property was, prior to such transfer, subject to the lien of any tax or assessment for the principal or interest of any bonded indebtedness, the property is not exempt from the lien nor from the payment of the taxes or assessments.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.24 NMAC - Rn & A, 3 NMAC 6.7.24, 4/30/01]

3.6.7.25 CLAIMING EXEMPTIONS - REQUIREMENTS – PENALTIES:

A. **STATEMENT OF PROOF OF ELIGIBILITY FOR VETERANS AND HEAD-OF-FAMILY EXEMPTION:** The statement of proof of eligibility for veterans and head of family exemptions required by Subsection F of Section 7-38-17 NMSA 1978 must be on a standard preprinted form, prepared and paid for by the county assessor and in form and content prescribed by the director. Any form other than the standard form

prescribed by the director and any method of making the form available to property owners other than the method directed by this subsection must be approved in writing by the director prior to such use. A request must be in writing and include the reason for the proposed use.

B. **ISSUANCE OF CERTIFICATE OF ELIGIBILITY BY THE VETERANS SERVICE COMMISSION:** The veterans service commission is required to issue original and duplicate certificates of eligibility for veterans' exemptions in substantially the following form:

TAX EXEMPTION

CERTIFICATE OF ELIGIBILITY

FOR VETERANS

This certifies that (name of veteran) who is living or deceased acquired legal residence in the State of New Mexico on _____ and served in the military forces of the United States from _____ to _____ and that (name of applicant) , (veteran or widow), whose address is:

_____

_____

_____

is entitled to tax exemption benefits in the state of New Mexico under the provisions of Section 7-37-5 NMSA 1978.

This certificate must be presented to the county assessor each time a veteran exemption is claimed, subsequently released, or subsequently claimed. Applicant must be a current New Mexico resident to qualify.

Date: _____

Amount _____:

Character of exemption claimed or granted:

_____

Signature of assessor:

_____

County:

_____

C. **VERIFICATION OF THE ISSUANCE OF CERTIFICATES AND THE CLAIMING OF VETERANS EXEMPTIONS:**

(1) No certificate of eligibility shall be issued by the veterans service commission unless application therefor has been made in writing in the form provided by the commission and the application is submitted with the appropriate United States department of defense separation form.

(2) A copy of the certificate of eligibility shall be mailed to the county assessor of the county in which the applicant resides by the commission. In lieu of sending a copy of the certificate, the commission may send a listing to the county if the listing contains the information presented on the form prescribed by Subsection B of Section 3.6.7.25 NMAC. The listing may be transmitted in electronic or optical format if the county assessor accepts that format.

(3) No claim of the veteran exemption shall be allowed by a county assessor unless accompanied by a verified certificate of exemption.

D. **VALIDATION OF CERTIFICATE OF ELIGIBILITY BY COUNTY ASSESSOR - PARTIAL OR FULL RELEASE OF CLAIMED EXEMPTION:**

(1) County assessors are to validate the certificate of eligibility for claimed veteran exemptions by notation on the certificate of the date a veteran exemption is first claimed, dates of subsequent releases of the exemption, dates of subsequent claiming of the exemption and the amount applied in each instance.

(2) If a county assessor for one county issues a partial or full release of a claimed exemption on property located in that county, the amount of the exemption released shall be noted by the assessor on the certificate of eligibility and the certificate is, after this notation and the notations referred to in the preceding paragraph, valid for use in claiming the amount of the exemption released in another county.

E. **HEAD-OF-FAMILY AND VETERAN EXEMPTIONS - "RESIDENT" DEFINED:** For the purposes of the head-of-family and veteran exemptions provided by Sections 7-37-4 and 7-37-5 NMSA 1978, "a New Mexico resident" means an individual who is domiciled in this state on January 1 of the tax year for which the exemption is claimed. A person is domiciled in New Mexico if he or she is physically present in New Mexico, except for short absences for reason of health, vacation, visits or temporary work assignments, with a bona fide intention of continuing to live in New Mexico. No person shall be deemed to have acquired or lost residency by reason of presence or absence from New Mexico:

(1) while employed in the service of the United States or of the state, or

(2) while a student at any school.

F. **VERIFICATION OF THE DOLLAR AMOUNT OF VETERAN EXEMPTIONS CLAIMED - MULTIPLE CLAIMING:**

(1) When a veteran's certificate of eligibility is presented to the county assessor for an initial claim in a county, the assessor shall determine if the exemption has been previously claimed in another county. If the exemption has been claimed previously, the county assessor shall verify with the assessor in the other county that the exemption has been released. If the exemption has not been released and a full $2,000 is being granted in the other county, the assessor shall deny the claim. If the exemption is being partially claimed in the other county, the county assessor determines the amount of exemption which is not being claimed and grant the exemption only for that amount.

(2) The assessor shall prepare a listing of all veteran exemptions being claimed for the first time in the assessor's county. The listing shall include the name and address of the veteran, the certificate number, property against which the exemption is claimed and the dollar amount of the exemption allowed. If the exemption has been previously claimed in another county, the county assessor shall also include in the listing the county in which the exemption was previously claimed, the property against which the exemption is claimed and the dollar amount allowed. The report on veteran exemptions granted for the first time shall be submitted by the county assessor to the department by March 15 of each tax year. In addition, a list of all veteran exemptions granted for the tax year shall be sent to the department by May 1.

(3) The division, upon receipt of the list of veteran exemptions granted for the first time, shall review its files to determine whether the persons have claimed the exemption previously in the same county under the current certificate number or another certificate number. If it is found that more than one certificate is being used, the division will notify the county assessor and the veterans service commission. When there is an indication that the exemption has been previously claimed in another county, the division will review its list of all veteran exemptions granted in the county to determine if the exemption has been dropped.

(4) If the exemption is being claimed in more than one county, the division shall contact each county assessor to verify the amount of exemption being granted to insure that no more than $2,000 is allowed. If it is found that a veteran exemption of more than $2,000 has been claimed by an individual, the county assessor or assessors in the counties in which the multiple claims have been filed will be requested by the division to reduce the amount of exemption being granted or to deny the application of the exemption in their county.

[3/23/83, 6/1/83, 12/29/94, 8/31/96; 3.6.7.25 NMAC - Rn & A, 3 NMAC 6.7.25, 4/30/01]

3.6.7.26 [RESERVED]

[3.6.7.26 NMAC - Rn, 3 NMAC 6.7.26, 4/30/01]

3.6.7.27 PUBLICATION OF NOTICE RELATING TO REPORTING PROPERTY FOR VALUATION AND CLAIMING EXEMPTIONS:

A. **UNIFORM FORM OF NOTICE:** The uniform form of notice required by Section 7-38-18 NMSA 1978 which is to be used by county assessors shall be provided annually by the division.

B. **REPORTING FORMS:** The county assessor is required to have available for use of the public preprinted forms for making the reports and applications for claim of exemption prescribed in the uniform notice required by Section 7-38-18 NMSA 1978.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.27 NMAC - Rn & A, 3 NMAC 6.7.27, 4/30/01]

3.6.7.28 VETERANS EXEMPTION FROM REGISTRATION FEE FOR A MOTOR VEHICLE:

Pursuant to Section 66-6-7 NMSA 1978 county assessors, upon receipt of information certified by the director of the motor vehicle division of the taxation and revenue department, are required to note on their valuation records the reduction of a veteran's exemption resulting from the allowance of a reduction from motor vehicle registration fees due to a claim of the exemption on those fees. If the veteran is not the owner of property subject to property tax, the notation is not required to be made.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.28 NMAC - Rn & A, 3 NMAC 6.7.28, 4/30/01]

3.6.7.29 FORM OF NOTICE OF VALUE:

The notice of valuation required to be mailed by county assessors must be on a standard preprinted form, prepared and paid for by the county assessor and in form and content prescribed by the director. Any form other than the standard form prescribed by the director must be approved in writing by the director prior to such use. A request must be in writing and include the reason for the proposed use.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.29 NMAC - Rn, 3 NMAC 6.7.29, 4/30/01]

3.6.7.30 TIME OF ELECTION OF REMEDIES:

The election provided for in Section 7-38-21 NMSA 1978 is made when the taxpayer files a petition of protest or claim for refund. The taxpayer may not withdraw the protest, then pay the assessment and claim a refund.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.30 NMAC - Rn, 3 NMAC 6.7.30, 4/30/01]

3.6.7.31 PROTESTING VALUES, CLASSIFICATION, ALLOCATION OF VALUES AND DENIAL OF EXEMPTIONS DETERMINED BY THE DEPARTMENT:

A. **FORM OF PETITION AND INFORMAL CONFERENCES:** The form of petition for protesting values and other determinations, with modification to reference the department, and information concerning informal conferences found in Section 3.6.7.33 NMAC, are applicable with respect to protests to the department.

B. **POSTMARK DATE IS TIME OF FILING OF PROTEST:** In determining the time at which a petition of protest mailed through the United States postal service is "filed with the department", the postmark date shown on the envelope containing the petition shall constitute the date of filing. If the postmark is illegible, the date of mailing shall be presumed to be the date two business days prior to the date the petition is received by the department. The presumption may be rebutted by a preponderance of evidence showing another date of mailing.

C. **HEARING OFFICER CONDUCTS HEARING:** The hearing provided for in Subsection C of Section 7-38-22 NMSA 1978 will be held before a hearing officer designated by the secretary designated for that purpose in accordance with Subsection A of Section 7-38-23 NMSA 1978.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.31 NMAC - Rn & A, 3 NMAC 6.7.31, 4/30/01]

3.6.7.32 PROTEST HEARINGS - VALUATION DETERMINED BY DEPARTMENT:

A. **PROTEST HEARINGS - TAPE RECORDING:** The requirement that a verbatim record be made of protest hearings before the secretary or a hearing officer designated by the secretary is met by recording the hearing with a tape or other recording device. This verbatim record shall be retained by the department until ninety (90) days after the decision and order is made.

B. **PROTEST HEARINGS - WITHDRAWAL OF PROTEST - FAILURE TO APPEAR:** If, at an informal conference pursuant to Subsection D of Section 7-38-22 NMSA 1978, or at any stage prior to final action by the secretary, a pending protest is fully resolved with no change resulting in the taxpayer's notice of valuation, the protesting taxpayer or the taxpayer's authorized representative must sign a written document, which may be provided by the department, stating that the taxpayer withdraws the protest and the hearing officer designated by the secretary shall vacate the hearing. Failure to sign a written document withdrawing a protest may result in a hearing of the protest. In the absence of a written withdrawal of protest and in the event that a taxpayer fails to appear at a scheduled hearing, the hearing officer may decide the protest against the taxpayer on the basis of the presumption under Section 7-38-6 NMSA 1978.

C. **PROTEST HEARINGS - PROCEDURES:** The procedures for hearings before the county valuation protests boards found in Section 7-38-27 NMSA 1978 and Section 3.6.7.36 NMAC are to be followed in protest hearings before the hearing officer designated by the secretary.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.32 NMAC - Rn & A, 3 NMAC 6.7.32, 4/30/01]

3.6.7.33 PROTESTING VALUES, CLASSIFICATION, ALLOCATION OF VALUES AND DENIAL OF EXEMPTIONS DETERMINED BY THE COUNTY ASSESSOR:

A. **FORM OF PETITION:** The following is an acceptable form of petition for protesting values and other determinations by the county assessor:

To: _____ county assessor

Date: _____

I hereby state that my full name is
_____
_____

my address is
_____
_____

_____
_____

and I am the owner of the following described property:

Property code no.
_____
_____

Legal description
_____
_____

I further state that the valuation and/or classification and/or denial of an exemption in regard to my property is incorrect because
_____
____

_____
_____

_____

_____
_____
_____

_____
_____
_____.

I believe the correct classification of my property is:
_____.

I believe the following exemption applies to the property:
_____.

I believe the total correct valuation of my property is:
$_____.

I further state that the following total amount of valuation: _____, is not in controversy because I agree with that valuation or portion of that valuation placed on my property.

I further state that I received a notice of valuation from the _____ county assessor on the following date: _____.

I state that I understand that the county assessor, upon receipt of this petition, is required to schedule a hearing before the county valuation protest board. I understand that I must provide evidence and/or have witnesses at the hearing. I (do) (do not) request that the _____ county assessor provide for an informal conference with me after setting a hearing on the protest but before the date of the hearing.

Signature of the protestant

_____

. . . . . OR . . . . . .

I hereby withdraw my protest this date: _____, _____, _____

Month Day Year

Signature of Protestant

_____

B. **INFORMAL CONFERENCES:**

(1) After a protest has been set for hearing, if a taxpayer requests or has requested an informal conference, the assessor may schedule and hold such a conference before the date of the hearing. If an informal conference has not been requested by the taxpayer and the assessor believes an informal conference prior to hearing would be useful, the assessor may schedule such a conference and require the presence of the taxpayer.

(2) An informal conference is off the record. Although the persons attending the conference may make memoranda of the discussion, statements made at the informal conference shall not be introduced by either party at a hearing or other proceeding. Any tapes or minutes of the conference are for the information and convenience of the parties only and shall have no evidentiary value in any later proceeding. The purpose of the informal conference is to discuss the facts and the legal positions of the assessor and the taxpayer, and it is to be in the nature of either settlement negotiations or a "prehearing (trial) conference" or both.

(3) Informal conferences may be held at the assessor's office or elsewhere as circumstances require. If, at an informal conference a pending protest is fully resolved with no reduction in the valuation shown on the protesting taxpayer's notice of valuation, the protesting taxpayer must sign a written document, which may be provided by the assessor, stating that the taxpayer withdraws the protest. The assessor is to notify the valuation protests board immediately so that the board may vacate the hearing. If the protest is resolved with the assessor agreeing that the taxpayer's notice of valuation is incorrect, then this settlement must be implemented by a written agreement between the assessor and the protesting taxpayer which contains an explanation of the settlement and must be signed by both the taxpayer and assessor.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.33 NMAC - Rn, 3 NMAC 6.7.33, 4/30/01]

3.6.7.34 COUNTY VALUATION PROTESTS BOARDS:

A. **BUDGET ITEM FOR EXPENSES INCURRED IN CONNECTION WITH PROTEST HEARINGS:** The department prepares and submits to the legislature, as part of its annual budget, a budget item for the reimbursement of board members, and all other actual and direct expenses incurred in connection with protest hearings. The department may require county assessors to provide information concerning their estimates of the number of protests in their counties and other information which will aid the department in preparing this budget item.

B. **LEGAL FEES NOT AUTOMATICALLY INCLUDED IN "ALL OTHER ACTUAL AND DIRECT EXPENSES INCURRED IN CONNECTION WITH PROTEST HEARINGS":** The phrase "all other actual and direct expenses incurred in connection with protest hearings" does not include any expenses for lawyers hired by the board or

by board members, unless such expenses have been approved in writing by the director prior to their having been incurred.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.34 NMAC - Rn, 3 NMAC 6.7.34, 4/30/01]

3.6.7.35 [RESERVED]

[3.6.7.35 NMAC - Rn, 3 NMAC 6.7.35, 4/30/01]

3.6.7.36 PROTEST HEARINGS - VALUATION DETERMINED BY COUNTY ASSESSOR:

A. **PROTEST HEARINGS - WITHDRAWAL OF PROTEST - FAILURE TO APPEAR:** If, at an informal conference pursuant to Subsection D of Section 7-38-24 NMSA 1978 or at any other stage prior to final action by the board, a pending protest is fully resolved with no change resulting the taxpayer's notice of valuation, the protesting taxpayer or the taxpayer's authorized representative must sign a written document, which may be provided by the assessor, stating that the taxpayer withdraws the protest. The county assessor is to notify the county valuation protests board immediately so that the board may vacate the hearing. Failure to sign the written document withdrawing a protest may result in a hearing of the protest by the board. In the absence of a written withdrawal of protest and in the event that a taxpayer fails to appear at a scheduled hearing before the board, the board may decide the protest against the taxpayer on the basis of the presumption under Section 7-38-6 NMSA 1978.

B. **PROTEST HEARINGS - DISCOVERY - CONSEQUENCES OF FAILURE TO ALLOW DISCOVERY:**

(1) The protestant has the right to discover relevant and material evidence in the possession of the assessor prior to the protest hearing. If the assessor refuses to permit discovery, the county valuation protests board, for the purpose of resolving issues and disposing of the proceeding without undue delay despite the refusal, may take such action in regard to the refusal as is just, including but not limited to, the following:

(a) infer that the admission, testimony, documents or other evidence sought by discovery would have been adverse to the position of the county assessor;

(b) rule that, for the purposes of the proceeding, the matter or matters concerning which the evidence was sought be taken as established against the position of the county assessor;

(c) rule that the county assessor may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer or agent or upon the documents or other evidence discovery of which has been denied; or

(d) rule that the county assessor may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents or other evidence would have shown.

(2) Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in the decision of the board. It is the duty of the parties to seek and of the board to grant such of the foregoing means of relief or other appropriate relief.

C. **PROTEST HEARINGS - STIPULATIONS OF FACTS SUBMITTED TO THE COUNTY VALUATION PROTESTS BOARD:**

(1) This format may be used by assessors and protestants in preparing stipulations to be submitted to the county valuation protests board. The format may be varied to meet particular circumstances. Statements should be made in separate numbered paragraphs.

(a) Statement of material facts concerning the protestant:

(i) Name of protestant

(ii) Location of property and description of property

(iii) Code number

(iv) Valuation set by assessor

(v) Principal use of the property

(vi) Amount of valuation not in controversy (this usually will be the amount the property owner contends is the value of the property).

(b) Protest information in accordance with Section 7-38-24 NMSA 1978:

(i) Date notice of valuation was mailed

(ii) Date petition was filed (copy of petition may be attached)

(iii) Why the protestant believes the valuation is incorrect and what he believes the correct valuation to be

(c) Statement of facts supporting what the protestant believes to be the correct valuation (documents may be attached).

(d) Statement of facts supporting the valuation placed on the property by the assessor (documents may be attached).

(e) Relevant correspondence regarding the controversy.

(f) Statement of any additional material facts relating to the controversy.

(2) The format of the stipulation may be as shown in the following example:

BEFORE THE HILL COUNTY VALUATION PROTESTS BOARD

In the matter of Smith, Inc.,

Petition No. 8612

STIPULATION OF FACTS

Smith, Inc. (hereinafter called "property owner") by and through its attorney, Richard Doe, hereby stipulates and agrees with Mr. John Doe, Hill County assessor (hereinafter called "assessor"), that the facts and statements set forth below shall be treated as having been conclusively established by competent evidence and further agrees to waive the hearing provided for in Section 7-38-27 NMSA 1978 and let this stipulation constitute the full record of the facts before the Hill County valuation protests board.

1. Property owner owns property in Hill County (insert description of property), code no._____. The assessor placed a value, for property taxation purposes, on the property of $111,000 improvements and $111,000 land.

2. The property is used to house the property owner's clothing plant. The value for property taxation purposes of $5,000 for improvements and $50,000 for land is not in controversy because the property owner admits this value.

3. The notice of valuation was mailed by the assessor January 15, 1975 and the petition protesting the valuation was filed with the county assessor on February 15, 1975. A copy of the petition is attached and marked Exhibit "A".

4. The property owner believes the value for property taxation purposes is incorrect and believes the correct value for property taxation purposes to be $5,000 improvements and $50,000 land. In support of this contention, the property owner presents the following facts which are agreed to by the assessor: (list supporting facts).

5. The assessor presents the following facts in support of the taxable value the assessor has placed on the property: (list supporting facts).

_____ _____

county assessor property owner

date_____ date_____

D. **PROTEST HEARINGS - SPECIAL ACCOMMODATIONS - ADVANCE DISSEMINATION OF PETITION:**

(1) Any special accommodations or arrangements required under the American with Disabilities Act shall also be determined and made in advance of the hearing.

(2) The petition filed with the county assessor shall be made available to the board members in advance of the hearing.

E. **PROTEST HEARINGS - CONDUCT OF HEARING:**

(1) The county valuation protests board has the duty to conduct fair and impartial hearings, to take all action necessary to avoid delay in the proceedings and to maintain order in the hearings.

(2) Hearings shall be recorded on audio or video tape unless the board directs recording by stenographic, mechanical or other means.

(3) It is suggested that the hearing be so ordered that the protestant first makes an opening statement and then the county assessor makes an opening statement or reserves it for the conclusion of the protestant's presentation. The protestant presents evidence through testimony of witnesses and the introduction of documents. Then the assessor presents evidence in the same manner. The board may allow each party a closing statement.

F. **PROTEST HEARINGS - PRELIMINARY MATTERS:**

(1) At the beginning of the hearing, the protestant, the protestant's representative or representatives, if any, all other persons present, the property and the amount of valuation in controversy shall be identified. The petition of the protestant filed with the county assessor shall be entered into the record.

(2) The county valuation protests board will confirm that any special accommodations or arrangements required under the Americans with Disabilities Act have been made.

(3) The board shall inform the protestant of the following.

(a) Other than the rules related to discovery, neither the technical rules of evidence nor the Rules of Civil Procedure for the District Courts apply to the board's proceedings.

(b) The legal presumption is in favor of the valuation placed on the property by the county assessor and the protestant has the burden of presenting evidence to overcome this presumption.

(c) All testimony will be taken under oath.

(d) The protestant will have an opportunity to present oral testimony, either the protestant's own or through witnesses, and that anyone testifying on the protestant's behalf is subject to cross-examination by the county assessor or the assessor's representative and that anyone testifying for the county assessor is also subject to cross-examination by the protestant or the protestant's representative. The protestant may call the county assessor or the assessor's employees as witnesses and examine them.

(e) The protestant will have the opportunity to offer into evidence whatever documents the protestant believes necessary. The protestant must have in hand all such documents but copies may be submitted instead of originals.

(f) Documents introduced into evidence before the board may be retained by the board.

(g) A written order deciding the protest will be made within thirty days of the date on which the hearing is concluded. This time limit may not be extended except by agreement of the board and the protestant.

(h) The protestant has the right to appeal the written decision and order of the board in accordance with the Rules of Appellate Procedure. Because the appeal is on the record made at the hearing, all evidence supporting all theories and positions of the protestant must be presented at the hearing.

(i) If the protestant appeals the decision of the board, the protestant must pay the costs of preparing the record.

G. **PROTEST HEARINGS - WITNESSES:**

(1) All witnesses must be sworn. They may be sworn by any member of the board or any person assisting the board. All witnesses either party intends to have testify may be sworn in at one time. A form of oath which may be used is: "Do you solemnly swear or affirm that the evidence which you are about to give in the proceedings before this board shall be the truth, and this you do under penalties of perjury?"

(2) All witnesses may be cross-examined by the adverse party.

H. **PROTEST HEARINGS - EVIDENCE:**

(1) Relevant and material evidence shall be admitted. Irrelevant, immaterial, unreliable or unduly repetitious evidence may be excluded. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded insofar as practicable. The county valuation protests board shall consider all evidence admitted.

board members may use their knowledge and experience to evaluate evidence admitted.

(2) If the protestant and the county assessor have arrived at a stipulation of facts, either party may present the written stipulation to the board. The stipulation shall be signed by both parties or their representatives. The stipulation may present all or a portion of the facts. If all the facts are not agreed to in the stipulation, then either party can establish additional facts at the hearing. If all the facts are stipulated, the board shall note for the record that a stipulation was received, receive oral argument regarding the protest, if any there be, and then take the protest under advisement. The stipulation then is the record of the hearing.

(3) Parties objecting to evidence shall timely and briefly state the grounds relied upon. Rulings of the board on all objections shall appear on the record or in the board's order. Any excluded exhibits, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.

(4) Formal exception to an adverse ruling is not required.

(5) When an objection to a question propounded to a witness is made, the board shall note the objection in the record and allow the testimony. In its discretion, the board shall give appropriate weight to the disputed testimony.

I. **PROTEST HEARINGS - DECISION OF BOARD:** The county valuation protests board may announce orally its decision immediately after all the evidence is presented or may take the matter under advisement. An oral decision of the board is not binding and may not be appealed. All final decisions of the board must be made by written order. Unless extended by agreement of the board and the protestant, the written order deciding the protest shall be made within thirty days after the date of the hearing.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.36 NMAC - Rn & A, 3 NMAC 6.7.36, 4/30/01]

3.6.7.37 APPEAL OF COUNTY VALUATION PROTESTS BOARD DECISION:

A protestant who wishes to file an appeal of a decision of the county valuation protests board must do so within the time prescribed by Section 39-3-1.1 NMSA 1978 by filing a notice of appeal with the district court for the county in which the hearing was held, pursuant to Sections 7-38-28 and 39-3-1.1 NMSA 1978 and Rule 1-074 NMRA 1999. The county assessor will be named as appellee.

[12/29/94, 8/31/96, 10/29/99; 3.6.7.37 NMAC - Rn & A, 3 NMAC 6.7.37, 4/30/01]

3.6.7.38 [RESERVED]

[3.6.7.38 NMAC - Rn, 3 NMAC 6.7.38, 4/30/01]

3.6.7.39 [RESERVED]

[3.6.7.39 NMAC - Rn, 3 NMAC 6.7.39, 4/30/01]

3.6.7.40 [RESERVED]

[3.6.7.40 NMAC - Rn, 3 NMAC 6.7.40, 4/30/01]

3.6.7.41 [RESERVED]

[3.6.7.41 NMAC - Rn, 3 NMAC 6.7.41, 4/30/01]

3.6.7.42 [RESERVED]

[3.6.7.42 NMAC - Rn, 3 NMAC 6.7.42, 4/30/01]

3.6.7.43 [RESERVED]

[3.6.7.43 NMAC - Rn, 3 NMAC 6.7.43, 4/30/01]

3.6.7.44 PREPARATION OF PROPERTY TAX SCHEDULE BY ASSESSOR:

A. **REQUIRED FORM AND INFORMATION AS TO PROPERTY TAX SCHEDULE:** The tax schedule must be on a standard preprinted form, prepared and paid for by the county assessor and must be in a form prescribed by the director. Information required to be contained in the schedule is limited to the information required by the prescribed form. Any form other than the standard form prescribed by the director may be used only after submitting the proposed form in writing to the director and receiving written approval from the director for the use of the proposed form.

B. **ABSTRACT OF INFORMATION CONTAINED IN THE PROPERTY TAX SCHEDULE:**

(1) On or before October 1 of each year, the county assessor shall prepare and submit to the department and to the county treasurer an abstract of the information contained in the property tax schedules as to the property in the county subject to property taxation under the Property Tax Code, including property valued by the department. The abstract shall include information showing for each county the valuation of the different kinds of property, taxable values of property, exemptions allowed against the taxable values and net taxable values of property.

(2) Specific information as to the breakdown of kinds of property to be listed and exemption information required shall be provided by instruction and directive of the director, pursuant to Section 9-11-6.2 NMSA 1978.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.44 NMAC - Rn & A, 3 NMAC 6.7.44, 4/30/01]

3.6.7.45 [RESERVED]

[3.6.7.45 NMAC - Rn, 3 NMAC 6.7.45, 4/30/01]

3.6.7.46 CONTENTS OF PROPERTY TAX BILL:

A. **REQUIRED FORM AND INFORMATION AS TO PROPERTY TAX BILL:** The tax bill must on a standard preprinted form, prepared and paid for by the county treasurer and in form and content prescribed by the director. Any form other than the standard form prescribed by the director will be used only after submitting the form in writing to the director and receiving written approval from the director for the use of such form and method.

B. **NOTICE OF SECOND HALF INSTALLMENT:** Treasurers may send a reminder notice with respect to the second installment of tax but they are not required to do so. If such a reminder notice is sent, it shall not be labeled or indicated as a "tax bill".

[3/23/83, 12/29/94, 8/31/96; 3.6.7.46 NMAC - Rn, 3 NMAC 6.7.46, 4/30/01]

3.6.7.47 [RESERVED]

[3.6.7.47 NMAC - Rn, 3 NMAC 6.7.47, 4/30/01]

3.6.7.48 [RESERVED]

[3.6.7.48 NMAC - Rn, 3 NMAC 6.7.48, 4/30/01]

3.6.7.49 CLAIMS FOR REFUND - CIVIL ACTION:

A. **PROTEST IS WAIVER OF RIGHT TO CLAIM FOR REFUND:** The initiation of a protest under Section 7-38-22 or 7-38-24 NMSA 1978 constitutes an unconditional and irrevocable waiver of the right to claim for refund under Section 7-38-40 NMSA 1978.

B. **COUNTY TREASURER OR ASSESSOR REQUIRED TO FORWARD TO DEPARTMENT COPIES OF CLAIM FOR REFUND PETITIONS OR COMPLAINTS SERVED ON THEM:** When a claim for refund petition or complaint is served on either a county assessor or county treasurer, the county assessor or county treasurer is required to immediately forward a copy of that petition or complaint to the director.

C. **PAYMENT OF TAX REQURIED.** Payment of the tax due is required to initiate a claim for refund. Because the property owner may elect to pay the tax in installments, payment of all installments due by the time the claim for refund is filed is sufficient to permit the property owner to submit a claim for refund. To preserve the claim for refund with respect to any installments due after the claim for refund was submitted but before

a decision is rendered, payment of the installment must be made. The county treasurer must place in the "property tax suspense fund" the portion of any property taxes paid to the county treasurer but not admitted to be due and subject to a claim for refund. If the claim for refund does not admit that any portion of an installment of tax due in the future is due, then the portion of the installment, when paid, must be placed in the "property tax suspense fund".

[3/23/83, 12/29/94, 8/31/96; 3.6.7.49 NMAC - Rn & A, 3 NMAC 6.7.49, 4/30/01, A, 6/29/01]

3.6.7.50 [RESERVED]

[3.6.7.50 NMAC - Rn, 3 NMAC 6.7.50, 4/30/01]

3.6.7.51 [RESERVED]

[3.6.7.51 NMAC - Rn, 3 NMAC 6.7.51, 4/30/01]

3.6.7.52 [RESERVED]

[3.6.7.52 NMAC - Rn, 3 NMAC 6.7.52, 4/30/01]

3.6.7.53 PERSONAL PROPERTY - JEOPARDY ASSESSMENTS:

A. **JEOPARDY ASSESSMENT:** Section 7-38-44 NMSA 1978 authorizes the secretary or the county assessor to issue a notice of valuation and a property tax bill simultaneously and immediately proceed to collect, by means of demand warrant pursuant to Section 7-38-54 NMSA 1978 the tax due at any time that the valuation authority has reasonable cause to believe that personal property subject to valuation by the valuation authority for property taxation purposes in a tax year will be removed from the state before the taxes for that year are due and that the removal of the property will jeopardize collection of the tax. Personal property seized pursuant to demand warrant cannot be sold until after the notice requirements of Section 7-38-57 NMSA 1978 are fulfilled.

B. **VALUATION DATE FOR JEOPARDY ASSESSMENT PURPOSES:** Section 7-38-7 NMSA 1978 fixes January 1 of each year as the date which determines the condition or status of the taxability of all property subject to valuation for property taxation purposes, except livestock which is to be valued as of the date and in the manner prescribed under Section 7-36-21 NMSA 1978. Therefore, no jeopardy assessment shall issue against property not in the state on January 1 of the tax year, except as to livestock.

C. **CONTESTING A NOTICE OF VALUATION ISSUED PURSUANT TO A JEOPARDY ASSESSMENT:** In order to contest the value determined for the property pursuant to Section 7-38-44 NMSA 1978, a property owner must pay the tax in the

amount shown on the tax bill and file a claim for refund pursuant to Section 7-38-40 NMSA 1978. Petitions of protest to a notice of valuation pursuant to Section 7-38-44 NMSA 1978 do not stay the delivery of the property tax bill or proceedings to collect the tax by demand warrant. Therefore, claim for refund is the only appropriate remedy to contest the value determined pursuant to that section.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.53 NMAC - Rn & A, 3 NMAC 6.7.53, 4/30/01]

3.6.7.54 [RESERVED]

[3.6.7.54 NMAC - Rn, 3 NMAC 6.7.54, 4/30/01]

3.6.7.55 PROTEST HEARING - FAILURE TO APPEAR:

If a property owner makes a timely protest but fails without reasonable justification to appear at the hearing, an order will be entered denying the protest, because no evidence has been presented, and declaring that, pursuant to statute, the property taxes involved are delinquent.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.55 NMAC - Rn, 3 NMAC 6.7.55, 4/30/01]

3.6.7.56 [RESERVED]

[3.6.7.56 NMAC - Rn, 3 NMAC 6.7.56, 4/30/01]

3.6.7.57 [RESERVED]

[3.6.7.57 NMAC - Rn, 3 NMAC 6.7.57, 4/30/01]

3.6.7.58 [RESERVED]

[3.6.7.58 NMAC - Rn, 3 NMAC 6.7.58, 4/30/01]

3.6.7.59 DELINQUENT TAXES - CIVIL PENALTIES:

A. **PENALTY IS IN ADDITION TO INTEREST BUT NOT COMPUTED ON INTEREST:** The penalty provided for in Section 7-38-50 NMSA 1978 is in addition to any interest imposed pursuant to Section 7-38-49 NMSA 1978. The penalty is not computed on the interest accrued.

B. **MINIMUM PENALTY APPLICABLE TO EACH INSTALLMENT OF TAXES AND EACH PROPERTY TAX BILL:** The minimum penalty provided for in Section 7-38-50 NMSA 1978 is applicable to each of the equal installments of property taxes payable to the county treasurer pursuant to Section 7-38-38 NMSA 1978 in the event that each of the equal installments becomes delinquent. The minimum penalty is applicable to each property tax bill mailed by the county treasurer pursuant to Section 7-38-35 NMSA

1978. In the event that more than one bill is mailed to a single taxpayer and the property taxes set forth in those bills become delinquent, the minimum penalty applies to each bill which becomes delinquent.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.59 NMAC - Rn & A, 3 NMAC 6.7.59, 4/30/01]

3.6.7.60 FORM OF NOTIFICATION TO PROPERTY OWNER OF DELINQUENT PROPERTY TAXES:

The notification of property owners that property taxes are delinquent shall be in substantially the following form and contain the following information. Additional information, including but not limited to, signature of the treasurer may be included in the form.

NOTICE OF DELINQUENT TAXES

TO: (Name of property owner or any person other than the owner to whom the tax bill was sent)

Your are hereby notified by the _____ county treasurer that property taxes upon the following described property in the following amounts became delinquent on _____:

Property description and code no. (include location, vehicle registration ("MH") number and vehicle identification number if a manufactured home)

_____

_____

_____

_____

_____

_____

Amount of tax due $,_____

Interest due _____

Penalty due _____

Total amount due if paid _____

(If not paid by _____, additional interest and penalty will accrue.)

INTEREST

Pursuant to 7-38-49 NMSA 1978, if property taxes are not paid for any reason within thirty (30) days after the date they are due, interest on the unpaid taxes shall accrue from the thirtieth day after they are due until the date they are paid. Interest shall accrue at the rate of one percent (1%) a month or any fraction of a month.

PENALTY

Pursuant to 7-38-50 NMSA 1978, if property taxes become delinquent, a penalty of one percent (1%) of the delinquent taxes for each month or any portion of a month they remain unpaid shall be imposed, but the total penalty shall not exceed five percent (5%) of the delinquent taxes, except that, when the penalty determined under the foregoing provisions is less than five dollars ($5.00), the penalty to be imposed shall be five dollars ($5.00). A county may suspend for a particular tax year application of the minimum penalty requirements by resolution of its county commissioners adopted not later than September 1 of that tax year.

If property taxes become delinquent because of an intent to defraud by the property owner, fifty percent (50%) of the property taxes due or fifty dollars ($50.00), whichever is greater, shall be added as a penalty.

COLLECTION TRANSFERRED TO PROPERTY TAX DIVISION

If the delinquent tax interest and penalties are not paid by July 1 of the year following the year in which the taxes have been delinquent for more than two years, this property will be placed on a tax delinquency list and forwarded to the property tax division for collection.

REAL PROPERTY

Pursuant to 7-38-65 NMSA 1978, if the property taxes due on real property are not paid within three (3) years from the date of delinquency, the real property will be sold and a deed issued by the property tax division of the New Mexico taxation and revenue department.

PERSONAL PROPERTY

Pursuant to 7-38-53 NMSA 1978, if property taxes due on personal property are not paid, the personal property may be seized and sold for taxes under authority of a demand warrant.

Pursuant to 7-38-52 NMSA 1978, a copy of the delinquency notice of unpaid taxes on a manufactured home was sent to the motor vehicle division of the taxation and revenue department. Upon receipt and filing of the notice by the motor vehicle division, the unpaid taxes, penalty and interest constitute a security interest in and a lien on the vehicle in accordance with Section 66-3-204 NMSA 1978.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.60 NMAC - Rn & A, 3 NMAC 6.7.60, 4/30/01]

3.6.7.61 DELINQUENT TAXES - MANUFACTURED HOMES - NOTICE TO MOTOR VEHICLE DIVISION - NOTICE CONSTITUTES LIEN:

A. **LIEN UPON MANUFACTURED HOMES - REQUIRED INFORMATION:** In order to establish a security interest in and a lien upon the manufactured home, the copy of the notice of property tax delinquency must include both the location of the manufactured home and the complete vehicle identification number of the manufactured home. Notices of property tax delinquency on manufactured homes which do not contain the complete vehicle identification number do not contain sufficient information to establish whether or not a manufactured home is registered with the motor vehicle division. Therefore such notices will not be filed and will not constitute a security interest in and a lien upon the vehicle.

B. **TITLE TRANSFERS PRIOR TO DELINQUENCY:** The receipt and filing by the motor vehicle division of the taxation and revenue department of a copy of the delinquency notice of unpaid taxes on a manufactured home constitutes a security interest in and a lien on the manufactured home in accordance with Section 66-3-204 NMSA 1978. The lien is a charge upon the manufactured home for the payment of the unpaid taxes, penalty and interest on the manufactured home, notwithstanding that the manufactured home changed ownership prior to the date of the delinquency.

C. **EFFECT OF LIEN:** Pursuant to Section 66-3-204 NMSA 1978, from the date and time of receipt of the delinquency notice by the motor vehicle division of the taxation and revenue department, the unpaid taxes, penalty and interest certified by the county treasurer constitute a lien on and a security interest in the manufactured home on behalf of the state until paid. The lien is valid against holders of prior perfected security interests, attaching creditors and subsequent transferees, and when filed in accordance with Section 66-3-204 NMSA 1978 constitutes constructive notice of the lien claimed.

[3/23/83, 12/29/94, 7/19/94, 8/31/96; 3.6.7.61 NMAC - Rn & A, 3 NMAC 6.7.61, 4/30/01]

3.6.7.62 [RESERVED]

[3.6.7.62 NMAC - Rn, 3 NMAC 6.7.62, 4/30/01]

3.6.7.63 [RESERVED]

[3.6.7.63 NMAC - Rn, 3 NMAC 6.7.63, 4/30/01]

3.6.7.64 [RESERVED]

[3.6.7.64 NMAC - Rn, 3 NMAC 6.7.64, 4/30/01]

3.6.7.65 [RESERVED]

[3.6.7.65 NMAC - Rn, 3 NMAC 6.7.65, 4/30/01]

3.6.7.66 [RESERVED]

[3.6.7.66 NMAC - Rn, 3 NMAC 6.7.66, 4/30/01]

3.6.7.67 [RESERVED]

[3.6.7.67 NMAC - Rn, 3 NMAC 6.7.67, 4/30/01]

3.6.7.68 CERTIFICATE OF SALE:

The certificate of sale shall be in substantially the following form:

CERTIFICATE OF SALE

This certificate of sale is issued pursuant to Section 7-38-59 NMSA 1978 and has the effect of a certificate of sale provided in that section. This certificate of sale is prima facie evidence of the county treasurer's right to make this sale and conclusive evidence of the regularity of all proceedings relating to this sale.

Under the authority of Section 7-38-58 NMSA 1978, the property described herein was sold at public auction on _____ at _____, New Mexico.

For consideration received in the sum of $_____, all interests of the delinquent taxpayer, _____, in the property described herein are hereby transferred to the purchaser, _____, who takes the personal property free of any unrecorded or unfiled interest unknown to the purchaser at the time of sale.

Description of property_____.

Done by me this_____day of_____, 19___, at_____, New Mexico.

_____

County treasurer of _____ County

[3/23/83, 12/29/94, 8/31/96; 3.6.7.68 NMAC - Rn, 3 NMAC 6.7.68, 4/30/01]

3.6.7.69 NOTIFICATION TO PROPERTY OWNER OF DELINQUENT TAXES:

A. **FORM OF NOTIFICATION TO PROPERTY OWNER OF TRANSFER OF DELINQUENT ACCOUNT:** The notice of transfer of delinquent account shall be in substantially the following form but the form may contain additional information including, but not limited to, a statement as to the full amount of taxes owed on the property for years other than the delinquent year:

NOTICE TO PROPERTY OWNER OF

TRANSFER OF DELINQUENT ACCOUNT

TO: (Name and address of property owner or any person other than the owner to whom the tax bill was sent)

You are hereby notified by the _____ county treasurer that property taxes upon the following described property in the following amounts for the _____ tax year became delinquent on _____; and that the taxes have been delinquent for more than one (2) years. Pursuant to Sections 7-38-61 and 7-38-62 NMSA 1978, this delinquent account is hereby transferred as of July 1 for collection to the Property Tax Division, Manuel Lujan, Sr. Building, Santa Fe, New Mexico 87504-0630, phone (505) 827-0876. Payment shall be made to the _____ county treasurer as agent for collection of this account pursuant to Section 6.3.7.71 NMAC.

Delinquent Account No. _____ School District No. _____

Property description and code no. (include location, vehicle registration "MH" number and vehicle identification number if a manufactured home):

_____

_____

_____

_____

Tax Year	Amount of Tax Due	Interest Due	Penalty Due	Total
20___	$,_____,	$,_____,	$,_____,	$,_____
20___	$,_____,	$,_____,	$,_____,	$,_____
20___	$,_____,	$,_____,	$,_____,	$,_____

20___ $,_____, $,_____, $,_____, $,_____

20___ $,_____, $,_____, $,_____, $,_____

Total due for all years . . . . . _____

Due by: _____, otherwise, additional interest and penalty will accrue.

INTEREST

Pursuant to 7-38-49 NMSA 1978, if property taxes are not paid for any reason within thirty (30) days after the date they are due, interest on the unpaid taxes shall accrue from the thirtieth day after they are due until the date they are paid. Interest shall accrue at the rate of one percent (1%) a month or any fraction of a month.

PENALTY

Pursuant to 7-38-50 NMSA 1978, if property taxes become delinquent, a penalty of one percent (1%) of the delinquent taxes for each month or any portion of a month they remain unpaid shall be imposed, but the total penalty shall not exceed five percent (5%) of the delinquent taxes except that, when the penalty determined under the forgoing provisions of this subsection is less than five dollars ($5.00), the penalty to be imposed shall be five dollars ($5.00). A county may suspend for a particular tax year application of the minimum penalty requirements of Section 7-38-60 NMSA 1978 by resolution of its county commissioners adopted not later than September 1 of that tax year.

If property taxes became delinquent because of an intent to defraud by the property owner, fifty percent (50%) of the property taxes due or fifty dollars ($50.00), whichever is greater, shall be added as a penalty.

REAL PROPERTY

Pursuant to 7-38-65 NMSA 1978, if the property taxes due on real property are not paid within three (3) years from the date of delinquency, the real property will be sold and a deed issued by the property tax division of the New Mexico taxation and revenue department.

PERSONAL PROPERTY

Pursuant to 7-38-53 NMSA 1978, if property taxes due on personal property are not paid, the personal property may be seized and sold by the division, at any time, for taxes under authority of a demand warrant.

Until sale, property listed on the property tax delinquency list will continue to be assessed and taxed to its owner in the same manner as it would be if it were not listed on the property tax delinquency list.

Date _____ County Treasurer _____

B. **LIABILITY FOR TAX ON PROPERTY LISTED ON THE PROPERTY TAX DELINQUENCY LIST:** Until sale, property listed on the property tax delinquency list will continue to be assessed and taxed to its owner in the same manner as it would be if it were not listed on the property tax delinquency list.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.69 NMAC - Rn & A, 3 NMAC 6.7.69, 4/30/01]

3.6.7.70 PROPERTY TAXES DELINQUENT FOR MORE THAN TWO YEARS - TREASURER TO PREPARE DELINQUENCY LIST:

A. **INFORMATION TO BE CONTAINED IN THE TAX DELINQUENCY LIST:**

(1) The tax delinquency list for real property shall contain the following information:

(a) The name and address of the real property owner and any other person to whom the tax bill was sent;

(b) A description of the property upon which the taxes are due and the property code number;

(c) A statement of the amount of property taxes due and the date they became delinquent; and

(d) The county name, municipality, town or village, and school district number where the real property is located.

(2) By July 1 of each tax year, the county treasurer shall prepare a property tax delinquency list of all real property for which taxes have been delinquent for more than two years. The tax delinquency list for real property shall contain the required information for real property only.

B. **DELINQUENCY LIST DELIVERY REQUIREMENTS:** The county treasurer shall deliver or mail the tax delinquency list for real property for the tax year to the division no later than July 15 of each year. The division may require or permit the list to be transmitted electronically.

[3/23/83, 12/31/85, 12/29/94, 8/31/96, 11/30/99; 3.6.7.70 NMAC - Rn, 3 NMAC 6.7.70, 4/30/01]

3.6.7.71 COUNTY TREASURERS ARE AUTHORIZED TO ACT AS AGENT FOR THE DEPARTMENT IN ACCEPTING PAYMENTS:

A. County treasurers are authorized by the department to act as the department's agent in accepting payments of taxes, penalties, interest and costs due on property shown on the tax delinquency list prepared in accordance with Section 7-38-61 NMSA 1978 after its receipt by the division, unless this agency relationship is revoked by order of the director.

B. County treasurers are required to notify the department by the 15th day of the month following the month in which payment is accepted of the amount paid and other information necessary for the department to correct the tax delinquency list.

[12/27/83, 12/29/94, 8/31/96; 3.6.7.71 NMAC - Rn & A, 3 NMAC 6.7.71, 4/30/01; A, 4/15/13]

3.6.7.72 [RESERVED]

[3.6.7.72 NMAC - Rn, 3 NMAC 6.7.72, 4/30/01]

3.6.7.73 [RESERVED]

[3.6.7.73 NMAC - Rn, 3 NMAC 6.7.73, 4/30/01]

3.6.7.74 [RESERVED]

[3.6.7.74 NMAC - Rn, 3 NMAC 6.7.74, 4/30/01]

3.6.7.75 [RESERVED]

[3.6.7.75 NMAC - Rn, 3 NMAC 6.7.75, 4/30/01]

3.6.7.76 [RESERVED]

[3.6.7.76 NMAC - Rn, 3 NMAC 6.7.76, 4/30/01]

3.6.7.77 INSTALLMENT AGREEMENTS:

A. **CIRCUMSTANCES JUSTIFYING AN INSTALLMENT AGREEMENT:** Installment agreements shall not be entered into if the taxpayer can obtain funds from any source to pay the liability, unless approval in writing by the director is obtained and such approval is supported by a written statement of circumstances justifying the installment agreement. To obtain an installment agreement, a taxpayer is required to provide a balance sheet and income statement on forms furnished by the division. Statements submitted by a licensed accountant containing the same information may be accepted in lieu of the division forms. Any such forms or statements must, unless waived in writing by the director, contain the following statement signed by the taxpayer or the taxpayer's agent: "Taxpayer is unable to obtain funds from any source with which to pay currently all the delinquent taxes proposed to be covered by the installment

agreement. Under the penalties of perjury, I swear or affirm that the information contained herein and in the attached statement is true and correct as to every material matter."

B. **MINIMUM DOWN PAYMENT FOR INSTALLMENT AGREEMENTS:** No installment agreement proposal shall be entered into for the division that involves a down payment of less than twenty (20) percent of all delinquent property taxes, penalties, interest and costs due, unless approval in writing by the director is obtained and such approval is supported by a written statement of the circumstances justifying a lesser down payment.

C. **TERMS OF INSTALLMENT AGREEMENTS:** Although an installment agreement may extend for a period of thirty-six (36) months, each installment agreement will cover the minimum period in which a taxpayer may reasonably liquidate the liability and shall provide for payment in equal monthly installments, unless approval in writing by the director is obtained and such approval is supported by a written statement of the circumstances justifying payment in other than equal monthly installments.

[3/23/83, 11/5/85, 12/29/94, 8/31/96; 3.6.7.77 NMAC - Rn, 3 NMAC 6.7.77, 4/30/01]

3.6.7.78 [RESERVED]

[3.6.7.78 NMAC - Rn, 3 NMAC 6.7.78, 4/30/01]

3.6.7.79 [RESERVED]

[3.6.7.79 NMAC - Rn, 3 NMAC 6.7.79, 4/30/01]

3.6.7.80 DISTRIBUTION OF AMOUNTS RECEIVED FROM SALE OF PROPERTY:

A. **EXPENSES OF SEIZURE AND SALE ARE IN ADDITION TO "COSTS":**

(1) The expenses of seizure and sale referred to in Section 7-38-67 NMSA 1978 are in addition to the "costs" referred to in Section 7-38-62 NMSA 1978 and may exceed those costs. Generally, the expenses of seizure and sale refer to the out-of-pocket expenses incurred by the department in seizing and selling a property. Costs are the internal expenses, such as employee wages and benefits, supplies and travel, of the department in carrying out its duties to enforce the property tax through sale of property.

(2) The amount of "costs", however, are a part of the "expenses of seizure and sale" as that phrase is used in Section 7-38-71 NMSA 1978 and shall be distributed accordingly.

B. **PROCEDURES FOR PAYMENT OF EXCESS PROCEEDS FROM THE SALE OF REAL PROPERTY:**

(1) When the proceeds from the sale of property for delinquent taxes exceed the amount required to be retained by the department plus the amounts required to be remitted to the county treasurer as provided by Subsection A of Section 7-38-71 NMSA 1978, the department will notify by mail the former owners of record of their right to claim a refund of any excess funds from the sale.

(2) As used in this subsection, the term "former owner" means that person whose name appears as the assessed owner of the property on the property tax delinquency list. The term "former owner" also includes any other person whose name is revealed as having an ownership interest in the property through a search of property ownership records at the county clerk's office conducted by the department prior to the public auction sale.

(3) After receiving a completed application for refund and documentation necessary to establish proof of ownership of the property, the department shall determine if a claimant is entitled to receive any excess funds from the sale. The department, at its discretion, may require additional information from the claimant to establish the right of the claimant to the excess funds.

(4) In the event more than one claimant requests a refund of the excess funds, the department shall not refund any funds to any claimant until an order, issued by a court of competent jurisdiction which identifies which claimant is entitled to the refund, has been presented to the department.

(5) Any person with a claim established by lien, mortgage or judgment against the property which was sold may file a claim for the excess funds from the sale by presenting an order directed to the department by a court of competent jurisdiction which establishes that person's right to receive the excess funds.

(6) After completing the requirements of Paragraph (1) of this subsection and after the expiration of two years from the date of sale, the department will deposit any unclaimed excess funds in accordance with the provisions of the Uniform Unclaimed Property Act. Any person having any claim to the excess funds after the funds have been so deposited can make a claim for the funds as provided by the provisions of the Uniform Unclaimed Property Act. Such claims shall be addressed to the Unclaimed Property Unit.

[3/23/88, 9/15/88, 12/29/94, 8/31/96; 3.6.7.80 NMAC - Rn & A, 3 NMAC 6.7.80, 4/30/01]

3.6.7.81 [RESERVED]

[3.6.7.81 NMAC - Rn, 3 NMAC 6.7.81, 4/30/01]

3.6.7.82 [RESERVED]

[3.6.7.82 NMAC - Rn, 3 NMAC 6.7.82, 4/30/01]

3.6.7.83 "OFFICERS OR EMPLOYEES OF THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS ENGAGED IN THE ADMINISTRATION OF THE PROPERTY TAX" DEFINED:

The phrase "officers or employees of the state or any of its political subdivisions engaged in the administration of the property tax" includes, but is not limited to, members of county valuation protests boards, county commissioners, county assessors and their employees, county treasurers and their employees, the secretary, deputy secretary and assistant secretary of the taxation and revenue department, any member of the secretary's staff; and the director and employees of the division. The phrase does not include state legislators because they are not "engaged in the administration of the property tax" unless they are employed in another governmental capacity.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.83 NMAC - Rn, 3 NMAC 6.7.83, 4/30/01]

3.6.7.84 [RESERVED]

[3.6.7.84 NMAC - Rn, 3 NMAC 6.7.84, 4/30/01]

3.6.7.85 PROPERTY SUBJECT TO TAXATION BUT OMITTED FROM PROPERTY TAX SCHEDULES IN PRIOR YEARS:

A. **VALUATION OF OMITTED PROPERTY:** Omitted property shall be valued, on its discovery, at its value on January 1 of each tax year or years for which it was omitted from property tax schedules.

B. **OWNERSHIP OF OMITTED PROPERTY:** Omitted property, real or personal, shall be valued, listed and the taxes on it collected pursuant to Section 7-38-76 NMSA 1978, regardless of whether or not it is owned or possessed by the same person as was the owner or person in possession thereof at the time of the omission.

C. **OMITTED PROPERTY - STATUTE OF LIMITATIONS:** Subsection B of Section 7-38-81 NMSA 1978 provides: "property that has not been included on a property tax schedule may not be subjected to the imposition of property taxes for more than ten (10) tax years immediately preceding the date of its entry on the property tax schedule". This applies to all property subject to the property tax, meaning all tangible property, real or personal.

D. **OMITTED PROPERTY - PENALTY AND INTEREST:** Omitted property is subject to penalty and interest pursuant to Sections 7-38-49 and 7-38-50 NMSA 1978 only from thirty (30) days after the date the property tax bill on the omitted property is mailed because that is the date all taxes for prior years on omitted property are due.

E. **OMITTED PROPERTY - PENALTY:** Omitted property shall be treated like property the owner of which has failed to make a required report thereof. The person who did not make the report shall be subject to the applicable penalty.

F. **OMITTED PROPERTY - PROCEDURE AFTER VALUATION AND LISTING:** If property was omitted from property tax schedules for a prior tax year, then the tax rate for the prior year in the governmental unit where the property was located shall be applied. Property tax bills shall be prepared and mailed by the county treasurers within thirty (30) days of the date the property is listed on the property tax schedule, and all taxes for prior years on omitted property shall be due the date the property tax bill is mailed.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.85 NMAC - Rn & A, 3 NMAC 6.7.85, 4/30/01]

3.6.7.86 EXEMPTION RESULTING FROM CORRECTION OF OBVIOUS CLERICAL ERROR:

If the correction by the county treasurer of name of the property owner or description of the property results in the property being exempt for a particular tax year or years by reason of provision of the New Mexico Constitution as implemented by a provision of the Property Tax Code, the treasurer may refund pursuant to Section 7-38-80 NMSA 1978 to the exempt entity that has paid property taxes.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.86 NMAC - Rn & A, 3 NMAC 6.7.86, 4/30/01]

3.6.7.87 COUNTY TREASURER REQUIRED TO FORWARD COPIES OF PETITIONS FOR CORRECTION OF ERRORS SERVED ON THEM TO THE DIVISION:

When a petition for correction is served on a county treasurer, the county treasurer is required to immediately forward a copy of that petition to the division.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.87 NMAC - Rn, 3 NMAC 6.7.87, 4/30/01]

3.6.7.88 ORDER BY THE DEPARTMENT - PROTEST REMEDY:

If the department enters an order changing the property tax schedule pursuant to Subsection A of Section 7-38-79 NMSA 1978, the property owner may protest only pursuant to the claim for refund procedures provided in Sections 7-38-39 and 7-38-40 NMSA 1978.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.88 NMAC - Rn & A, 3 NMAC 6.7.88, 4/30/01]

PART 8-49: [RESERVED]

PART 50: PROCEDURES FOR COUNTY TREASURERS

3.6.50.1 ISSUING AGENCY:

Department of Finance and Administration, Local Government Division.

[7/15/98; Recompiled 10/01/01]

3.6.50.2 SCOPE:

These rules and regulations shall apply to procedures to be followed by all county treasurers in the state of New Mexico.

[12/31/74, 7/15/98; Recompiled 10/01/01]

3.6.50.3 STATUTORY AUTHORITY:

The local government division of the department of finance and administration promulgates the procedures for county treasurers, pursuant to the authority of NMSA 1978 Sections 6-6-2, 6-6-3, 7-35-6, 7-35-7 through 7-37-8, 7-38-32 through 7-38-38.1, 7-38-41 through 7-38-43, 7-38-63, 7-38-65 through 7-38-69, 7-38-71, 7-38-73, 7-38-76 through 7-38-77.1 and 7-38-80.

[7/15/98; Recompiled 10/01/01]

3.6.50.4 DURATION:

Permanent.

[12-31-74, 2-19-92, 7-15-98; Recompiled 10/01/01]

3.6.50.5 EFFECTIVE DATE:

July 15, 1998, unless a different date is cited at the end of a section or paragraph.

[7/15/98; Recompiled 10/01/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Different dates are now cited only at the end of sections, in the history notes appearing in brackets.]

3.6.50.6 OBJECTIVE:

The objective of Title 3, Chapter 6, Part 50 NMAC is to establish uniform procedures by which county treasurers implement portions of the Property Tax Code and prepare financial reports. The rule also provides procedures for suspension of a county treasurer by the department of finance and administration.

[7/15/98; Recompiled 10/01/01]

3.6.50.7 DEFINITIONS:

A. "Assessor" means a county assessor as defined by Sections 4-39-1 through 4-39-7 [repealed] NMSA 1978, as amended.

B. "Board of finance" means a county board of finance.

C. "Delinquent" refers to any payment of taxes that is not paid within thirty days of the date on which they were due.

D. "Department" means the department of finance and administration.

E. "Forfeiture" funds means cash or property that is subject to forfeiture and is under the Controlled Substances Act, Sections 30-31-34 through Section 30-31-35 NMSA 1978.

F. "Local government" means a local public body as defined in Section 6-6-1 NMSA 1978.

G. "Local government division" means the local government division of the department of finance and administration.

H. "Property tax division" means the property tax division of the taxation and revenue department.

I. "Refund" is that portion of property taxes in controversy found to be in excess of the amount legally due.

J. "Secretary" means the cabinet secretary of the department of finance and administration.

K. "State delinquency list" means the tax delinquency list collected by the property tax division as defined in Section 7-38-62 NMSA 1978.

L. "Taxes on omitted property" refers to taxes on property subject to property taxation but was omitted from property tax schedules and for which taxes have not been paid but would be due, except for the omission.

M. "Treasurer" means a county treasurer as defined by Sections 4-43-1 [repealed] through 4-43-4 NMSA 1978, as amended.

[7-15-98; Recompiled 10/01/01]

3.6.50.8 TREASURER'S DUTIES:

A. Section 4-43-2 NMSA 1978 requires the treasurer to keep account of all moneys received and disbursed in the county; keep regular accounts of all warrants drawn on the treasurer and paid; and keep the books, papers and moneys pertaining to his office ready for inspection by the county commissioners at all times. All moneys under the treasurer's control include, but are not limited to: property taxes; property tax penalties and interest; state shared taxes; gross receipts taxes; lodgers' taxes; franchise taxes; licenses and permits; charges for services; fines and forfeits, including forfeiture funds; miscellaneous revenues; other revenues including contributions, donations, investment income, refunds, rents, royalties, insurance recoveries and inter-governmental grants.

B. Section 6-10-8 NMSA 1978 states the treasurer of each county in the state shall have supervision of the deposit and safekeeping of public money in the county.

C. The treasurer determines how to deposit and invest county funds. That decision must then be approved by the board of county commissioners, sitting as the board of finance.

D. The board of finance must adopt an investment policy and permit the treasurer to make investment decisions that conform to the policy.

[7/15/98; Recompiled 10/01/01]

3.6.50.9 FINANCIAL REPORTS:

A. Subsection F of Section 6-6-2 NMSA 1978 requires periodic financial reports of all local public bodies. Section 6-6-3 NMSA 1978 requires that every local public body shall make all reports as may be required by the local government division.

B. Every county shall file a financial report on a quarterly basis with the local government division. The first quarter is from July 1st to September 30th; the second quarter is from October 1st to December 31st; the third quarter is from January 1st to March 31st and the fourth quarter is from April 1st to June 30th. The reports are due at the local government division no later than thirty days following the end of the quarter.

C. The local government division may grant a county's written request, if warranted, an extension for filing the quarterly financial report.

D. Monthly financial reports shall be submitted to the county commission and may be requested by the local government division.

E. Quarterly financial reports shall be submitted on the prescribed local government division format, unless the local government division approves submission of similar data hand written, typed or using the county's current software program.

F. The treasurer's office should work cooperatively with the county managers office or county finance department to ensure that reports are submitted accurately and

timely. The reports must include the signatures and titles of the individuals who prepared the reports.

G. Instructions and sample reporting formats of the quarterly financial reports are available in the local government divisions budgeting and financial accounting manual for local governments.

[7/15/98; Recompiled 10/01/01]

3.6.50.10 SUSPENSION OF COUNTY TREASURERS' FUNCTIONS:

A. The secretary shall follow the procedures set forth in Section 7-35-7 NMSA 1978, as amended, for suspension of treasurers' functions and termination of a suspension order.

B. The costs counties are required to reimburse the department, when the department performs the functions of a suspended treasurer, shall include the salaries and expenses of department employees or contractors who carry out the functions of the office of a suspended treasurer.

C. The department will take all action necessary to assure reimbursement of costs by the county.

[12/31/74, 7/15/98; Recompiled 10/01/01]

3.6.50.11 PROPERTY TAXES:

A. Section 7-37-7 NMSA 1978, as amended, provides for the maximum property tax rates and their limitations. The authority to impose general purpose tax rates is granted to local governments and shall be done during the budget-making and approval process. The general purpose tax rate imposed by each governmental unit for residential property is the same rate that is imposed for nonresidential property. The local government division shall apply the yield control formula and other tax rate limitations in statute that apply to the imposed tax rates prior to setting the tax rates.

B. Tax rates for school districts and institutions of higher education are set by the state department of education and the commission on higher education, respectively. These rates are certified to the local government division by August 15th of each year.

C. Pursuant to Section 7-38-33 NMSA 1978, the department shall by written order set property tax rates no later than September 1st each year for each county, municipality, special district, school district, institution of higher education and state debt service.

D. Pursuant to Section 7-38-34 NMSA 1978, within five business days of the date of the tax rate order set by the department, the board of county commissioners shall

issue by written order imposing the certified tax rates on the net taxable value of property allocated to the appropriate governmental units. Within these five days, it is the responsibility of the county to ensure that the rates set are correct. The local government division must be notified of any errors with regards to the validity of these rates during this five day period.

[7/15/98; Recompiled 10/01/01]

3.6.50.12 COUNTY PROPERTY VALUATION FUND:

A. The county property valuation fund is created in Section 7-38-38.1 NMSA 1978 and prescribes the method and manner for the collection and distribution of the administrative charge on revenue recipients to offset collection costs.

B. All administrative charges shall be collected by the treasurer and distributed to the county property valuation fund.

C. The assessor's budget for purposes of calculating the forty percent of the amount shall include all appropriations made to the assessor's budget including the county property valuation fund.

D. The treasurer is responsible for collecting the administrative charges and distributing these collections to the county property valuation fund in accordance with statute, relevant county ordinances and stipulated orders.

[7/15/98; Recompiled 10/01/01]

3.6.50.13 PROTESTED PROPERTY TAXES AND PROPERTY TAX SUSPENSE FUND:

A. The treasurer shall deposit in the property tax suspense fund an amount equal to the portion of any property taxes paid to the treasurer that is not admitted to be due and is the subject of a claim for refund.

B. The property tax suspense fund shall be invested as permitted by Subsection B of Section 7-38-41 NMSA 1978, as amended.

C. All refunds to property owners pursuant to Section 7-38-41 NMSA 1978 shall be made fifteen days after the treasurer receives a copy of the final order relating to the protest.

D. If final determination in a claim for refund is less than originally claimed, or if the claim is denied, the difference between the amount placed in the property tax suspense fund and the amount refunded to the taxpayer shall be disbursed in the monthly distribution process as stated in subparagraph 15.6 [now Subsection F of 3.6.50.15 NMAC]. Upon the final determination of a claim, the treasurer is to send a copy of the

final order to the assessor and the director of the property tax division who shall change their respective valuation records to clearly reflect the final determination.

E. The treasurer is authorized to transfer any surplus interest accrued in the property tax suspense fund to the county general fund, when a case is closed or at the close of the fiscal year.

[12/31/74, 7/15/98; Recompiled 10/01/01]

3.6.50.14 COLLECTION AND RECEIPT OF PROPERTY TAXES:

A. All property tax payments shall be marked paid and recorded within 48 hours and must be deposited within 72 hours.

B. Property tax receipts or copies of the tax bills marked paid are not required to be mailed to property taxpayers if payment of property taxes, penalties and interest are received by mail. These amounts are sufficiently "receipted" if indication of payment is made on the tax schedule by the treasurer. However, the treasurer is not prohibited from mailing receipts or copies of the tax bills marked paid.

C. Except for accounts on the state delinquency list, any partial payments received by the treasurer for delinquent property taxes, penalties and interest shall be receipted and accounted for in accordance with Section 7-38-42 NMSA 1978.

D. If the treasurer's office is unable to comply with this policy, the treasurer must immediately notify the chairman of the board of finance and the county manager in writing. The notification must include a description of the problem, identification of the cause of the problem, an estimate of the anticipated duration of non-compliance and the proposed remedial action. The notification does not relieve the receipting authority of its statutory duty to collect, record and account for property taxes.

E. Receipting and depositing of revenues other than property tax payments shall be implemented according to policies adopted by the county board of finance.

[12/31/74, 7/15/98; Recompiled 10/01/01]

3.6.50.15 DISTRIBUTION OF PROPERTY TAXES, PENALTIES AND INTEREST:

A. The treasurer shall distribute the receipts from property tax collections to each governmental unit. All interest and penalties collected shall be deposited in the county general fund without regard to the tax year for which it was paid, other than as an agent of the taxation and revenue department under Section 7-38-62 NMSA 1978.

B. At the time of distributing receipts from property taxes collected as agent for the taxation and revenue department under Section 7-38-62 NMSA 1978, all interest and penalties collected for tax years before 1990 will be placed in the county general fund

and all interest and penalties collected for 1990 and subsequent tax years shall be remitted to the taxation and revenue department.

C. The treasurer shall distribute taxes collected for the November 10th installment no earlier than December 15th or later than the 5th working day after December 15th.

D. The treasurer shall distribute taxes collected from the April 10th installment no earlier than May 15th or later than the 5th working day after May 15th.

E. For installment agreements pursuant to Section 7-38-38.2 NMSA 1978, no distribution shall be made earlier than the 15th of the month following the month of collection or later than the 5th working day after the 15th of month following the month of collection.

F. For delinquent taxes, normal distributions shall not be made earlier than the 15th of the month following the month of collection or later than the 5th working day after the 15th of month following the month of collection.

G. Once a county has placed a property on the state delinquency list, the property tax division shall have responsibility and exclusive authority to collect delinquent taxes, interest and penalties for all tax years. However, the property tax division may authorize treasurers to act as its agents in accepting payments of taxes, penalties, interests or costs due.

[2/19/92, 7/15/98; Recompiled 10/01/01]

3.6.50.16 NOTIFICATION TO PROPERTY OWNER OF DELINQUENT PROPERTY TAXES:

A. In accordance with Section 7-38-51 NMSA 1978, any property tax delinquent more than thirty days as of June 30th of each year, the treasurer shall mail a notice of delinquency to the assessed owner and any person other than the owner to whom the tax bill on the property was sent. This applies to every delinquency and not just those on the state delinquency list.

B. If payment has not been received within 90 days following the written notice of delinquency, the treasurer shall pursue further collection efforts.

C. If the collection rate for a tax year for any jurisdiction in the county falls twenty percent below anticipated collections as of December 31st of that year or June 30th of the following year, the treasurer must immediately notify the board of finance in writing.

[7/15/98; Recompiled 10/01/01]

3.6.50.17 SALE OF REAL PROPERTY FOR DELINQUENT TAXES:

Section 7-38-66 NMSA 1978 states the taxpayer must show proof of the following to prevent or invalidate a sale:

A. All delinquent taxes, penalties, interest and costs had been paid prior to the date of sale shall prevent or invalidate the sale. The treasurers office must be in possession of the funds prior to the time of the sale or the payment must be postmarked prior to the date of the sale.

B. The taxpayer has entered into a written installment agreement to pay all delinquent taxes, penalties, interest and costs prior to the date of sale as provided in Section 7-38-68 NMSA 1978 and that payments are being made in accordance with the terms of such agreement. The installment agreement must be signed by both parties at least the day prior to the date of sale.

[7/15/98; Recompiled 10/01/01]

3.6.50.18 INSTALLMENT AGREEMENTS OR SALE OF PROPERTY:

A. When the property tax division collects delinquent taxes in total from the taxpayer under installment agreements or sale of property, the money, excluding interest, penalties and costs, will be remitted to the treasurer. When the money is received by the treasurer, the tax bill will be validated as paid. The distribution will be accomplished by the treasurer as the normal distribution of delinquent taxes.

B. Upon receipt of the money from the property tax division, the treasurer shall:

(1) validate the tax bill as paid in the manner prescribed in Section 7-38-63 NMSA 1978;

(2) make a notation of the payment of delinquent property taxes, penalties and interest on the property tax schedule; and

(3) distribute the amount of property taxes to the appropriate governmental units at the time of normal monthly distributions.

[12/31/74, 7/15/98; Recompiled 10/01/01]

3.6.50.19 TAXES ON OMITTED PROPERTY:

When taxes on omitted property are placed on tax schedules, tax bills mailed and money is received for payment of these taxes, the receipting and accounting of the money is the same as for other property taxes. For distribution purposes, all the monies received for taxes on omitted property for years prior to current tax year will be considered to be receipts of delinquent taxes.

[12/31/74; Recompiled 10/01/01]

3.6.50.20 CHANGES IN THE PROPERTY TAX SCHEDULE:

A. Pursuant to Section 7-38-77.1 NMSA 1978, the department may order the treasurer to make changes in the property tax schedule in connection with any property listed on the schedule if the department determines that an error was made in the certification of tax rates.

B. Upon such a determination, the department will issue a statement to the county commission and treasurer stating the reason for the error along with the amended certificate of tax rates.

[7/15/98; Recompiled 10/01/01]

3.6.50.21 BANKHEAD-JONES FARM TENANT ACT:

Pursuant to the national grasslands and land utilization project receipts for the Bankhead-Jones Farm Tenant Act, the county shall deposit these funds directly into the county road fund for the purpose of maintaining county roads or school bus routes, or both.

[3/30/73, 7/15/98; Recompiled 10/01/01]

CHAPTER 7: SPECIAL PROPERTY TAXES

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: COPPER AD VALOREM TAX

3.7.2.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[7/31/96; 3.7.2.1 NMAC - Rn, 3 NMAC 7.2.1, 12/14/00]

3.7.2.2 SCOPE:

This part applies to all persons who sever or smelt copper and applies to the valuation of all productive copper mineral property.

[7/31/96; 3.7.2.2 NMAC - Rn, 3 NMAC 7.2.2, 12/14/00]

3.7.2.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[7/31/96; 3.7.2.3 NMAC - Rn, 3 NMAC 7.2.3, 12/14/00]

3.7.2.4 DURATION:

Permanent.

[7/31/96; 3.7.2.4 NMAC - Rn, 3 NMAC 7.2.4, 12/14/00]

3.7.2.5 EFFECTIVE DATE:

7/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[7/31/96; 3.7.2.5 NMAC - Rn & A, 3 NMAC 7.2.5, 12/14/00]

3.7.2.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Copper Production Ad Valorem Tax Act.

[7/31/96; 3.7.2.6 NMAC - Rn, 3 NMAC 7.2.6, 12/14/00]

3.7.2.7 DEFINITIONS:

Reserved.

[7/31/96; 3.7.2.7 NMAC - Rn, 3 NMAC 7.2.7, 12/14/00]

3.7.2.8 DETERMINATION OF AVERAGE PRICE:

A. The copper and other mineral prices to be used to calculate the value of salable copper and other minerals for purposes of the Copper Ad Valorem Tax Act shall be the following average annual prices as published in Metals Week, or any successor publication, for each year:

(1) copper - "COMEX HG 1st position" copper price per pound cathodes;

(2) gold - "Handy and Harmon" gold price per troy ounce;

(3) silver - "Handy and Harmon" silver price per troy ounce;

(4) molybdenum sulfide concentrate - "byproduct concentrate" molybdenum price per pound;

(5) molybdic oxide - "metals week dealer oxide" molybdenum price per pound;

(6) zinc - "metals week U.S. high grade" zinc price per pound; and

(7) other minerals - as determined by the taxation and revenue department pursuant to subsequent regulation or in response to a written request from the taxpayer specifying the mineral produced and the taxable years to which the request pertains.

B. This section (3.7.2.8 NMAC) is applicable to taxable transactions on or after July 1, 1990.

[7-1-90, 7/31/96; 3.7.2.8 NMAC - Rn & A, 3 NMAC 7.2.8, 12/14/00]

CHAPTER 8: ESTATE TAX

PART 1: GENERAL PROVISIONS

3.8.1.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[7/15/96; 3.8.1.1 NMAC - Rn, 3 NMAC 8.1.1, 12/14/00]

3.8.1.2 SCOPE:

Provisions of this part apply to every person subject to the Estate Tax Act.

[7/15/96; 3.8.1.2 NMAC - Rn, 3 NMAC 8.1.2, 12/14/00]

3.8.1.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act.

[7/15/96; 3.8.1.3 NMAC - Rn, 3 NMAC 8.1.3, 12/14/00]

3.8.1.4 DURATION:

Permanent.

[7/15/96; 3.8.1.4 NMAC - Rn, 3 NMAC 8.1.4, 12/14/00]

3.8.1.5 EFFECTIVE DATE:

7/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date. The effective date of the Estate Tax Act was July 1, 1973. (Laws 1973, Ch. 345, Section 18) The Estate Tax Act and this Part apply to estates where decedent passed away after June 30, 1973. Pursuant to Section 7-1-5(H) NMSA 1978

of the Tax Administration Act, the Estate Tax Act regulations filed August 5, 1974 were declared to be effective July 1, 1973. The amendments to those regulations adopted by TRD Rule 7-88 were effective on September 15, 1988.

[7/15/96; 3.8.1.5 NMAC - Rn & A, 3 NMAC 8.1.5, 12/14/00]

3.8.1.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Estate Tax Act.

[7/15/96; 3.8.1.6 NMAC - Rn, 3 NMAC 8.1.6, 12/14/00]

3.8.1.7 DEFINITIONS:

[**RESERVED**]

[7/15/96; 3.8.1.7 NMAC - Rn, 3 NMAC 8.1.7, 12/14/00]

3.8.1.8 CITATIONS:

All citations to statutes in 3.8 NMAC are to the 1978 New Mexico Statutes Annotated (NMSA 1978).

[7/15/96; 3.8.1.8 NMAC - Rn & A, 3 NMAC 8.1.8, 12/14/00]

3.8.1.9 EFFECT ON PRIOR LAW:

All regulations, rulings, and attorney general's opinions pertaining to the former law, Taxation of Inheritances and Transfers (Laws 1921, Chapter 179, as amended), were superseded by the Estate Tax Act.

[7/15/96; 3.8.1.9 NMAC - Rn, 3 NMAC 8.1.9, 12/14/00]

PART 2: PERSONAL REPRESENTATIVE

3.8.2.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[7/15/96; 3.8.2.1 NMAC - Rn, 3 NMAC 8.2.1, 12/14/00]

3.8.2.2 SCOPE:

Provisions of this part apply to every person subject to the Estate Tax Act.

[7/15/96; 3.8.2.2 NMAC - Rn, 3 NMAC 8.2.2, 12/14/00]

3.8.2.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act.

[7/15/96; 3.8.2.3 NMAC - Rn, 3 NMAC 8.2.3, 12/14/00]

3.8.2.4 DURATION:

Permanent.

[7/15/96; 3.8.2.4 NMAC - Rn, 3 NMAC 8.2.4, 12/14/00]

3.8.2.5 EFFECTIVE DATE:

7/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date. The effective date of the Estate Tax Act was July 1, 1973. (Laws 1973, Ch. 345, Section 18) The Estate Tax Act and this Part apply to estates where decedent passed away after June 30, 1973. Pursuant to Section 7-1-5(H) NMSA 1978 of the Tax Administration Act, the Estate Tax Act regulations filed August 5, 1974 were declared to be effective July 1, 1973. The amendments to those regulations adopted by TRD Rule 7-88 were effective on September 15, 1988.

[7/15/96; 3.8.2.5 NMAC - Rn & A, 3 NMAC 8.2.5, 12/14/00]

3.8.2.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Estate Tax Act.

[7/15/96; 3.8.2.6 NMAC - Rn, 3 NMAC 8.2.6, 12/14/00]

3.8.2.7 DEFINITIONS:

[RESERVED]

[7/15/96; 3.8.2.7 NMAC - Rn, 3 NMAC 8.2.7, 12/14/00]

3.8.2.8 WHO IS PERSONAL REPRESENTATIVE:

A. The term "personal representative" generally means the executor or administrator of the decedent's estate as a whole, such as one appointed by a court having jurisdiction of the estate.

B. If there is no such person appointed, qualified and acting, then every person in possession of any property of the decedent can be considered a "personal representative" for estate tax purposes. Consequently, in the absence of a duly qualified and acting executor, administrator, fiduciary or custodian, persons possessing property of the decedent are responsible for filing the estate tax return (Section 7-7-5 NMSA 1978) and paying the estate tax (Section 7-7-6 NMSA 1978). Such persons are also subject to the provisions of Section 7-7-11 NMSA 1978 and Subsection A of 7-7-12 NMSA 1978. It is not anticipated that every person in possession of any property of the decedent will file the estate tax return but that one among that group will take the responsibility.

C. "Possession" of property means actual or constructive possession and denotes physical dominion or control over the property coupled with an intent to exercise control and to exclude others from control. Persons who may have possession of a decedent's property include, but are not limited to, lessees or bailees, joint or co-owners (including an owner or owners in joint tenancy, tenancy in common, and community property), partners or joint venturers, trustees or other fiduciaries, and transferees or distributees of the estate. The term "possession" does not, however, signify mere physical custody of property, when such custody is for a limited purpose or when there is no intent to exercise control or to exclude others from control. Persons who do not have possession of a decedent's property (absent special circumstances) include mortgagees or pledgees, stockbrokers or stock transfer agents, bank and other depositories of checking or saving accounts, safe-deposit companies, and life insurance companies.

D. Example 1: D, a New Mexico domiciliary, and J own a joint bank account in B bank. D dies and no executor or administrator is appointed for D's estate. J is a personal representative; B is not.

E. Example 2: D, a New Mexico domiciliary, and S own as community property land which is mortgaged to L savings and loan association. D carries life insurance with I insurance company; S is named as beneficiary. D dies and no executor or administrator is appointed for the estate. S collects the proceeds, pays off the loan and receives a release of mortgage from L. S is a personal representative (as co-owner, as recipient of the insurance proceeds and release of the mortgage); L and I are not.

F. Example 3: D, a New Mexico domiciliary, has an investment management agency account with C bank, under which C holds D's securities (registered in the name of its nominee) and invests and re- invests them in its discretion. The assets in this account are pledged to C to secure a loan to D. C places an order with broker B to sell certain stocks and to buy other stocks and then D dies. B executes the orders, forwards the sold securities to T^1 transfer agent, collects the proceeds and sends them to C, and has the purchased securities registered by T^2 transfer agent in the name of C's nominee. No executor or administrator is appointed for D's estate, all of which is inherited by X. X is a personal representative, as is C (as bailee, not as pledgee). Neither B, T^1 nor T^2 is a personal representative.

G. Example 4: D, a New Mexico domiciliary, is employed by E, a New Mexico employer. D dies and E pays to S, D's surviving spouse, $1,000 wages E owed to D. Thereafter, an executor or administrator becomes appointed, qualified and acting for D's estate. E is not a personal representative.

[8/5/74, 9/15/88, 7/15/96; 3.8.2.8 NMAC - Rn & A, 3 NMAC 8.2.8, 12/14/00]

PART 3: CREDIT FOR TAX PAID TO OTHER STATE

3.8.3.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[7/15/96; 3.8.3.1 NMAC - Rn, 3 NMAC 8.3.1, 12/14/00]

3.8.3.2 SCOPE:

Provisions of this Part apply to every person subject to the Estate Tax Act.

[7/15/96; 3.8.3.2 NMAC - Rn, 3 NMAC 8.3.2, 12/14/00]

3.8.3.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act.

[7/15/96; 3.8.3.3 NMAC - Rn, 3 NMAC 8.3.3, 12/14/00]

3.8.3.4 DURATION:

Permanent.

[7/15/96; 3.8.3.4 NMAC - Rn, 3 NMAC 8.3.4, 12/14/00]

3.8.3.5 EFFECTIVE DATE:

7/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date. The effective date of the Estate Tax Act was July 1, 1973. (Laws 1973, Ch. 345, Section 18) The Estate Tax Act and this Part apply to estates where decedent passed away after June 30, 1973. Pursuant to Section 7-1-5(H) NMSA 1978 of the Tax Administration Act, the Estate Tax Act regulations filed August 5, 1974 were declared to be effective July 1, 1973. The amendments to those regulations adopted by TRD Rule 7-88 were effective on September 15, 1988.

[7/15/96; 3.8.3.5 NMAC - Rn & A, 3 NMAC 8.3.5, 12/14/00]

3.8.3.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Estate Tax Act.

[7/15/96; 3.8.3.6 NMAC - Rn, 3 NMAC 8.3.6, 12/14/00]

3.8.3.7 DEFINITIONS:

[RESERVED]

[7/15/96; 3.8.3.7 NMAC - Rn, 3 NMAC 8.3.7, 12/14/00]

3.8.3.8 CALCULATION OF CREDIT FOR TAX PAID OTHER STATE; EXAMPLES:

A. The following examples illustrate the application of Section 7-7-3 NMSA 1978. The federal credit in each case is determined by reference to federal law. All other figures are hypothetical.

B. Example 1: T is a New Mexico decedent. T's gross estate is $1,750,000; T has $140,000 in deductions. Thus the taxable estate is $1,610,000. $175,000 of T's estate is real property located in state X, where it is taxed. State X does not have a reciprocal provision allowing this amount to be taxed in New Mexico.

(1) Under Section 7-7-3(B)(1) NMSA 1978 ("method 1"), it is determined that the amount of estate tax paid to state X on $175,000 is $2,040. This is the amount of credit for method one. (State X's statute does not tax to the full measure of its proportional share of the federal credit.)

(2) Under Section 7-7-3(B)(2) NMSA 1978 ("method 2"), the calculation is: Total credit for T's taxable estate times the quotient of the value of the property in state X divided by the value of the gross estate; that is,

$$\$71{,}520 \times \frac{175{,}000}{1{,}750{,}000} = \$7{,}152$$

(3) The credit allowed in this situation against New Mexico tax due is equal to the smaller of the above two amounts, calculated under methods 1 and 2. The credit against the $71,520 owed to New Mexico would, therefore, be $2,040.

C. Example 2: Same facts as in Example 1, except $1,400,000 of T's gross estate is real property located in and taxed by state X. Method 1 results in $61,840 credit. Method 2 results in $57,216 credit ($71,520 x 8/10). The amount credited against New Mexico tax due is $57,216, because the amount in this case is less using method 2.

[8/5/74, 9/15/88, 7/15/96; 3.8.3.8 NMAC - Rn & A, 3 NMAC 8.3.8, 12/14/00]

PART 4: NONRESIDENT

3.8.4.1 ISSUING AGENCY:

Taxation and Revenue Department; Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[7/15/96; 3.8.4.1 NMAC - Rn, 3 NMAC 8.4.1, 12/14/00]

3.8.4.2 SCOPE:

Provisions of this part apply to every person subject to the Estate Tax Act.

[7/15/96; 3.8.4.2 NMAC - Rn, 3 NMAC 8.4.2, 12/14/00]

3.8.4.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act.

[7/15/96; 3.8.4.3 NMAC - Rn, 3 NMAC 8.4.3, 12/14/00]

3.8.4.4 DURATION:

Permanent.

[7/15/96; 3.8.4.4 NMAC - Rn, 3 NMAC 8.4.4, 12/14/00]

3.8.4.5 EFFECTIVE DATE:

7/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date. The effective date of the Estate Tax Act was July 1, 1973. (Laws 1973, Ch. 345, Section 18). The Estate Tax Act and this part apply to estates where decedent passed away after June 30, 1973. Pursuant to Section 7-1-5(H) NMSA 1978 of the Tax Administration Act, the Estate Tax Act regulations filed August 5, 1974 were declared to be effective July 1, 1973. The amendments to those regulations adopted by TRD Rule 7-88 were effective on September 15, 1988.

[7/15/96; 3.8.4.5 NMAC - Rn & A, 3 NMAC 8.4.5, 12/14/00]

3.8.4.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Estate Tax Act.

[7/15/96; 3.8.4.6 NMAC - Rn, 3 NMAC 8.4.6, 12/14/00]

3.8.4.7 DEFINITIONS:

[RESERVED]

[7/15/96; 3.8.4.7 NMAC - Rn, 3 NMAC 8.4.7, 12/14/00]

3.8.4.8 PROOF OF NONRESIDENCE:

When a claim is made that the residence of a decedent was outside the state of New Mexico, the taxpayer has the burden of showing nonresidence.

[8/5/74, 9/15/88, 7/15/96; 3.8.4.8 NMAC - Rn, 3 NMAC 8.4.8, 12/14/00]

3.8.4.9 REAL PROPERTY AND RIGHTS TO REAL PROPERTY LOCATED IN NEW MEXICO:

A. The listing in Subsection C of Section 7-7-4 NMSA 1978 of property located in New Mexico is illustrative; it is not an exhaustive listing.

B. Real property in this state belonging to a nonresident decedent is subject to the estate tax. Intangible personal property outside the state belonging to a nonresident decedent is not subject to the tax. If a nonresident decedent owning real property situated within the state has entered into an executory contract for its sale, the right of the decedent, his estate or heirs to the proceeds of the sale will be treated as subject to the tax should the state in which the nonresident decedent was domiciled not subject the proceeds to its own inheritance or estate tax law, either on application of the so-called "doctrine of equitable conversion" or for any other reason. If a nonresident decedent has entered into an executory contract for the purchase of real property situated within the state, the right of the nonresident decedent, his estate or heirs to the real property will be treated as subject to the tax should the state in which the nonresident decedent was domiciled not subject the value of or right to the real property to its own inheritance or estate tax law.

C. Real property in this state belonging to a nonresident decedent includes royalty interests in oil, gas, or similar leases or property interests.

D. For the purposes of the Estate Tax Act, mortgages are considered personal property.

[8/5/74, 9/15/88, 7/15/96; 3.8.4.9 NMAC - Rn & A, 3 NMAC 8.4.9, 12/14/00]

3.8.4.10 TAXABILITY OF DEBT OF DECEASED NONRESIDENT CREDITOR:

A. The concept of "business situs" refers to the place where a business is conducted; it is used to localize notes and accounts, debit balances, receivables, and other intangible property for tax purposes, in a place where the decedent was not a resident.

B. A debt may arise from a transaction in New Mexico even if the business situs of the decedent's business was outside New Mexico.

C. The debtor's residence does not determine the taxability of a debt in New Mexico.

D. Example 1: T is a Texas decedent who owned a store in Clovis, New Mexico. The accounts receivable of T's business are all "property located in New Mexico", even if many of T's customers owing the debts live in Texas.

E. Example 2: C is a Colorado decedent who owned a business located in Colorado. C enters New Mexico to sell a widget to D on credit. The sale is made in Farmington. The debt owed by D to C is "property located in New Mexico".

[8/5/74, 9/15/88, 7/15/96; 3.8.4.10 NMAC - Rn, 3 NMAC 8.4.10, 12/14/00]

3.8.4.11 GENERAL EXAMPLE:

The following example illustrates the application of Subsection D of Section 7-7-4 NMSA 1978.

A. Example 1: S is a decedent who was a resident of State M at the time of her death. The property in her estate consisted solely of bank accounts located in State M and 10,000 shares of stock of XYZ, Inc., a corporation organized under the laws of New Mexico.

B. Pursuant to Section 7-7-4(C)(2) NMSA 1978, the stock is property located in New Mexico, upon which Section 7-7-4(A) NMSA 1978 imposes tax. However, the estate tax law of State M taxes all personal property of its domiciliary decedents, and refrains from taxing the personal property of New Mexico's (and other states') decedents. Therefore, the transfer of S's estate is exempt from the New Mexico estate tax.

[8/5/74, 9/15/88, 7/15/96; 3.8.4.11 NMAC - Rn & A, 3 NMAC 8.4.11, 12/14/00]

PART 5: FEDERAL EXTENSION

3.8.5.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[7/15/96; 3.8.5.1 NMAC - Rn, 3 NMAC 8.5.1, 12/14/00]

3.8.5.2 SCOPE:

Provisions of this part apply to every person subject to the Estate Tax Act.

[7/15/96; 3.8.5.2 NMAC - Rn, 3 NMAC 8.5.2, 12/14/00]

3.8.5.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act.

[7/15/96; 3.8.5.3 NMAC - Rn, 3 NMAC 8.5.3, 12/14/00]

3.8.5.4 DURATION:

Permanent.

[7/15/96; 3.8.5.4 NMAC - Rn, 3 NMAC 8.5.4, 12/14/00]

3.8.5.5 EFFECTIVE DATE:

7/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date. The effective date of the Estate Tax Act was July 1, 1973. (Laws 1973, Ch. 345, Section 18) The Estate Tax Act and this part apply to estates where decedent passed away after June 30, 1973. Pursuant to Section 7-1-5(H) NMSA 1978 of the Tax Administration Act, the Estate Tax Act regulations filed August 5, 1974 were declared to be effective July 1, 1973. The amendments to those regulations adopted by TRD Rule 7-88 were effective on September 15, 1988.

[7/15/96; 3.8.5.5 NMAC - Rn & A, 3 NMAC 8.5.5, 12/14/00]

3.8.5.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Estate Tax Act.

[7/15/96; 3.8.5.6 NMAC - Rn, 3 NMAC 8.5.6, 12/14/00]

3.8.5.7 DEFINITIONS:

[RESERVED]

[7/15/96; 3.8.5.7 NMAC - Rn, 3 NMAC 8.5.7, 12/14/00]

3.8.5.8 COPY OF FEDERAL EXTENSION:

If an extension of time for filing the federal estate tax return is granted by the federal government, that extension applies to the filing of the state estate tax return. A copy of the document granting the extension by the federal government must be filed simultaneously with the filing of the state estate tax return by the date to which the federal extension has been granted.

[8/5/74, 9/15/88, 7/15/96; 3.8.5.8 NMAC - Rn, 3 NMAC 8.5.8, 12/14/00]

PART 6: [RESERVED]

PART 7: [RESERVED]

PART 8: CERTIFICATE

3.8.8.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[7/15/96; 3.8.8.1 NMAC - Rn, 3 NMAC 8.8.1, 12/14/00]

3.8.8.2 SCOPE:

Provisions of this part apply to every person subject to the Estate Tax Act.

[7/15/96; 3.8.8.2 NMAC - Rn, 3 NMAC 8.8.2, 12/14/00]

3.8.8.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act.

[7/15/96; 3.8.8.3 NMAC - Rn, 3 NMAC 8.8.3, 12/14/00]

3.8.8.4 DURATION:

Permanent.

[7/15/96; 3.8.8.4 NMAC - Rn, 3 NMAC 8.8.4, 12/14/00]

3.8.8.5 EFFECTIVE DATE:

7/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date. The effective date of the Estate Tax Act was July 1, 1973. (Laws 1973, Ch. 345, Section 18) The Estate Tax Act and this part apply to estates where decedent passed away after June 30, 1973. Pursuant to Section 7-1-5(H) NMSA 1978 of the Tax Administration Act, the Estate Tax Act regulations filed August 5, 1974 were

declared to be effective July 1, 1973. The amendments to those regulations adopted by TRD Rule 7-88 were effective on September 15, 1988.

[7/15/96; 3.8.8.5 NMAC - Rn & A, 3 NMAC 8.8.5, 12/14/00]

3.8.8.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Estate Tax Act.

[7/15/96; 3.8.8.6 NMAC - Rn, 3 NMAC 8.8.6, 12/14/00]

3.8.8.7 DEFINITIONS:

[**RESERVED**]

[7/15/96; 3.8.8.7 NMAC - Rn, 3 NMAC 8.8.7, 12/14/00]

3.8.8.8 WHEN CERTIFICATE FILED:

A. For estates for which a federal estate tax return is required to be made, the department will file a certificate as provided in Section 7-7-8 NMSA 1978 in every case when an estate tax return has been properly filed with the department and either no tax is due under the Estate Tax Act or the taxes due have been paid. A copy of the certificate will be filed with those clerks specified in the request of the personal representative or other person who has filed the return.

B. The certificate is prepared solely on the basis of information supplied to the department by the personal representative or other person filing the return, as of the date of issuance. The certificate does not bind or estop the department as to later-discovered property, omitted property, or misrepresentation of any material fact, whether negligent or intentional.

C. No certificate is required nor will a certificate be provided or filed for estates for which no federal estate tax return is required by the Internal Revenue Code. The mere fact that no federal estate tax return is required is sufficient to demonstrate that no New Mexico estate tax is due.

D. Example: A's gross estate totals $580,000. Under Section 6018 of the Internal Revenue Code, no return is required for estates whose gross estate is less than $600,000. Therefore, no certificate pursuant to Section 7-7-8 NMSA 1978 is required to demonstrate that New Mexico estate tax liability has been satisfied and no certificate will be issued.

[8/5/74, 9/15/88, 7/15/96; 3.8.8.8 NMAC - Rn & A, 3 NMAC 8.8.8, 12/14/00]

PART 9: [RESERVED]

PART 10: LIEN

3.8.10.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[7/15/96; 3.8.10.1 NMAC - Rn, 3 NMAC 8.10.1, 12/14/00]

3.8.10.2 SCOPE:

Provisions of this part apply to every person subject to the Estate Tax Act.

[7/15/96; 3.8.10.2 NMAC - Rn, 3 NMAC 8.10.2, 12/14/00]

3.8.10.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act.

[7/15/96; 3.8.10.3 NMAC - Rn, 3 NMAC 8.10.3, 12/14/00]

3.8.10.4 DURATION:

Permanent.

[7/15/96; 3.8.10.4 NMAC - Rn, 3 NMAC 8.10.4, 12/14/00]

3.8.10.5 EFFECTIVE DATE:

7/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date. The effective date of the Estate Tax Act was July 1, 1973. (Laws 1973, Ch. 345, Section 18) The Estate Tax Act and this part apply to estates where decedent passed away after June 30, 1973. Pursuant to Section 7-1-5(H) NMSA 1978 of the Tax Administration Act, the Estate Tax Act regulations filed August 5, 1974 were declared to be effective July 1, 1973. The amendments to those regulations adopted by TRD Rule 7-88 were effective on September 15, 1988.

[7/15/96; 3.8.10.5 NMAC - Rn & A, 3 NMAC 8.10.5, 12/14/00]

3.8.10.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Estate Tax Act.

[7/15/96; 3.8.10.6 NMAC - Rn, 3 NMAC 8.10.6, 12/14/00]

3.8.10.7 DEFINITIONS:

[RESERVED]

[7/15/96; 3.8.10.7 NMAC - Rn, 3 NMAC 8.10.7, 12/14/00]

3.8.10.8 WHEN LIEN ARISES:

A lien on property of the estate arises pursuant to Sections 7-1-37 NMSA 1978 et seq. of the Tax Administration Act, and not otherwise.

[8/5/74, 9/15/88, 7/15/96; 3.8.10.8 NMAC - Rn & A, 3 NMAC 8.10.8, 12/14/00]

PART 11: [RESERVED]

PART 12: PAYMENT OF ESTATE TAX

3.8.12.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[7/15/96; 3.8.12.1 NMAC - Rn, 3 NMAC 8.12.1, 12/14/00]

3.8.12.2 SCOPE:

Provisions of this part apply to every person subject to the Estate Tax Act.

[7/15/96; 3.8.12.2 NMAC - Rn, 3 NMAC 8.12.2, 12/14/00]

3.8.12.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act.

[7/15/96; 3.8.12.3 NMAC - Rn, 3 NMAC 8.12.3, 12/14/00]

3.8.12.4 DURATION:

Permanent.

[7/15/96; 3.8.12.4 NMAC - Rn, 3 NMAC 8.12.4, 12/14/00]

3.8.12.5 EFFECTIVE DATE:

7/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date. The effective date of the Estate Tax Act was July 1, 1973. (Laws 1973, Ch. 345, Section 18) The Estate Tax Act and this part apply to estates where decedent passed away after June 30, 1973. Pursuant to Section 7-1-5(H) NMSA 1978 of the Tax Administration Act, the Estate Tax Act regulations filed August 5, 1974 were declared to be effective July 1, 1973. The amendments to those regulations adopted by TRD Rule 7-88 were effective on September 15, 1988.

[7/15/96; 3.8.12.5 NMAC - Rn & A, 3 NMAC 8.12.5, 12/14/00]

3.8.12.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Estate Tax Act.

[7/15/96; 3.8.12.6 NMAC - Rn, 3 NMAC 8.12.6, 12/14/00]

3.8.12.7 DEFINITIONS:

[RESERVED]

[7/15/96; 3.8.12.7 NMAC - Rn, 3 NMAC 8.12.7, 12/14/00]

3.8.12.8 LIABILITY OF PERSONAL REPRESENTATIVE:

The primary liability for payment of the estate tax is on the personal representative of the estate, as defined in Section 7-7-2(I) NMSA 1978. The liability imposed by Section 7-7-12(B) NMSA 1978 is secondary.

[8/5/74, 9/15/88, 7/15/96; 3.8.12.8 NMAC - Rn & A, 3 NMAC 8.12.8, 12/14/00]

3.8.12.9 SECURING ANOTHER'S PAYMENT OF ESTATE TAX:

"Securing another's payment of" the estate tax due requires that any tax which may be owed, actually be paid by any person other than the distributor or deliveror liable under Section 7-7-12 NMSA 1978.

[8/5/74, 9/15/88, 7/15/96; 3.8.12.9 NMAC - Rn & A, 3 NMAC 8.12.9, 12/14/00]

3.8.12.10 FURNISHING SECURITY FOR PAYMENT OF ESTATE TAX:

A. To be acceptable under the terms of Section 7-7-12 NMSA 1978, a surety bond must be underwritten by a corporate surety authorized to transact business in New Mexico.

B. Other acceptable security may be an assignment of a certificate of deposit or a savings account executed by a state or national bank or federally insured savings association authorized to do business in New Mexico, or by an irrevocable letter of credit issued by a state or national bank authorized to do business in New Mexico. Interest, if any, accumulating thereon shall accrue to the assignor or customer causing issuance of the letter of credit.

C. Example 1: The form of an acceptable surety bond is:

SURETY BOND FOR PAYMENT TO THE TAXATION AND REVENUE DEPARTMENT OF THE STATE OF NEW MEXICO OF ESTATE TAX LIABILITY.

Bond Number (_____)

KNOW ALL PERSONS BY THESE PRESENTS:

That (Principal's Name) as Principal, and (Surety's Name) , a corporate surety authorized to transact business in New Mexico, as Surety, are held and firmly bound unto the Taxation and Revenue Department of the State of New Mexico, as Obligee, in the sum of $_____ lawful money of the United States, for the payment of which we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly, severally, and firmly by this document.

NOW, THEREFORE, the condition of this obligation is such that if the above Principal shall comply with the applicable statutes of the State of New Mexico and with all regulations and rulings of the Taxation and Revenue Department of the State of New Mexico for the estate of _____, decedent, concerning reporting and payment of estate tax liability, then the above obligations shall be void; otherwise they shall remain in full force and effect; and if the Principal fails to pay estate tax when due or becomes a delinquent taxpayer pursuant to Section 7-1-16 NMSA 1978, and the above statutes, regulations and rulings, the above Surety shall pay over to the Taxation and Revenue Department of the State of New Mexico the amount of the tax due up to the stated amount of this bond.

It is understood that the aggregate liability of the Surety shall not exceed the sum of this bond, this bond is continuous in form, and if the Surety shall so elect, this bond may be cancelled by giving thirty days' notice in writing to said Obligee.

Witness/Attest Surety

_____ _____

_____ _____

By

_____

Attorney-In-Fact

Principal

_____ _____

_____ _____

By _____

NOTE: A POWER OF ATTORNEY SHOULD BE ATTACHED

D. Example 2: The form of an acceptable agreement of assignment is shown in the following letter:

MODEL LETTER TO BE FOLLOWED BY FINANCIAL

INSTITUTION IN TYPING LETTER ON THEIR LETTERHEAD

DATE:

Taxation and Revenue Department

P.O. Box 630

Santa Fe, New Mexico 87504-0630

Dear Secretary:

This is to certify that (Assignor's Name) has deposited with this institution (Dollar Amount of Deposit) in savings account number, or certificate of deposit number _____. This amount, exclusive of any interest which may accrue, is being held to meet the security requirements of Section 7-7-12 NMSA 1978. If the above named depositor fails to pay estate tax when due or at any time becomes a delinquent taxpayer under Section 7-1-16 NMSA 1978, this institution shall, upon demand of the Secretary of Taxation and Revenue, pay over the aforesaid amount to the Taxation and Revenue Department or so much thereof as the Secretary shall demand.

No withdrawals from the account identified above will be permitted without the written permission of the Taxation and Revenue Department of the State of New Mexico.

Very truly yours,

BANK OFFICER

TITLE

[8/5/74, 9/15/88, 7/15/96; 3.8.12.10 NMAC - Rn, 3 NMAC 8.12.10, 12/14/00]

3.8.12.11 EXCEPTIONS TO LIABILITY FOR FAILURE TO PAY TAX BEFORE DISTRIBUTION OR DELIVERY:

A. No liability shall arise under Section 7-7-12 NMSA 1978 by reason of any payment made pursuant to Sections 58-1-8, 58-10-103 or 58-11-64 NMSA 1978, provided that all requirements of those sections are met and that the transferor has acted in good faith. Payments by a savings and loan association, credit union, or bank not in compliance with those sections, or above the amounts specified therein, may result in liability and are fully subject to the provisions of Section 7-7-12 NMSA 1978.

B. Liability is not imposed by Section 7-7-12 NMSA 1978 for the delivery or transfer of property into a New Mexico estate or to the personal representative of the decedent inside New Mexico. A personal representative who is not a resident of New Mexico but who is appointed by a New Mexico court having jurisdiction of an estate, and who is qualified and acting, is not "outside New Mexico" within the meaning of Section 7-7-12 NMSA 1978.

[8/5/74, 9/15/88, 7/15/96; 3.8.12.11 NMAC - Rn & A, 3 NMAC 8.12.11, 12/14/00]

3.8.12.12 CONTROL, CUSTODY OR POSSESSION OF PROPERTY--EXAMPLES:

Persons who have control, custody or possession of any of a decedent's property may include the decedent's agents and representatives, safe-deposit companies, warehouse companies, brokers holding securities belonging to the decedent as collateral, debtors

of the decedent, bankers, transferees or distributees, factors, joint owners or partners, fiduciaries or trustees, stock transfer agents, escrow agents, bailees, and persons holding any property as security for an outstanding obligation.

[8/5/74, 9/15/88, 7/15/96; 3.8.12.12 NMAC - Rn, 3 NMAC 8.12.12, 12/14/00]

3.8.12.13 WHO IS LEGAL REPRESENTATIVE:

The term "legal representative" is not restricted to a "personal representative" of a decedent, but includes every person who, with respect to the decedent's property, stands in his place and represents his interests, whether the property is transferred by his act or by operation of law; heirs, next of kin, and distributees may be included in this category.

[8/5/74, 9/15/88, 7/15/96; 3.8.12.13 NMAC - Rn, 3 NMAC 8.12.13, 12/14/00]

CHAPTER 9: CIGARETTE AND TOBACCO PRODUCTS TAXES

PART 1: GENERAL PROVISIONS

3.9.1.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[4/30/99; 3.9.1.1 NMAC - Rn, 3 NMAC 9.1.1, 12/14/00]

3.9.1.2 SCOPE:

Provisions of this part apply to all persons who sell, distribute or otherwise deal in cigarettes or tobacco products.

[4/30/99; 3.9.1.2 NMAC - Rn, 3 NMAC 9.1.2, 12/14/00]

3.9.1.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[4/30/99; 3.9.1.3 NMAC - Rn, 3 NMAC 9.1.3, 12/14/00]

3.9.1.4 DURATION:

Permanent.

[4/30/99; 3.9.1.4 NMAC - Rn, 3 NMAC 9.1.4, 12/14/00]

3.9.1.5 EFFECTIVE DATE:

4/30/99, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[4/30/99; 3.9.1.5 NMAC - Rn & A, 3 NMAC 9.1.5, 12/14/00]

3.9.1.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Cigarette Tax Act and the Tobacco Products Tax Act.

[4/30/99; 3.9.1.6 NMAC - Rn, 3 NMAC 9.1.6, 12/14/00]

3.9.1.7 DEFINITIONS:

CIGARETTES DEFINED: For purposes of the Cigarette Tax Act, a "cigarette" is:

A. a roll of tobacco wrapped in paper or any substance not containing tobacco; or

B. a roll of tobacco that is wrapped in a substance containing tobacco other than one hundred percent natural leaf tobacco, that weighs no more than three pounds per thousand sticks, and that has three or more of the following characteristics:

(1) it has a typical cigarette size and shape;

(2) it has a cellulose acetate or other cigarette-type integrated filter;

(3) it has a filler primarily consisting of flue-cured, burley, oriental, or unfermented tobaccos or has a filler material yielding the smoking characteristics of any of those tobaccos;

(4) it has a filler, binder and wrapper that together contain three percent or more by weight of total reducing sugars and four percent or less by weight of non-reducing sugars;

(5) it is sold in soft packs, hard packs, flip-top boxes, clam shells, or other cigarette-type packages;

(6) it is sold in a package that labels the product as a cigarette or a cigarette substitute, or in a package that does not clearly and conspicuously declare that the product is a cigar;

(7) it is available for sale in packages of five, ten, twenty or twenty-five sticks;

(8) it is available for sale in cartons of ten packages;

(9) it is marketed or advertised to consumers as a cigarette or cigarette substitute; or

C. a bidi or kretek.

[3.9.1.7 NMAC - N, 11/15/06; A, 11/30/07]

3.9.1.8 CIGARETTES AS PRIZES ARE TAXABLE:

Cigarettes which are used as prizes for performing certain skills at carnivals, amusement parks, fairs or similar recreation facilities are required to have New Mexico cigarette tax stamps affixed.

[4/30/99; 3.9.1.8 NMAC - Rn, 3 NMAC 9.1.8, 12/14/00]

3.9.1.9 DOCUMENTATION TO SUBSTANTIATE THE ISSUANCE OF A TRIBAL LICENSE:

Any documentation showing that a governing body or, if the governing body has delegated the licensing function to an administrative agency, the appropriate administrative agency, has authorized the enrolled tribal member to use or sell cigarettes on that tribe's reservation or pueblo grant is sufficient to claim the exemption under Section 7-12-4 NMSA 1978.

[3.9.1.9 NMAC - N, 11/15/06]

3.9.1.10 DOCUMENTATION TO SUBSTANTIATE SALES OF CIGARETTES TO EXEMPT ENTITIES:

A. A distributor shall sell packages of cigarettes bearing a tax-exempt stamp only to:

(1) the United States or any agency or instrumentality thereof;

(2) the State of New Mexico or any political subdivision thereof;

(3) an Indian tribe, as defined in Subsection A of 3.2.4.7 NMAC, for use or sale on that tribe's reservation or pueblo grant; or

(4) a person who is recognized by the governing body of an Indian tribe to be an enrolled member of that Indian tribe and who is authorized by that Indian tribe to sell cigarettes on the reservation or pueblo grant of that Indian tribe for use or sale on that tribe's reservation or pueblo grant.

B. The distributor must maintain records demonstrating that the sale is to an entity or person described in Subsection A above.

C. For sales to a purchaser described in Paragraphs (1) and (2) of Subsection A above, the distributor shall retain documentation related to the transaction showing the governmental entity's name, such as purchase orders, copies of warrants issued in payment and contracts related to the cigarettes sold.

D. For sales to a purchaser described in Paragraph (3) of Subsection A above, the distributor shall obtain a statement, signed by the purchaser of the cigarettes that the purchaser is an Indian tribe, as defined by Subsection A of 3.2.4.7 NMAC, and that the cigarettes are being purchased for use or sale on that tribe's reservation or pueblo grant. The statement must be attested to by a tribal official.

E. For sales to a purchaser described in Paragraph (4) of Subsection A above, the distributor shall obtain a statement signed by an official of the purchaser's Indian tribe confirming that the purchaser is an enrolled member of that Indian tribe. The statement of membership may also be provided to the distributor by the Indian tribe on behalf of one or more of its members, if attested to by a tribal official. This documentation shall be conclusive evidence, and the only material evidence, that the purchaser is an enrolled member of an Indian tribe.

F. For sales to a purchaser described in Paragraph (4) of Subsection A above, the distributor shall also obtain documentation that the purchaser is authorized by, or under, the authority of the governing body of the purchaser's Indian tribe to sell or use cigarettes on the reservation or pueblo grant of that Indian tribe. This documentation must be attested to by a tribal official. The purchaser of the cigarettes shall also affirm in writing to the distributor that the cigarettes are being purchased for use or sale on that tribe's reservation or pueblo grant.

[3.9.1.10 NMAC - N, 11/15/06]

3.9.1.11 QUALIFICATIONS FOR A STAMP TO BE CONSIDERED AFFIXED:

In order for a stamp to be considered affixed, a package must have at least 60% of the stamp visible, including the entire serial number. Packages of cigarettes that do not meet these requirements shall be considered contraband cigarettes and may be subject to the penalties imposed under Section 7-12-13.1 NMSA 1978.

[3.9.1.11 NMAC - N, 11/15/06]

3.9.1.12 CIGARETTE STAMP QUANTITIES:

The minimum order for cigarette stamps is 1,500, and the minimum order for tax-exempt stamps is 15,000.

[3.9.1.12 NMAC - N, 11/15/06]

3.9.1.13 CIGARETTE DISTRIBUTOR AND MANUFACTURER LICENSE - LICENSING FEE:

Any person that applies for a cigarette distributor's license or a manufacturer's license shall pay a licensing fee of one hundred dollars ($100.00). The licensing fee will be imposed for every license, including annual renewals.

[3.9.1.13 NMAC - N, 11/15/06]

3.9.1.14 CIGARETTES NOT PURCHASED FROM A LICENSED DISTRIBUTOR:

If a cigarette retailer has in its possession cigarettes determined by the department to have been purchased from a source other than a licensed distributor, the retailer may be subject to penalties under Section 7-12.13.1 NMSA 1978.

[3.9.1.14 NMAC - N, 11/15/06]

3.9.1.15 CIVIL PENALTIES:

The department will impose the penalties authorized by Section 7-12-13.1 NMSA 1978 in accordance with the following schedule.

A. The penalty for a first offense shall be imposed as follows:

(1) one hundred dollars ($100) for a violation involving a quantity of fewer than two cartons of contraband cigarettes;

(2) two hundred fifty dollars ($250) for a violation involving a quantity of between two cartons and not more than twenty-five cartons of contraband cigarettes;

(3) five hundred dollars ($500) for a violation involving a quantity of between twenty-six cartons and not more than two hundred ninety-nine cartons of contraband cigarettes; or

(4) one thousand dollars ($1,000) for a violation involving a quantity of three hundred or more cartons of contraband cigarettes.

B. The penalty for a second offense shall be imposed as follows:

(1) one thousand five hundred dollars ($1,500) for a violation involving a quantity of fewer than two cartons of contraband cigarettes;

(2) one thousand seven hundred fifty dollars ($1,750) for a violation involving a quantity of between two cartons and not more than twenty-five cartons of contraband cigarettes;

(3) two thousand dollars ($2,000) for a violation involving a quantity of between twenty-six cartons and not more than two hundred ninety-nine cartons of contraband cigarettes; or

(4) two thousand five hundred dollars ($2,500) for a violation involving a quantity three hundred or more cartons of contraband cigarettes.

C. The penalty for a third offense shall be imposed as follows:

(1) five thousand dollars ($5,000) for a violation involving a quantity of fewer than two cartons of contraband cigarettes;

(2) seven thousand five hundred dollars ($7,500) for a violation involving a quantity of more than two cartons and not more than twenty-five cartons of contraband cigarettes;

(3) ten thousand dollars ($10,000) for a violation involving a quantity of between twenty-six cartons and not more than two hundred ninety-nine cartons of contraband cigarettes; or

(4) fifty thousand dollars ($50,000) for a violation involving a quantity of three hundred or more cartons of contraband cigarettes.

D. The level of the penalty imposed for a second or third offense is determined only on the quantity of cigarettes involved with that offense, and not on cigarettes involved in a prior offense.

[3.9.1.15 NMAC - N, 11/15/06]

3.9.1.16 REPORTING UNDER SECTION 7-12-18 NMSA 1978:

Persons required to submit reports concerning their cigarette transactions, under Section 7-12-18 NMSA 1978, shall do so on a monthly basis. These reports, RPD 41279 *Cigarette Distributor's Monthly Report* and RPD-41280 *Cigarette Manufacturer's Monthly Report* shall be submitted to the department on or before the 25th day of the month after the reporting period.

[3.9.1.16 NMAC - N, 11/15/06]

3.9.1.17 DOCUMENTATION OF CIGARETTES SHIPPED OUT OF NEW MEXICO:

A cigarette distributor who ships cigarettes outside New Mexico must report the quantity of cigarette packages shipped out of state for each report period using the *Schedule C* form as an attachment to the form RPD-41279 *Cigarette Distributor's Monthly Report*. In addition to the reporting function the distributor must maintain the following documentation for three years with respect to each shipment:

A. bill of lading;

B. delivery receipts;

C. the name and address of persons to whom cigarettes are shipped out of state.

[3.9.1.17 NMAC - N, 11/15/06]

3.9.1.18 FALSE AND FRAUDULENT MANUFACTURING LABELS:

Product labels on packages of cigarettes, including small cigars, that are in compliance with federal requirements are not false and fraudulent manufacturing labels for purposes of the Cigarette Tax Act.

[3.9.1.18 NMAC - N, 11/15/06]

3.9.1.19 POSSESSION OF CONTRABAND CIGARETTES; SEIZURE:

Cigarettes in the possession of any person which are contraband cigarettes pursuant to Subsection B of Section 7-12-2 NMSA 1978 may be immediately seized by the department. The department shall not be required to obtain a warrant or court order prior to the seizure of contraband cigarettes.

[3.9.1.19 NMAC - N, 10/30/09]

3.9.1.20 RIGHT OF APPEAL:

Any person may appeal the department's determination that cigarettes seized are contraband under Subsection B of Section 7-12-2 NMSA 1978, and any imposition of civil penalties authorized by Section 7-12-13.1 NMSA 1978. Any person may appeal the department's decision to deny, suspend or revoke the issuance of a cigarette distributor or manufacturer license.

[3.9.1.20 NMAC - N, 10/30/09]

3.9.1.21 APPEAL PROCEDURES:

The following are the procedures for appeals filed pursuant to 3.9.1.20 NMAC:

A. Appeals shall be submitted in writing to the office of the secretary of the taxation and revenue department. Appeals must be received by the office of the secretary or, if mailed, must bear a postmark date, within 10 days after the date cigarettes are seized by the department, the date of a notice of denial, suspension or revocation of a license, or the date of a notice of imposition of civil penalties or, where the tenth day falls on a Saturday, Sunday or legal state holiday, the next business day following the tenth day.

B. Contents of appeal. The appeal shall:

(1) include the name and address of the appellant;

(2) contain a statement of the grounds for appeal, including any law to support the grounds for appeal; and

(3) include supporting exhibits, evidence or documents to substantiate the appellant's claim.

C. Upon the receipt of a timely appeal, the secretary shall review the materials submitted and shall issue a written decision granting or denying the appeal.

(1) In the event that an appeal is granted with respect to seized cigarettes, the cigarettes seized by the department shall be released to the appellant.

(2) In the event that an appeal is denied, the secretary's decision shall include the reasons for the denial of the appeal.

D. A person from whom more than 2,500 cigarettes were seized or upon whom a civil penalty has been imposed may request an evidentiary hearing on the seizure and forfeiture of the cigarettes or the civil penalty if the appeal provided above is denied. The hearing request must be in writing, addressed to the office of the secretary and received or, if mailed, postmarked within 10 days of the date that the secretary's decision has been mailed to the person. The hearing will be conducted as provided in 3.1.8.8 through 3.1.8.16 NMAC. The secretary may designate a hearing officer to conduct the hearing.

E. The decision of the secretary to grant or deny an appeal shall become final and conclusive 30 days from the date the written decision is mailed by the department to the appellant unless a request for hearing as allowed by Subsection D above has been filed. If a request for hearing is filed, the decision of the secretary or hearing officer shall become final and conclusive 30 days from the date the written decision is mailed by the secretary or hearing officer to the appellant.

[3.9.1.21 NMAC - N, 10/30/09]

3.9.1.22 FORFEITURE:

In the absence of the filing of a timely appeal of a seizure of contraband cigarettes or when a decision has become final under Subsection E of 3.9.1.21 NMAC, the cigarettes seized by the department shall be deemed forfeited and shall be destroyed by the department unless needed for evidence in other proceedings.

[3.9.1.22 NMAC - N, 10/30/09]

PART 2: SHIPMENT OF UNSTAMPED CIGARETTES IN NEW MEXICO

3.9.2.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[9/14/96; 3.9.2.1 NMAC - Rn, 3 NMAC 9.2.1, 12/14/00]

3.9.2.2 SCOPE:

Provisions of this part apply to the transportation of unstamped cigarettes in New Mexico by any person.

[9/14/96; 3.9.2.2 NMAC - Rn, 3 NMAC 9.2.2, 12/14/00]

3.9.2.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[9/14/96; 3.9.2.3 NMAC - Rn, 3 NMAC 9.2.3, 12/14/00]

3.9.2.4 DURATION:

Permanent.

[9/14/96; 3.9.2.4 NMAC - Rn, 3 NMAC 9.2.4, 12/14/00]

3.9.2.5 EFFECTIVE DATE:

9/14/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[9/14/96; 3.9.2.5 NMAC - Rn & A, 3 NMAC 9.2.5, 12/14/00]

3.9.2.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Cigarette Tax Act.

[9/14/96; 3.9.2.6 NMAC - Rn, 3 NMAC 9.2.6, 12/14/00]

3.9.2.7 DEFINITIONS:

Reserved.

[9/14/96; 3.9.2.7 NMAC - Rn, 3 NMAC 9.2.7, 12/14/00]

3.9.2.8 TRANSPORTING UNSTAMPED CIGARETTES INTO NEW MEXICO:

A person filing a notice with the department, pursuant to Subsection A of Section 7-12-12 NMSA 1978, shall include in the notice the following information:

A. name and address of the person receiving the unstamped cigarettes in New Mexico;

B. the quantity of unstamped cigarettes being shipped into the state to that person;

C. the brands of the cigarettes being shipped into the state to that person; and

D. the date of shipment.

[5/20/92, 9/14/96; 3.9.2.8 NMAC - Rn & A, 3 NMAC 9.2.8, 12/14/00; A, 11/15/06]

CHAPTER 10: LIQUOR EXCISE TAX [RESERVED]

CHAPTER 11: MOTOR VEHICLE TAXES AND FEES

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: PERMITS [RESERVED]

PART 3: [RESERVED]

PART 4: SALE OR TRANSFER OF VEHICLES

3.11.4.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3/15/96; 3.11.4.1 NMAC - Rn, 3 NMAC 11.4.1, 12/14/00]

3.11.4.2 SCOPE:

General public, dealers in motor vehicles, agencies of the United States government, NATO forces.

[3/15/96; 3.11.4.2 NMAC - Rn, 3 NMAC 11.4.2, 12/14/00]

3.11.4.3 STATUTORY AUTHORITY:

Sections 9-11-6.2 and 7-14-11 NMSA 1978.

[3/15/96; 3.11.4.3 NMAC - Rn, 3 NMAC 11.4.3, 12/14/00]

3.11.4.4 DURATION:

Permanent.

[3/15/96; 3.11.4.4 NMAC - Rn, 3 NMAC 11.4.4, 12/14/00]

3.11.4.5 EFFECTIVE DATE:

7/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3/15/96, 7/31/96; 3.11.4.5 NMAC - Rn & A, 3 NMAC 11.4.5, 12/14/00]

3.11.4.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Motor Vehicle Excise Tax Act.

[3/15/96; 3.11.4.6 NMAC - Rn, 3 NMAC 11.4.6, 12/14/00]

3.11.4.7 DEFINITIONS:

A. "Member of a NATO force" means the military and civilian personnel of the NATO force and their dependents.

B. "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.

C. "NATO signatory" means a nation, other than the United States of America, that is a contracting party to the north Atlantic treaty.

D. "Price paid" is the dollar amount to which the motor vehicle excise tax is applied and (except as provided in Section 7-14-4 NMSA 1978 if the price paid does not represent the value of the vehicle) is the total net purchase price paid by the buyer for the vehicle itself, including any deposit or down payment, at the time of sale. "Price

paid" includes any charges to the buyer for accessories, transportation, delivery and dealer preparation. "Price paid" is reduced by the value of any vehicle trade-in and by any discounts or rebates that are applied to the buyer's balance due at time of sale. "Price paid" is also reduced by the value of any manufacturer's or other rebate that is contractually guaranteed to the buyer at time of sale, even though the rebate is received by the buyer at a later date.

[3/15/96; 3.11.4.7 NMAC - Rn, 3 NMAC 11.4.7, 12/14/00; A, 2/13/09]

3.11.4.8 VEHICLES SOLD UNDER CERTAIN AGREEMENTS ARE NOT TRADE-INS:

A "factory repurchase agreement" is an agreement under which a person who maintains a fleet of vehicles purchased through one or more dealers sells used vehicles from its fleet directly to the manufacturer. Because two separate transactions with different parties are occurring, the value of the vehicles sold by the fleet owner to the manufacturer under a factory repurchase agreement may not be deducted for purposes of the motor vehicle excise tax as an allowance for vehicles traded in when the fleet owner purchases new vehicles from a dealer.

[12/14/93, 7/31/96; 3.11.4.8 NMAC - Rn, 3 NMAC 11.4.8, 12/14/00]

3.11.4.9 VEHICLES SOLD TO THE UNITED STATES:

Because issuance of a certificate of title is not required with respect to vehicles sold to the United States, the motor vehicle excise tax does not apply to vehicles sold or transferred to the United States. This regulation applies to sales or transfers of vehicles on or after July 1, 1988.

[3/15/96; 3.11.4.9 NMAC - Rn, 3 NMAC 11.4.9, 12/14/00]

3.11.4.10 VEHICLES SOLD TO NATO FORCE:

Because issuance of a certificate of title is not required with respect to vehicles sold or transferred to a NATO force, the motor vehicle excise tax does not apply to vehicles sold or transferred to the NATO force. This regulation applies to sales or transfers of vehicles on or after July 1, 1995.

[3/15/96; 3.11.4.10 NMAC - Rn, 3 NMAC 11.4.10, 12/14/00]

3.11.4.11 VEHICLES SOLD TO A MEMBER OF A NATO FORCE:

The sale or transfer of a vehicle to a member of a NATO force is not subject to the motor vehicle excise tax by operation of the provisions of the North Atlantic Treaty. This regulation is retroactively applicable to sales or transfers of vehicles in New Mexico on or after July 1, 1995.

[7/31/96; 3.11.4.11 NMAC - Rn, 3 NMAC 11.4.11, 12/14/00]

3.11.4.12 RESPONSIBILITY OF AGENTS FOR PAYMENT OF TAX:

A. For the purposes of the motor vehicle excise tax, a "remittance agent" is a person who has contracted with the buyer of a vehicle to collect from the buyer and to report and remit on behalf of the buyer the motor vehicle excise tax due on the purchase. A remittance agent is responsible for correctly reporting the transaction and remitting the full amount of motor vehicle excise tax collected from the buyer.

B. Any excess tax remitted by the remittance agent will be refunded by the department to the buyer. If the remittance agent remits the full amount collected from the buyer but the amount collected and remitted is less than the tax due, the department will assess the buyer for the deficiency. If the remittance agent remits less than the full amount collected from the buyer and the amount remitted is less than the tax due, the remittance agent will be assessed for that part of the deficiency equal to the difference between the amount remitted by the remittance agent and the amount collected by the remittance agent from the buyer; the buyer will be assessed for any remaining amount due.

C. Failure of a remittance agent who is licensed in accordance with Sections 66-4-1 through 66-4-9 NMSA 1978 to remit the full amount of motor vehicle excise tax collected from the buyer is grounds for revocation of the agent’s license.

[3/31/99; 3.11.4.12 NMAC - Rn & A, 3 NMAC 11.4.12, 12/14/00]

3.11.4.13 TRADE-INS:

A. In determining taxable value, Section 7-14-4 NMSA 1978 allows the value of "vehicle trade-ins" to be deducted from the price paid for, or the reasonable value of, a purchased vehicle. Only the value of vehicles may be deducted but, except as provided otherwise in 3.11.4.13 NMAC, the value of any vehicle traded-in on the purchase of any other vehicle may be deducted. For example, the value of a horse traded-in for a vehicle may not be deducted from the price paid for, or reasonable value of, the vehicle. A horse is not a vehicle. As another example, the value of a recreational vehicle traded-in may be deducted in determining the taxable value of a purchased truck. Both are vehicles.

B. Because the motor vehicle excise tax is not imposed on manufactured homes, the value of a manufactured home trade-in on the purchase of a vehicle other than a manufactured home may not be deducted in determining the taxable value of the purchased vehicle. For the same reason, when the owner of a vehicle whose liability for the motor vehicle excise tax was suspended pursuant to Section 7-14-7.1 NMSA 1978 trades the vehicle in on the purchase of another vehicle, the owner may not deduct the value of the trade-in vehicle in the determining the taxable value of a purchased vehicle.

[10/29/99; 3.11.4.13 NMAC - Rn & A, 3 NMAC 11.4.13, 12/14/00]

3.11.4.14 REASONABLE VALUE:

With respect to transfers in which the parties are related and to other non-arm's-length transfers, the price paid in itself cannot be relied upon to indicate the market value of the vehicle transferred. In such cases the department will presume that the reasonable value of the vehicle transferred is no less than the average trade-in (wholesale) value for the make, model and year of the vehicle reported by the National Automobile Dealers Association (N.A.D.A.) at the time of transfer. For vehicles not covered by the applicable N.A.D.A. guide, the comparable value reported by any comparable guide may be used. The taxpayer may rebut the presumption by presenting evidence sufficient in the opinion of the director, motor vehicle division, to establish a lower value. Evidence that merely establishes or confirms the price paid is not evidence of reasonable value. 3.11.4.14 NMAC does not apply to voluntary transfers without consideration or to transfers by operation of law.

[3/31/00; 3.11.4.14 NMAC - Rn & A, 3 NMAC 11.4.14, 12/14/00]

3.11.4.15 GIFTS:

To establish that a voluntary transfer without consideration has occurred, the department may require the parties to complete affidavits under penalty of perjury that a voluntary transfer without consideration has occurred and to submit such other evidence as is appropriate under the circumstances of the transfer.

[3/31/00; 3.11.4.15 NMAC - Rn, 3 NMAC 11.4.15, 12/14/00]

3.11.4.16 SALE OF ATV SUBJECT TO TAX:

All-terrain vehicles (ATVs) are subject to the registration and titling provisions of the Motor Vehicle Code. Therefore the motor vehicle excise tax and not the gross receipts tax applies to the sale of ATVs.

[3.11.4.16 - N, 5/15/01]

CHAPTER 12: HIGHWAY USE TAXES AND FEES

PART 1: GENERAL PROVISIONS

3.12.1.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[9/14/96; 3.12.1.1 NMAC - Rn, 3 NMAC 12.1.1, 11/15/01]

3.12.1.2 SCOPE:

This part applies to (1) all registrants, owners and operators of motor vehicles with a declared gross weight of 12,000 pounds or more if the motor vehicles are used or intended to be used on New Mexico highways, whether or not the motor vehicles are registered with New Mexico and (2) all persons transporting motor vehicles in New Mexico if the person is either engaged in the business of transporting motor vehicles or is delivering the motor vehicle to its purchaser.

[9/14/96; 3.12.1.2 NMAC - Rn, 3 NMAC 12.1.2, 11/15/01]

3.12.1.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[9/14/96; 3.12.1.3 NMAC - Rn, 3 NMAC 12.1.3, 11/15/01]

3.12.1.4 DURATION:

Permanent.

[9/14/96; 3.12.1.4 NMAC - Rn, 3 NMAC 12.1.4, 11/15/01]

3.12.1.5 EFFECTIVE DATE:

9/14/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[9/14/96; 3.12.1.5 NMAC - Rn & A, 3 NMAC 12.1.5, 11/15/01]

3.12.1.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Weight Distance Tax Act, Trip Tax Act and Caravan Tax.

[9/14/96; 3.12.1.6 NMAC - Rn, 3 NMAC 12.1.6, 11/15/01]

3.12.1.7 DEFINITIONS:

[Reserved.]

[9/14/96; 3.12.1.7 NMAC - Rn, 3 NMAC 12.1.7, 11/15/01]

3.12.1.8 CITATION OF STATUTES:

Unless otherwise stated, all citations of statutes within Chapter 3.12 NMAC are to the New Mexico Statutes Annotated, 1978 (NMSA 1978).

[9/14/96; 3.12.1.8 NMAC - Rn & A, 3 NMAC 12.1.8, 11/15/01]

3.12.1.9 LEASE OPERATORS:

A. Any person named on a validly-issued tax identification card is responsible for maintaining all records which demonstrate that any and all highway use taxes and fees incurred by the operation of registered vehicles on New Mexico highways have been paid.

B. When a vehicle is leased and there is no validly-issued tax identification card for it, the following persons shall be held ultimately responsible for demonstrating that all applicable fees and taxes have been paid. In the event that such payment cannot be demonstrated, these same persons shall be held financially responsible for payment of all unpaid fees and taxes due, and the vehicle may be detained until such payment has been made.

(1) If the commercial motor carrier vehicle is owned by a company which is in the business of vehicle rental or leasing and the vehicle is leased to customers without a driver, the vehicle owner (lessor) is financially responsible.

(2) If the commercial motor carrier vehicle is owned by an owner/operator and both the owner/operator (lessor) and the vehicle falls under the employment or control and custody of the lessee, the lessee is financially responsible.

[2/1/93, 4/30/97; 3.12.1.9 NMAC - Rn, 3 NMAC 12.1.9, 11/15/01]

PART 2: DEFINITION [RESERVED]

PART 3: IMPOSITION OF WEIGHT DISTANCE TAX [RESERVED]

PART 4: RESPONSIBILITY FOR PAYMENT OF TAX [RESERVED]

PART 5: EXEMPTION FROM TAX

3.12.5.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[9/14/96; 3.12.5.1 NMAC - Rn, 3 NMAC 12.5.1, 11/15/01]

3.12.5.2 SCOPE:

This part applies to all registrants, owners and operators of motor vehicles with a declared gross weight of 26,000 pounds or more if the motor vehicles are used or intended to be used on New Mexico highways, whether or not the motor vehicles are registered with New Mexico.

[9/14/96; 3.12.5.2 NMAC - Rn, 3 NMAC 12.5.2, 11/15/01]

3.12.5.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[9/14/96; 3.12.5.3 NMAC - Rn, 3 NMAC 12.5.3, 11/15/01]

3.12.5.4 DURATION:

Permanent.

[9/14/96; 3.12.5.4 NMAC - Rn, 3 NMAC 12.5.4, 11/15/01]

3.12.5.5 EFFECTIVE DATE:

9/14/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[9/14/96; 3.12.5.5 NMAC - Rn & A, 3 NMAC 12.5.5, 11/15/01]

3.12.5.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Weight Distance Tax Act.

[9/14/96; 3.12.5.6 NMAC - Rn, 3 NMAC 12.5.6, 11/15/01]

3.12.5.7 DEFINITIONS:

[Reserved.]

[9/14/96; 3.12.5.7 NMAC - Rn, 3 NMAC 12.5.7, 11/15/01]

3.12.5.8 REGISTRATION OF SCHOOL BUSES REQUIRED:

Only those school buses registered under the provisions of Section 66-6-12 NMSA 1978, those buses used exclusively for the transportation of agricultural laborers registered under the provisions of Section 66-6-8 NMSA 1978, and those buses operated by religious or nonprofit charitable organizations registered under the

provisions of Section 66-6-5 NMSA 1978 are exempt from the imposition of the weight distance tax under Section 7-15A-5 NMSA 1978.

[9/20/93, 9/14/96; 3.12.5.8 NMAC - Rn & A, 3 NMAC 12.5.8, 11/15/01]

3.12.5.9 OFF HIGHWAY USE NOT SUBJECT TO TAX:

A. Any registrant, owner or operator of a motor vehicle who does not use that motor vehicle on the highways of this state, in whole or in part, is not subject to the tax imposed by Section 7-15A-3 NMSA 1978 to the extent that the motor vehicle is not operated on the highways of this state.

B. For the purposes of section 3.12.5.9 NMAC, "highways of this state" include those roads, highways, thoroughfares, streets and other ways generally open to the use of the public as a matter of right for the purpose of motor vehicle travel, regardless of whether it is temporarily closed for the purpose of construction, reconstruction, maintenance or repair, if the road, highway, thoroughfare, street or other way is or was constructed, reconstructed, maintained or repaired with the use of any federal, state or local government or Indian nation, tribe or pueblo government funding.

C. Any road, highway, thoroughfare, street or other way is not a "highway of this state" if it is or was constructed, reconstructed, maintained or repaired solely with private funds.

[9/20/93, 9/14/96; 3.12.5.9 NMAC - Rn & A, 3 NMAC 12.5.9, 11/15/01]

PART 6: TAX RATE FOR MOTOR VEHICLES OTHER THAN BUSES - REDUCTION OF RATE FOR ONE-WAY HAULS

3.12.6.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[9/14/96; 3.12.6.1 NMAC - Rn, 3 NMAC 12.6.1, 11/15/01]

3.12.6.2 SCOPE:

This part applies to all registrants, owners and operators of motor vehicles with a declared gross weight of 26,000 pounds or more if the motor vehicles are used or intended to be used on New Mexico highways, whether or not the motor vehicles are registered with New Mexico.

[9/14/96; 3.12.6.2 NMAC - Rn, 3 NMAC 12.6.2, 11/15/01]

3.12.6.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[9/14/96; 3.12.6.3 NMAC - Rn, 3 NMAC 12.6.3, 11/15/01]

3.12.6.4 DURATION:

Permanent.

[9/14/96; 3.12.6.4 NMAC - Rn, 3 NMAC 12.6.4, 11/15/01]

3.12.6.5 EFFECTIVE DATE:

9/14/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[9/14/96; 3.12.6.5 NMAC - Rn & A, 3 NMAC 12.6.5, 11/15/01]

3.12.6.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Weight Distance Tax Act.

[9/14/96; 3.12.6.6 NMAC - Rn, 3 NMAC 12.6.6, 11/15/01]

3.12.6.7 DEFINITIONS:

For the purposes of this part (3.12.6 NMAC):

A. "empty miles" means the number of miles traveled on New Mexico roads when the vehicle or vehicle combination is transporting no load whatsoever;

B. "loaded miles" means the number of miles traveled on New Mexico roads when the vehicle or vehicle combination is transporting any load, regardless of whether a fee is charged for the transportation; and

C. "one-way hauler" means a vehicle described in Subsection B of 7-15A-6 NMSA 1978.

[9/20/93, 9/14/96; 3.12.6.7 NMAC - Rn & A, 3 NMAC 12.6.7, 11/15/01]

3.12.6.8 QUALIFICATION AS ONE-WAY HAULER:

A. At the time that a vehicle is registered or reregistered under the provisions of the Motor Vehicle Code, the registrant, owner or operator of the vehicle may identify the vehicle as a one-way hauler if the registrant, owner or operator reasonably believes it

will be qualified during that registration year for the rate reduction provided by Subsection B of Section 7-15A-6 NMSA 1978.

B. Only those vehicles that the registrant, owner or operator can reasonably expect at the time of registration or reregistration to travel forty-five percent (45%) or more of all miles traveled in New Mexico to be traveled empty of all load may be qualified as one-way haul vehicles.

C. Identification of a specific vehicle at the time of registration or reregistration as being qualified for the rate reduction provided by Subsection B of Section 7-15A-6 NMSA 1978 does not entitle the registrant, owner or operator of the vehicle to use the rate reduction in any reporting period that the vehicle does not travel forty-five percent (45%) or more of all New Mexico miles traveled empty of all load.

[9/20/93, 9/14/96; 3.12.6.8 NMAC - Rn & A, 3 NMAC 12.6.8, 11/15/01]

3.12.6.9 DISQUALIFICATION AS ONE-WAY HAULER:

A. If any registrant, owner or operator has identified one or more vehicles as one-way haulers for a registration year, and during that year any identified vehicle does not qualify for the rate reduction provided by Subsection B of Section 7-15A-6 NMSA 1978 for at least three (3) reporting periods during the registration period, that registrant, owner or operator may not identify that vehicle as a one-way hauler for the subsequent registration year.

B. If a vehicle is disqualified as a one-way hauler under the provisions of section 3.12.6.9 NMAC for any registration year, but does travel at least forty-five percent (45%) of all miles traveled in New Mexico are empty miles, the registrant, owner or operator may file an amended return or returns and claim for refund for the difference between the tax paid and the tax that would have been paid had the vehicle been qualified for the reduced rates provided by Subsection B of Section 7-15A-6 NMSA 1978.

[9/20/93, 9/14/96; 3.12.6.9 NMAC - Rn & A, 3 NMAC 12.6.9, 11/15/01]

3.12.6.10 ONE-WAY HAULERS - REPORTING REQUIREMENTS:

A. For each one-way hauler, the total number of empty miles in New Mexico and the total number of loaded miles traveled in New Mexico shall be reported to the department on a quarterly basis on forms supplied by the department, unless the taxpayer has qualified for annual reporting under Section 7-15A-9 NMSA 1978.

B. For each reporting period during the registration year, tax shall be due at the rates specified in Subsection A of 7-15A-6 NMSA 1978, and not the reduced rates specified in Subsection B of 7-15A-6 NMSA 1978, for each vehicle whose reported percentage of empty miles traveled on New Mexico roads is less than forty-five percent (45%).

[9/20/93, 9/14/96; 3.12.6.10 NMAC - Rn & A, 3 NMAC 12.6.10, 11/15/01]

3.12.6.11 ONE-WAY HAULERS - REQUIRED RECORDS:

One-way haulers shall maintain the following records on a reporting period basis. All records shall be referenced by vehicle unit number:

A. Vehicle trip mileage records for each vehicle operated in New Mexico. The mileage records shall reflect the total empty miles and the total loaded miles traveled on New Mexico roads. Accurate trip mileage records indicating empty and loaded miles may include:

(1) accurate map mileage for each trip;

(2) hubometer or odometer readings; or

(3) vehicle-specific log books.

B. Vehicle itineraries including the origin and destination point of each trip, and the routes taken.

[9/20/93, 9/14/96; 3.12.6.11 NMAC - Rn, 3 NMAC 12.6.11, 11/15/01]

PART 7: TAX RATE FOR BUSES [RESERVED]

PART 8: MILEAGE AND WEIGHTS TO BE USED FOR COMPUTING TAX [RESERVED]

PART 9: PAYMENT TO DEPARTMENT - RECORD-KEEPING REQUIREMENTS

3.12.9.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[9/14/96; 3.12.9.1 NMAC - Rn, 3 NMAC 12.9.1, 11/15/01]

3.12.9.2 SCOPE:

This part applies to all registrants, owners and operators of motor vehicles with a declared gross weight of 26,000 pounds or more if the motor vehicles are used or intended to be used on New Mexico highways, whether or not the motor vehicles are registered with New Mexico.

[9/14/96; 3.12.9.2 NMAC - Rn, 3 NMAC 12.9.2, 11/15/01]

3.12.9.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[9/14/96; 3.12.9.3 NMAC - Rn, 3 NMAC 12.9.3, 11/15/01]

3.12.9.4 DURATION:

Permanent.

[9/14/96; 3.12.9.4 NMAC - Rn, 3 NMAC 12.9.4, 11/15/01]

3.12.9.5 EFFECTIVE DATE:

9/14/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[9/14/96; 3.12.9.5 NMAC - Rn & A, 3 NMAC 12.9.5, 11/15/01]

3.12.9.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Weight Distance Tax Act.

[9/14/96; 3.12.9.6 NMAC - Rn, 3 NMAC 12.9.6, 11/15/01]

3.12.9.7 DEFINITIONS:

[RESERVED]

[9/14/96; 3.12.9.7 NMAC - Rn, 3 NMAC 12.9.7, 11/15/01]

3.12.9.8 LEASE OPERATIONS:

A. Any person named on a valid tax identification card issued by the department is responsible for maintaining all records which demonstrate that any and all highway use taxes and fees incurred by the operation of registered vehicles on New Mexico highways have been paid.

B. When a vehicle is leased and there is no valid tax identification card issued by the department for it, the following persons shall be held ultimately responsible for demonstrating that all applicable fees and taxes have been paid. In the event that such payment cannot be demonstrated, these same persons shall be held financially responsible for payment of all unpaid fees and taxes due, and the vehicle may be detained until such payment has been made.

(1) If the commercial motor carrier vehicle is owned by a company which is in the business of vehicle rental or leasing and the vehicle is leased to customers without a driver, the vehicle owner (lessor) is financially responsible.

(2) If the commercial motor carrier vehicle is owned by an owner/operator and both the owner/operator (lessor) and the vehicle falls under the employment or control and custody of the lessee, the lessee is financially responsible.

[9/20/93, 9/14/96; 3.12.9.8 NMAC - Rn, 3 NMAC 12.9.8, 11/15/01]

3.12.9.9 WEIGHT DISTANCE TAX RETURN:

The weight distance tax return shall be submitted on forms provided or approved by the department and must be signed by the taxpayer or his authorized agent.

[9/20/93, 9/14/96; 3.12.9.9 NMAC - Rn, 3 NMAC 12.9.9, 11/15/01]

3.12.9.10 DETERMINATION OF TIMELINESS:

Determination of timeliness for notices, returns, applications and payments of any tax or fee imposed under the Weight Distance Tax Act will be made in conformance with the requirements of Section 7-1-9 NMSA 1978 and the regulations thereunder.

[9/20/93, 9/14/96; 3.12.9.10 NMAC - Rn &A, 3 NMAC 12.9.10, 11/15/01]

3.12.9.11 CHANGE OF ADDRESS - NOTICES:

Taxpayers must inform the department of any change of address. Any notice to a taxpayer is presumed to be effective and binding on that taxpayer when it is sent to the last address shown in the department's records.

[9/20/93, 9/14/96; 3.12.9.11 NMAC - Rn, 3 NMAC 12.9.11, 11/15/01]

PART 10: ANNUAL FILING FEE

3.12.10.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[9/14/96; 3.12.10.1 NMAC - Rn, 3 NMAC 12.10.1, 11/15/01]

3.12.10.2 SCOPE:

This part applies to all registrants, owners and operators of motor vehicles with a declared gross weight of 26,000 pounds or more if the motor vehicles are used or

intended to be used on New Mexico highways, whether or not the motor vehicles are registered with New Mexico.

[9/14/96; 3.12.10.2 NMAC - Rn, 3 NMAC 12.10.2, 11/15/01]

3.12.10.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[9/14/96; 3.12.10.3 NMAC - Rn, 3 NMAC 12.10.3, 11/15/01]

3.12.10.4 DURATION:

Permanent.

[9/14/96; 3.12.10.4 NMAC - Rn, 3 NMAC 12.10.4, 11/15/01]

3.12.10.5 EFFECTIVE DATE:

9/14/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[9/14/96; 3.12.10.5 NMAC - Rn & A, 3 NMAC 12.10.5, 11/15/01]

3.12.10.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Weight Distance Tax Act.

[9/14/96; 3.12.10.6 NMAC - Rn, 3 NMAC 12.10.6, 11/15/01]

3.12.10.7 DEFINITIONS:

[Reserved.]

[9/14/96; 3.12.10.7 NMAC - Rn, 3 NMAC 12.10.7, 11/15/01]

3.12.10.8 [RESERVED]

[9/20/93, 9/14/96; 3.12.10.8 NMAC - Rn & A, 3 NMAC 12.10.8, 11/15/01, Repealed, 6/15/04]

3.12.10.9 [RESERVED]

[9/20/93, 9/14/96; 3.12.10.9 NMAC - Rn, 3 NMAC 12.10.9, 11/15/01, Repealed, 6/15/04]

PART 11: ANNUAL SAFETY AND TRAINING FEE - SCHEDULE - DISTRIBUTION

3.12.11.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[9/14/96; 3.12.11.1 NMAC - Rn, 3 NMAC 12.11.1, 11/15/01]

3.12.11.2 SCOPE:

This part applies to all registrants, owners and operators of motor vehicles with a declared gross weight of 26,000 pounds or more if the motor vehicles are used or intended to be used on New Mexico highways, whether or not the motor vehicles are registered with New Mexico.

[9/14/96; 3.12.11.2 NMAC - Rn, 3 NMAC 12.11.2, 11/15/01]

3.12.11.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[9/14/96; 3.12.11.3 NMAC - Rn, 3 NMAC 12.11.3, 11/15/01]

3.12.11.4 DURATION:

Permanent.

[9/14/96; 3.12.11.4 NMAC - Rn, 3 NMAC 12.11.4, 11/15/01]

3.12.11.5 EFFECTIVE DATE:

9/14/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[9/14/96; 3.12.11.5 NMAC - Rn & A, 3 NMAC 12.11.5, 11/15/01]

3.12.11.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Weight Distance Tax Act.

[9/14/96; 3.12.11.6 NMAC - Rn, 3 NMAC 12.11.6, 11/15/01]

3.12.11.7 DEFINITIONS:

[Reserved.]

[9/14/96; 3.12.11.7 NMAC - Rn, 3 NMAC 12.11.7, 11/15/01]

3.12.11.8 [RESERVED]

[9/20/93, 9/14/96; 3.12.11.8 NMAC - Rn & A, 3 NMAC 12.11.8, 11/15/01, Repealed, 6/15/04]

PART 12: WEIGHT DISTANCE TAX IDENTIFICATION PERMIT

3.12.12.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.12.12.1 NMAC - Rp, 3.12.12.1 NMAC, 9/25/2018]

3.12.12.2 SCOPE:

This part applies to all registrants, owners and operators of motor vehicles with a declared gross weight of 26,001 pounds or more if the motor vehicles are used or intended to be used on New Mexico highways, when the motor vehicle is registered with New Mexico.

[3.12.12.2 NMAC - Rp, 3.12.12.2 NMAC, 9/25/2018]

3.12.12.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.12.12.3 NMAC - Rp, 3.12.12.3 NMAC, 9/25/2018]

3.12.12.4 DURATION:

Permanent.

[3.12.12.4 NMAC - Rp, 3.12.12.4 NMAC, 9/25/2018]

3.12.12.5 EFFECTIVE DATE:

September 25, 2018, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.12.12.5 NMAC - Rp, 3.12.12.5 NMAC, 9/25/2018]

3.12.12.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Weight Distance Tax Act.

[3.12.12.6 NMAC - Rp, 3.12.12.6 NMAC, 9/25/2018]

3.12.12.7 DEFINITIONS:

[**RESERVED**]

[3.12.12.7 NMAC - Rp, 3.12.12.7 NMAC, 9/25/2018]

3.12.12.8 WEIGHT DISTANCE TAX IDENTIFICATION PERMIT TO BE ISSUED:

A. Upon receipt of an approved application by a motor carrier, the department will issue weight distance tax identification permit(s) to the motor carrier for the number of vehicles they own that are subject to the weight distance tax. The motor carrier will be required to identify each permit they receive to a specific vehicle by indicating the unit and vehicle identification numbers on the face of the permit.

B. The weight distance tax identification permit is an administrative certificate that will be issued on non-reproducible paper to motor carriers who submit an approved application.

C. Weight distance tax identification permits issued by the department will only be valid for the calendar year for which they are issued.

[3.12.12.8 NMAC - Rp, 3.12.12.8 NMAC, 9/25/2018]

3.12.12.9 WEIGHT DISTANCE TAX IDENTIFICATION PERMIT - ADMINISTRATIVE FEE:

Any person that applies for and receives a weight distance tax identification permit shall pay an administrative fee. The administrative fee shall be ten dollars ($10.00) upon the effective date of this regulation. The administrative fee may be increased or decreased by the secretary after due consideration of the costs of issuing and administering weight distance tax identification permits and of enforcing permits use. Persons who have current weight distance tax identification permits will be notified if the secretary changes the fee at least 30 days prior to effective date of a change in the fee. The administrative fee will be deposited in the weight distance tax identification permit fund to pay the costs of issuing and administering weight distance tax identification permits and costs incurred by the department, the motor transportation division of the department of public safety and the department of transportation to enforce the use of such permits by motor carriers in accordance with the Weight Distance Tax Act. The administrative fee will be imposed for every permit, including annual renewals and replacements.

[3.12.12.9 NMAC - Rp. 3.12.12.9, 9/25/2018]

PART 13: CIVIL PENALTIES - FAILURE TO CORRECTLY REPORT

3.12.13.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.12.13.1 NMAC - N, 3/15/10]

3.12.13.2 SCOPE:

This part applies to all registrants, owners and operators of motor vehicles with a declared gross weight of 26,001 pounds or more if the motor vehicles are used or intended to be used on New Mexico highways, when the motor vehicle is registered with New Mexico.

[3.12.13.2 NMAC - N, 3/15/10]

3.12.13.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.12.13.3 NMAC - N, 3/15/10]

3.12.13.4 DURATION:

Permanent.

[3.12.13.4 NMAC - N, 3/15/10]

3.12.13.5 EFFECTIVE DATE:

3/15/10, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.12.13.5 NMAC - N, 3/15/10]

3.12.13.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Weight Distance Tax Act.

[3.12.13.6 NMAC - N, 3/15/10]

3.12.13.7 DEFINITIONS:

[Reserved.]

3.12.13.8 WHEN CIVIL PENALTIES ARE IMPOSED:

The civil penalties under Section 7-15A-16 NMSA 1978 will be imposed only in connection with audits conducted by the New Mexico taxation and revenue department showing that a commercial motor carrier has underreported declared gross vehicle weight or miles driven in New Mexico. The types of audits include, but are not limited to, field audits and limited scope audits. Reporting of additional gross vehicle weight or miles driven in New Mexico on amended returns prepared by the taxpayer or taxpayer's representative and managed audits will not be subject to the civil penalties under Section 7-15A-16 NMSA 1978.

[3.12.13.8 NMAC - N, 3/15/10]

PART 14-98: [RESERVED]

PART 99: SPECIAL FUEL USER PERMITS

3.12.99.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P. O. Box 630, Santa Fe, NM 87504-0630.

[3.12.99.1 NMAC - N/E, 9/25/2018; N, 11/13/2018]

3.12.99.2 SCOPE:

This part applies to commercial motor carriers using special fuel and having a gross vehicle weight in excess of twenty-six thousand pounds operating in the state of New Mexico.

[3.12.99.2 NMAC - N/E, 9/25/2018; N, 11/13/2018]

3.12.99.3 STATUTORY AUTHORITY:

Sections 9-5-1, 9-11-6.2, 7-16A-2.1, 7-16A-19 and 7-16A-19.1 NMSA 1978.

[3.12.99.3 NMAC - N/E, 9/25/2018; N, 11/13/2018]

3.12.99.4 DURATION:

Permanent.

[3.12.99.4 NMAC - N/E, 9/25/2018; N, 11/13/2018]

3.12.99.5 EFFECTIVE DATE:

November 13, 2018, unless a later date is cited at the end of a section.

[3.12.99.5 NMAC - N/E, 9/25/2018; N, 11/13/2018]

3.12.99.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the Special Fuel Use Permits provisions of Chapter 7, Article 16A of NMSA 1978.

[3.12.99.6 NMAC - N/E, 9/25/2018; N, 11/13/2018]

3.12.99.7 DEFINITIONS:

As used in this rule:

A. "Department" has the same meaning as defined in Subsection F of 7-16A-2 NMSA 1978.

B. "International border commercial zone" has the same meaning as defined in Subsection D of

7-16A-19.1 NMSA 1978.

C. "Person" has the same meaning as defined in Subsection K of 7-16A-2 NMSA 1978.

D. "Special fuel user" has the same meaning as defined in Subsection R of 7-16A-2 NMSA 1978.

[3.12.99.7 NMAC - N/E, 9/25/2018; N, 11/13/2018]

3.12.99.8 TEMPORARY SPECIAL FUEL USER PERMIT:

A. On a form provided by the department, a special fuel user whose vehicle is not registered with the department shall acquire from the department, before operating the vehicle on New Mexico highways, a temporary special fuel user permit valid for one calendar day only or for one entry into and one exit out of New Mexico.

B. A special fuel user whose vehicle is not registered with the department, that applies for a temporary special fuel user permit valid for one calendar day only, for one entry into and one exit out of New Mexico, shall pay five dollars ($5.00) for each motor vehicle.

C. A special fuel user operating under a temporary special fuel user permit shall pay a special fuel user tax of five cents ($.05) per mile for each mile traveled in New Mexico.

[3.12.99.8 NMAC - N/E, 9/25/2018; N, 11/13/2018]

3.12.99.9 BORDER CROSSING SPECIAL FUEL USER PERMIT:

A. A special fuel user who operates a commercial motor carrier vehicle registered or titled in Mexico, who is engaged primarily in movement across the New Mexico-Mexico border and into or from an international border commercial zone and whose exclusive use of New Mexico highways is limited to an area within ten miles of the New Mexico-Mexico border, may apply for, on a form approved by the department, a quarterly, semi-annual or annual border crossing special fuel user permit.

B. The department shall issue the permit if it approves the application and upon payment of the fee for the border crossing special fuel user permit.

C. The fee for the border crossing special fuel user permit shall be:

(1) for a quarterly permit, one hundred twenty-five dollars ($125);

(2) for a semi-annual permit, two hundred dollars ($200); and

(3) for an annual permit, three hundred fifty dollars ($350).

D. A special fuel user holding a valid border crossing special fuel user permit and operating within the specified 10 miles of the New Mexico - Mexico border, as provided above, shall be exempt from the five dollar ($5.00) temporary special fuel user permit specified in Paragraph (1) of Subsection A and Subsection C of 7-16A-19 NMSA 1978 and exempt from the five cents ($0.05) per mile special fuel user tax pursuant to Subsections E and F of 7-16A-2.1 NMSA 1978.

E. A special fuel user holding a valid border crossing special fuel user permit and operating outside the specified 10 miles of the New Mexico-Mexico border, shall acquire a temporary special fuel user permit for a fee of five dollars ($5.00) and shall pay the special fuel user tax of five cents ($0.05) per mile for each mile traveled in New Mexico.

[3.12.99.9 NMAC - N/E, 9/25/2018; N, 11/13/2018]

3.12.99.10 VIOLATION OF THE SPECIAL FUELS SUPPLIER TAX ACT:

A. It is a violation of the special fuels supplier tax act for a person to act as a temporary special fuel user without possessing a valid temporary special fuel user permit issued by the department.

B. It is a violation of the special fuels supplier tax act for a person holding a valid border crossing special fuel user permit to travel in the motor carrier vehicle for which the permit was issued on New Mexico highways, outside of the area in which the permit authorizes travel, unless the person may otherwise under law engage in that travel.

C. In addition to any other penalty that may apply, a person who violates the terms of use of a border crossing special fuel user permit, is subject to a fine of three hundred dollars ($300).

[3.12.99.10 NMAC - N/E, 9/25/2018; N, 11/13/2018]

3.12.99.11 REVOCATION OF SPECIAL FUEL USER PERMITS:

A. After notice and a hearing, the department may revoke the border crossing special fuel user permit of a special fuel user found to have violated the special fuels supplier tax act.

B. The hearing shall be conducted pursuant to the tax administration act.

[3.12.99.11 NMAC - N/E, 9/25/2018; N, 11/13/2018]

PART 100: TRIP TAX - GENERAL PROVISIONS

3.12.100.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[9/14/96; 3.12.100.1 NMAC - Rn, 3 NMAC 12.100.1, 11/15/01]

3.12.100.2 SCOPE:

This part applies to all registrants, owners and operators of motor vehicles with a declared gross weight of 12,000 pounds or more if the motor vehicles are used or intended to be used on New Mexico highways, whether or not the motor vehicles are registered with New Mexico.

[9/14/96; 3.12.100.2 NMAC - Rn, 3 NMAC 12.100.2, 11/15/01]

3.12.100.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[9/14/96; 3.12.100.3 NMAC - Rn, 3 NMAC 12.100.3, 11/15/01]

3.12.100.4 DURATION:

Permanent.

[9/14/96; 3.12.100.4 NMAC - Rn, 3 NMAC 12.100.4, 11/15/01]

3.12.100.5 EFFECTIVE DATE:

9/14/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[9/14/96; 3.12.100.5 NMAC - Rn & A, 3 NMAC 12.100.5, 11/15/01]

3.12.100.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Trip Tax Act.

[9/14/96; 3.12.100.6 NMAC - Rn, 3 NMAC 12.100.6, 11/15/01]

3.12.100.7 DEFINITIONS:

As used in Parts 3.12.100 and 3.12.101 NMAC:

A. "custom harvesting operation" means the temporary provision of agricultural harvesting implements, with or without operators, for consideration to a person engaged in the business of farming or ranching;

B. "foreign-based commercial motor vehicle" means a commercial motor vehicle that is registered and titled in a jurisdiction other than New Mexico;

C. "owner" means the person who holds legal title to the foreign-based commercial motor vehicle; and

D. "person" means any individual or any other legal entity.

[2/9/95, 9/14/96; 3.12.100.7 NMAC - Rn & A, 3 NMAC 12.100.7, 11/15/01]

3.12.100.8 FEDERALLY LICENSED CUSTOM BROKERS ARE OPERATORS:

A. For the purposes of Section 7-15-3.1 NMSA 1978, a federally licensed customs broker is an operator and may purchase prepaid trip permits for use by any person performing transportation services on behalf of the federally licensed customs broker. Prepaid trip tax permits will be issued in the broker's name.

B. If a prepaid trip tax permit is used by a person other than the broker, the person shall have in his possession a document that explains the relationship between the

person and the broker. This document shall be available for inspection by any authorized department employee upon request of that authorized employee.

[2/9/95, 9/14/96; 3.12.100.8 NMAC - Rn & A, 3 NMAC 12.100.8, 11/15/01]

PART 101: TRIP TAX - PERMITS

3.12.101.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[9/14/96; 3.12.101.1 NMAC - Rn, 3 NMAC 12.101.1, 11/15/01]

3.12.101.2 SCOPE:

This part applies to all registrants, owners and operators of motor vehicles with a declared gross weight of 12,000 pounds or more if the motor vehicles are used or intended to be used on New Mexico highways, whether or not the motor vehicles are registered with New Mexico.

[9/14/96; 3.12.101.2 NMAC - Rn, 3 NMAC 12.101.2, 11/15/01]

3.12.101.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[9/14/96; 3.12.101.3 NMAC - Rn, 3 NMAC 12.101.3, 11/15/01]

3.12.101.4 DURATION:

Permanent.

[9/14/96; 3.12.101.4 NMAC - Rn, 3 NMAC 12.101.4, 11/15/01]

3.12.101.5 EFFECTIVE DATE:

9/14/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[9/14/96; 3.12.101.5 NMAC - Rn & A, 3 NMAC 12.101.5, 11/15/01]

3.12.101.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Trip Tax Act.

[9/14/96; 3.12.101.6 NMAC - Rn, 3 NMAC 12.101.6, 11/15/01]

3.12.101.7 DEFINITIONS:

[Reserved.]

[9/14/96; 3.12.101.7 NMAC - Rn, 3 NMAC 12.101.7, 11/15/01]

3.12.101.8 PREPAID TRIP TAX PERMITS - APPLICATION - ISSUANCE OF PERMITS:

A. Only registrants, owners or operators of foreign-based commercial motor vehicles may apply for prepaid trip tax permits.

B. Prepaid trip tax permits shall be applied for by submitting a completed "prepaid trip tax permit application" form provided by the department or a reproduction of that form. Permits may be applied for in the amount of fifty dollars ($50.00) and exact multiples thereof. No application shall be approved prior to the applicant's payment of the appropriate permit fee. The department will accept only cashier's checks or other certified funds stated in United States dollars in payment of a prepaid trip tax permit.

C. Applicants may apply for more than one prepaid trip tax permit.

D. Incomplete applications will not be approved and permits will not be issued. The applicant may complete and re-submit the application or, with respect to any payment made by the applicant with respect to the rejected application, may request either a refund of the fee submitted or application of it to another tax liability owed by the applicant to New Mexico.

E. With the receipt of the appropriate fee and a completed application form, the department will issue prepaid trip tax permits to the applicant.

F. A prepaid trip tax permit expires six months after the date of issuance.

[2/9/95, 9/14/96; 3.12.101.8 NMAC - Rn, 3 NMAC 12.101.8, 11/15/01]

3.12.101.9 PREPAID TRIP TAX PERMITS - CONDITIONS OF USE - VOIDING OF PERMITS:

A. Prepaid trip tax permits may be used in any vehicle under the control of the registrant, owner or operator, but may not be used by any person not specifically named on the permit, except as provided 3.12.100.8 NMAC.

B. The prepaid trip tax permit must be carried in the vehicle. The prepaid trip tax permit must be presented to an authorized department employee on request of the authorized employee.

C. Any violation of the conditions of the prepaid trip tax permit is cause for voiding of the permit in addition to any other penalties provided by law. If a permit is voided because of violation of the conditions of use, any fee balance remaining on the permit is also voided and shall not be refunded.

D. Once the balance of a prepaid trip tax permit is reduced to zero, the permit is void.

[2/9/95, 9/14/96; 3.12.101.9 NMAC - Rn & A, 3 NMAC 12.101.9, 11/15/01]

3.12.101.10 PREPAID TRIP TAX PERMITS - GENERAL ADMINISTRATION:

A. The prepaid trip tax permit may be used to pay the following:

(1) Trip tax computed on the miles to be traveled in New Mexico and the gross vehicle weight or combination gross vehicle weight, in accordance with Subsection B of Section 7-15-3.1 NMSA 1978.

(2) If the vehicle is special fuel powered and has a gross vehicle weight or combination gross vehicle weight of more than 26,000 pounds:

(a) the special fuel permit fee of $5.00 for each trip; and

(b) the special fuel tax of five cents (.05) for each mile traveled in New Mexico.

B. In order to effectively administer the prepaid trip tax permit program, the permit fees charged against the permit shall be rounded to the nearest whole dollar. If the charge is more than 50 cents, then the amount shall be rounded up; if the charge is 50 cents or less, the amount shall be rounded down.

C. Example: A commercial motor carrier vehicle propelled by special fuel, with a gross vehicle weight of 55,000 pounds has a prepaid trip tax permit. At the New Mexico port of entry, the driver declares an intention to travel 60 miles into New Mexico and then return to the point of origin. The total fees are calculated as follows:

Trip tax (60 miles x 2 x $.11/mile)	$ 13.20
Temporary special fuel user permit	5.00
Special fuel excise tax (60 miles x 2 x $.05/mile)	6.00
Total	$ 24.20
Total charged against prepaid trip tax permit	$ 24.00

D. Once the balance of a prepaid trip tax permit is reduced to zero, the permit expires and is no longer valid.

[2/9/95, 9/14/96; 3.12.101.10 NMAC - Rn & A, 3 NMAC 12.101.10, 11/15/01]

3.12.101.11 PREPAID TRIP TAX PERMITS - REFUND POLICY:

Except as provided in 3.12.101.8 NMAC, no refunds will be made for unused prepaid trip tax permit balances, whether the permit is lost, expires or is voided. Unused balances may not be transferred to any other prepaid trip tax permit.

[2/9/95, 9/14/96; 3.12.101.11 NMAC - Rn & A, 3 NMAC 12.101.11, 11/15/01]

CHAPTER 13: BUSINESS TAX CREDITS

PART 1: GENERAL PROVISIONS

3.13.1.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.13.1.1 NMAC - Rp, 3.13.1.1 NMAC, 2/25/2025]

3.13.1.2 SCOPE:

This part applies to all persons applying or claiming a business tax credit in New Mexico.

[3.13.1.2 NMAC - Rp, 3.13.1.2 NMAC, 2/25/2025]

3.13.1.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.13.1.3 NMAC - Rp, 3.13.1.3 NMAC, 2/25/2025]

3.13.1.4 DURATION:

Permanent.

[3.13.1.4 NMAC - Rp, 3.13.1.4 NMAC, 2/25/2025]

3.13.1.5 EFFECTIVE DATE:

February 25, 2025, unless a later date is cited at the end of a section, in which case the

later date is the effective date.

[3.13.1.5 NMAC - Rp, 3.13.1.1 NMAC, 2/25/2025]

3.13.1.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of tax credit acts and tax credits which are regulated specifically under Chapter 3 Article 13 NMAC.

[3.13.1.6 NMAC - Rp, 3.13.1.6 NMAC, 2/25/2025]

3.13.1.7 DEFINITIONS:

[RESERVED]

3.13.1.8 CITATION OF STATUTES:

Unless otherwise stated, all citations to statutes in Chapter 3 Article 13 NMAC are to the New Mexico Statutes Annotated 1978.

[3.13.1.8 NMAC - Rp, 3.13.1.8 NMAC, 2/25/2025]

PART 2: INVESTMENT TAX CREDIT

3.13.2.1 ISSUING AGENCY:

Taxation and Revenue Department.

[3.13.2.1 NMAC - N, 4/28/2000]

3.13.2.2 SCOPE:

This part applies to all persons carrying on a manufacturing operation in New Mexico and to any other person eligible to obtain the investment tax credit.

[3.13.2.2 NMAC - N, 4/28/2000]

3.13.2.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.13.2.3 NMAC - N, 4/28/2000]

3.13.2.4 DURATION:

Permanent.

[3.13.2.4 NMAC - N, 4/28/2000]

3.13.2.5 EFFECTIVE DATE:

April 28, 2000, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.13.2.5 NMAC - N, 4/28/2000]

3.13.2.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Investment Credit Act.

[3.13.2.6 NMAC - N, 4/28/2000]

3.13.2.7 DEFINITIONS; "SUBJECT TO DEPRECIATION" DEFINED:

For purposes of Section 7-9A-3 NMSA 1978, "subject to depreciation" means the taxpayer's federal income tax return must include a depreciation expense with respect to equipment for which an investment credit is sought or claimed. Equipment depreciated under the accelerated cost recovery system, I.R.C. Section 168, and property for which the taxpayer makes an election under Internal Revenue Code Section 179 are "subject to depreciation"

[3.13.2.7 NMAC - Rp 3 NMAC 13.6.7, 4/28/2000]

3.13.2.8 INDUSTRIAL REVENUE BONDS

A. Any equipment that is placed into service on or after January 1, 1991, under the provisions of either the Industrial Revenue Bond Act or the County Industrial Revenue Bond and that otherwise meets the requirements of the Investment Credit Act is "qualified equipment" for the purpose of the Investment Credit Act.

B. Tangible personal property placed into service prior to January 1, 1991, under the provisions of either the Industrial Revenue Bond Act or the County Industrial Revenue Bond Act is not "equipment" for the purpose of the Investment Credit Act.

[3.13.2.8 NMAC - Rp 3 NMAC 13.6.8, 4/28/2000]

3.13.2.9 ITEMS NOT "EQUIPMENT":

Tangible personal property which is not a machine, mechanism or tool, or a component or fitting thereof, is not "equipment" for the purpose of the Investment Credit Act.

Accordingly such items as furniture, shelving and supplies are not "equipment". Equipment that is neither essential to nor used in conjunction with the manufacturing plant will not qualify for the investment credit, even if that equipment is physically located in the plant. Nonqualifying equipment may include, but is not limited to: coffee makers, kitchen equipment used in an employee cafeteria and televisions or radios used in an employee lounge or in a reception area.

[3.13.2.9 NMAC - Rp 3 NMAC 13.6.9, 4/28/2000]

3.13.2.10 ITEMS WHICH MAY BE INCLUDED AS "EQUIPMENT":

The term "manufacturing operation" is defined as a plant where personnel perform production tasks "in conjunction with equipment not previously existing at the site" to produce goods. Equipment need not be employed exclusively in the manufacturing process as long as the equipment is physically located in the plant and is used in conjunction with the production of goods. Therefore, equipment used in conjunction with the production of goods may include, but is not limited to, such items as manufacturing process equipment, lights, boilers, air conditioners, smoke detectors and other equipment essential to maintaining the proper climate for the manufacturing process, packaging equipment used to put the manufactured product in marketable form, warehousing equipment and computers used to control the manufacturing process or to inventory and schedule the shipping of manufactured products.

[3.13.2.10 NMAC - Rp 3 NMAC 13.6.10, 4/28/2000]

3.13.2.11 EQUIVALENT OF ONE FULL-TIME EMPLOYEE:

To calculate the number of full-time-equivalent employees, add the average weekly hours worked or expected to be worked by all employees whose regular weekly work hours are or are expected to be less than forty hours. Divide the total by 40 and round down to the nearest whole number. The rounded number plus the number of employees who work or are expected to work an average of 40 or more hours per week is the number of full-time equivalent employees.

[3.13.2.11 NMAC - Rp 3 NMAC 13.7.8, 4/28/2000]

3.13.2.12 EMPLOYMENT INCREASE ESSENTIAL:

A. The investment credit is available only to manufacturers who increase employment in the relevant periods. Manufacturers who do not meet the employment requirement do not qualify for the investment credit, regardless of the amount of equipment acquired.

B. Example:

(1) X is a manufacturer who establishes a new manufacturing operation in New Mexico on August 1 of year 1. Prior to establishing this plant, X had no operations or employees in New Mexico. Beginning with June 15 of year 1 through August 1, X hires 20 full-time equivalent employees to work in that plant. On January 15 of year 2, X submits an application for an investment credit with respect to equipment placed in the new plant as of August 1. Since on January 15 of year 1 X had no employees in New Mexico, X may count all 20 employees in meeting the employment requirement for this application.

(2) X acquires and installs additional new equipment during the period September 1 through December 15 of year 1, during which time X hires two more full-time equivalent employees. Unfortunately sales are below X's expectations and so in April of year 2 X lays off 3 full-time employees. In August of year 2, X files a second application for an investment credit with respect to the additional equipment. None of the 20 employees counted in the first application may be counted for purposes of meeting the employment requirement in the second application. Since X has in fact decreased employment over the relevant time period, X does not meet the employment requirement and X's application for a second credit will be denied.

[3.13.2.12 NMAC - N, 4/28/2000]

3.13.2.13 APPLICATION OF THE CREDIT:

The credit allowed by Section 7-9A-8 NMSA 1978 may not be applied against any local option gross receipts tax imposed by a county or municipality.

[3.13.2.13 NMAC - Rp 3 NMAC 13.8.8, 4/28/2000]

3.13.2.14 CREDIT NOT TRANSFERABLE:

A. Any amount of investment credit claimed and approved may be applied by the claimant only against the gross receipts, compensating and withholding taxes owed by the claimant. The credit amount may not be transferred to any other person, including an affiliate.

B. Example:

(1) Corporation T sets up a manufacturing operation in New Mexico. T subsequently qualifies for $50,000 in investment credit. After applying $13,000 to its own gross receipts, compensating and withholding tax liabilities, T creates a subsidiary corporation, S, to own and operate all of T's New Mexico business, including the manufacturing operation. T may not transfer the $37,000 remaining authorized investment credit to S nor may S apply any of the remaining tax credit to S's gross receipts, compensating and withholding tax liability. T, to the extent T still has gross receipts, compensating and withholding tax obligations, may apply the $37,000 balance against those obligations.

(2) When two or more corporations merge, the resultant corporation is a continuation of any predecessor corporation. When a business organization changes its form, as for example from a sole proprietorship to a corporation or from a corporation to a limited liability company, so that the resultant entity is a successor in business to the predecessor, the resultant entity shall be deemed a continuation of the predecessor for investment credit purposes. In both cases, since there is no transfer, the resultant entity may claim any amount of approved but unclaimed investment credit held by a predecessor.

[3.13.2.14 NMAC - N, 4/28/2000]

3.13.2.15 REPORTING NUMBER OF EMPLOYEES - ESTIMATES:

To meet the employment requirement, the credit claimant must report the number of full-time-equivalent employees employed on the day the credit is applied for. This number is to be compared with the number of full-time-equivalent employees on the same day in the prior year. Because complete employee data may not be available for the day on which the credit is applied for, a credit claimant may estimate the number of full-time-equivalent employees employed on the day the credit is applied for, provided that the claimant must provide the actual number of full-time-equivalent employees within forty-five days from the end of the calendar quarter in which the claim is applied for. The fact that an estimate is used in the claim must be clearly indicated. The department may withhold approval of the claim until the correct number is provided and will deny the claim if the correct number is not provided.

[3.13.2.15 NMAC - N, 5/15/07]

3.13.2.16 WHEN CLAIM BARRED:

If a taxpayer claims any amount of research and development small business tax credit with respect to a reporting period, the taxpayer may not claim any amount of approved investment credit with respect to that same period. If for the same reporting period an amount of investment credit is claimed in addition to any amount of research and development small business tax credit, the amount of investment credit will be disallowed by the department, which may result in an underpayment of tax. The taxpayer is not barred from applying for approval of new or additional investment credit with respect to qualified equipment purchased or introduced into New Mexico during that reporting period.

[3.13.2.16 NMAC - N, 5/15/07]

PART 3: CALL CENTER EQUIPMENT TAX CREDIT [REPEALED]

[This part was repealed on February 25, 2025.]

PART 4: RURAL JOB TAX CREDIT

3.13.4.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[2/14/00; 3.13.4.1 NMAC - Rn, 3 NMAC 13.4.1, 6/29/01]

3.13.4.2 SCOPE:

This part applies to all employers subject to the gross receipts, compensating, withholding or corporate income tax and approved for in-plant training assistance by the economic development department.

[2/14/00; 3.13.4.2 NMAC - Rn, 3 NMAC 13.4.2, 6/29/01]

3.13.4.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[2/14/00; 3.13.4.3 NMAC - Rn, 3 NMAC 13.4.3, 6/29/01]

3.13.4.4 DURATION:

Permanent.

[2/14/00; 3.13.4.4 NMAC - Rn, 3 NMAC 13.4.4, 6/29/01]

3.13.4.5 EFFECTIVE DATE:

2/14/00, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[2/14/00; 3.13.4.5 NMAC - Rn & A, 3 NMAC 13.4.5, 6/29/01]

3.13.4.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of Sections 7-2E-1 and 7-2E-2 NMSA 1978.

[2/14/00; 3.13.4.6 NMAC - Rn & A, 3 NMAC 13.4.6, 6/29/01]

3.13.4.7 DEFINITIONS:

[Reserved.]

[2/14/00; 3.13.4.7 NMAC - Rn, 3 NMAC 13.4.7, 6/29/01]

3.13.4.8 APPLICATION OF THE CREDIT:

The credit allowed by Section 7-2E-1 NMSA 1978 may not be applied against any local option gross receipts tax imposed by a county or municipality.

[2/14/00; 3.13.4.8 NMAC - Rn & A, 3 NMAC 13.4.8, 6/29/01]

3.13.4.9 CREDIT TRANSFERABLE - TRANSFER REQUIREMENTS:

A. Any amount of rural job tax credit claimed and approved may be applied by the claimant only against the claimant's modified combined tax liability, as that term is defined in Section 7-2E-1 NMSA 1978, and personal or corporate income tax owed by the claimant. If any amount of approved credit is sold, exchanged or otherwise transferred to another person, that person may apply the credit amount transferred only against that person's modified combined tax liability, as that term is defined in Section 7-2E-1 NMSA 1978, and personal or corporate income tax owed by that person. No credit will be approved with respect to employment prior to July 1, 2000.

B. No person who has received approval for a certain amount of rural job tax credit may sell to any other person more than the amount approved or more than the amount approved less amounts claimed and allowed.

C. The sale, exchange or other transfer of an amount of rural job tax credit is not effective and will not be honored by the department unless the seller notifies the department in writing of the fact of the proposed sale, exchange or other transfer, the name, address, taxpayer identification number and telephone number of the person to whom the credit is being sold, exchanged or transferred and the amount of credit being sold, exchanged or transferred. The department will compare the credit amount the department records show as unclaimed with the amount proposed to be sold, exchanged or transferred. if the credit amount shown on department records is less than the amount proposed to be transferred, the department will notify both parties in writing of that fact.

[2/14/00; 3.13.4.9 NMAC - Rn & A, 3 NMAC 13.4.9, 6/29/01]

3.13.4.10 EFFECT OF CHANGE IN MUNICIPAL POPULATION:

A. If the population of a municipality within the rural area is 15,000 or fewer according to the 1990 decennial census but greater than 15,000 according to the 2000 decennial census,

(1) credits based on a location that changes from a tier one area to a tier two area as a result of the 2000 decennial census shall be deemed to be tier one area credits and credit amounts may be claimed for four qualifying periods if all other requirements are satisfied and the credit was approved prior to the time the 2000 decennial census population for the location is announced officially; and

(2) credits based on a location that changes from a tier one area to a tier two area as a result of the 2000 decennial census shall be deemed to be tier two area credits and credit amounts may be claimed for two qualifying periods if all other requirements are satisfied and the credit was applied for but not approved by the Department at the time the 2000 decennial census population for the location is announced officially.

B. If the population of a municipality within the rural area is greater than 15,000 according to the 1990 decennial census but 15,000 or fewer according to the 2000 decennial census,

(1) credits based on a location that changes from a tier two area to a tier one area as a result of the 2000 decennial census shall be deemed to be tier two area credits and credit amounts may be claimed for two qualifying periods if all other requirements are satisfied and the credit was approved prior to the time the 2000 decennial census population for the location is announced officially; and

(2) credits based on a location that changes from a tier two area to a tier one area as a result of the 2000 decennial census shall be deemed to be tier one area credits and credit amounts may be claimed for four qualifying periods if all other requirements are satisfied and the credit was applied for but not approved by the department at the time the 2000 decennial census population for the location is announced officially.

[2/14/00; 3.13.4.10 NMAC - Rn, 3 NMAC 13.4.10, 6/29/01]

PART 5: TECHNOLOGY JOBS TAX CREDIT

3.13.5.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.13.5.1 NMAC - N, 10/31/05]

3.13.5.2 SCOPE:

This part applies to persons conducting qualified research at a qualified facility in New Mexico.

[3.13.5.2 NMAC - N, 10/31/05]

3.13.5.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.13.5.3 NMAC - N, 10/31/05]

3.13.5.4 DURATION:

Permanent.

[3.13.5.4 NMAC - N, 10/31/05]

3.13.5.5 EFFECTIVE DATE:

10/31/05, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.13.5.5 NMAC - N, 10/31/05]

3.13.5.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Technology Jobs Tax Credit Act.

[3.13.5.6 NMAC - N, 10/31/05]

3.13.5.7 DEFINITIONS:

[Reserved.]

[3.13.5.7 NMAC - N, 10/31/05]

3.13.5.8 AMOUNTS CONSTITUTING WAGES TO MEET ELIGIBILITY REQUIREMENTS:

A. In calculating the annual payroll expense and base payroll expense for purposes of determining eligibility for the additional credit under Subsection B of Section 7-9F-6 NMSA 1978, a taxpayer may include total wages paid to all employees at a qualified New Mexico facility. "Wages" as used in Subsection K of Section 7-9F-3 NMSA 1978 means "wages" as defined under section 3401(a) of the Internal Revenue Code. Thus, "wages" used to meet eligibility requirements of the Technology Jobs Tax Credit Act are the same as those that are included or will be included in box 1 of the annual statement of withholding (form W-2) as required under Subsection A of Section 7-3-7 NMSA 1978.

B. Example: Taxpayer X conducts research and development at a qualified facility in New Mexico. In addition to wages paid for employees directly involved in research and development, X pays wages to administrative personnel at the facility. Wages paid to administrative personnel may also be included in annual payroll expense and base payroll expense for purposes of determining eligibility for the additional credit under the Act. Taxpayer X may not include any expenses not included as wages on form W-2,

such as expenses for employee health insurance, retirement plan contributions, or the value of employee stock options when calculating annual payroll expense and base payroll expense.

[3.13.5.8 NMAC - N, 10/31/05]

3.13.5.9 STATUTE OF LIMITATIONS:

A. A taxpayer must file its application for approval of a credit within one year of the end of the calendar year in which the qualified expenditures were made.

B. Example: Taxpayer X makes qualified expenditures from January 1 through October 30, 2005. X must submit its application for credit under the Technology Jobs Tax Credit Act by no later than December 31, 2006.

[3.13.5.9 NMAC - N, 10/31/05]

3.13.5.10 ELIGIBILITY REQUIREMENTS - ADDITIONAL CREDIT - ESTIMATES:

A. A taxpayer claiming the additional credit must compute annual payroll expense for the period specified in the application and must compute base payroll expense as of a date one year prior to the annual payroll date.

B. Because complete payroll data to calculate "annual payroll expense" and "base payroll expense" may not be available on the day the credit is applied for, a credit claimant may estimate the number of these two amounts on the credit application, provided that the claimant must provide the actual "annual payroll expense" and "base payroll expense" amounts within forty-five days from the end of the calendar quarter in which the claim is applied for. The fact that an estimate is used in the claim must be clearly indicated. The department may withhold approval of the claim until the correct numbers are provided and will deny the claim if the correct numbers are not provided.

[3.13.5.10 NMAC - N, 10/31/05; A, 5/15/07]

3.13.5.11 WHEN CLAIM BARRED:

If a taxpayer claims any amount of research and development small business tax credit with respect to a reporting period, the taxpayer may not claim any amount of technology jobs tax credit with respect to that same period. If for the same reporting period an amount of technology jobs tax basic credit is claimed in addition to any amount of research and development small business tax credit, the amount of technology jobs tax credit will be disallowed by the department, which may result in an underpayment of tax. The taxpayer is not barred from applying for approval of new or additional technology jobs tax credit with respect to qualified expenditures in that reporting period.

[3.13.5.11 NMAC - N, 5/15/07]

PART 6: RESEARCH AND DEVELOPMENT SMALL BUSINESS TAX CREDIT

3.13.6.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.13.6.1 NMAC - N, 5/15/07]

3.13.6.2 SCOPE:

This part applies to persons conducting qualified research at a qualified facility in New Mexico.

[3.13.6.2 NMAC - N, 5/15/07]

3.13.6.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.13.6.3 NMAC - N, 5/15/07]

3.13.6.4 DURATION:

Permanent.

[3.13.6.4 NMAC - N, 5/15/07]

3.13.6.5 EFFECTIVE DATE:

5/15/07, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.13.6.5 NMAC - N, 5/15/07]

3.13.6.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Research and Development Small Business Tax Credit Act.

[3.13.6.6 NMAC - N, 5/15/07]

3.13.6.7 DEFINITIONS:

[Reserved.]

3.13.6.8 EQUIVALENT OF ONE FULL-TIME EMPLOYEE:

To calculate the number of full-time-equivalent employees, add the average weekly hours worked or expected to be worked by all employees whose regular weekly work hours are or are expected to be less than forty hours. Divide the total by 40 and round down to the nearest whole number. The rounded number plus the number of employees who work or are expected to work an average of 40 or more hours per week is the number of full-time equivalent employees.

[3.13.6.8 NMAC - N, 5/15/07]

PART 7: ALTERNATIVE ENERGY PRODUCT MANUFACTURERS TAX CREDIT

3.13.7.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.13.7.1 NMAC - N, 12/31/08]

3.13.7.2 SCOPE:

This part applies to all persons carrying on a manufacturing operation in New Mexico that produce alternative energy products and who may be eligible to obtain the alternative energy product manufacturers tax credit.

[3.13.7.2 NMAC - N, 12/31/08]

3.13.7.3 STATUTORY AUTHORITY:

Section 7-9J-1 through 8 and 9-11-6.2 NMSA 1978.

[3.13.7.3 NMAC - N, 12/31/08]

3.13.7.4 DURATION:

Permanent.

[3.13.7.4 NMAC - N, 12/31/08]

3.13.7.5 EFFECTIVE DATE:

12/31/08, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.13.7.5 NMAC - N, 12/31/08]

3.13.7.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Alternative Energy Product Manufacturers Tax Credit Act.

[3.13.7.6 NMAC - N, 12/31/08]

3.13.7.7 DEFINITIONS: "SUBJECT TO DEPRECIATION" DEFINED:

For purposes of Section 7-9J-2 NMSA 1978 "subject to depreciation" means the taxpayer's federal income tax return must include a depreciation expense with respect to the manufacturing equipment for which an alternative energy product manufacturer's tax credit is sought or claimed. Equipment depreciated under the accelerated cost recovery system, Internal Revenue Code Section 168, and property for which the taxpayer makes an election under Internal Revenue Code Section 179 is "subject to depreciation".

[3.13.7.7 NMAC - N, 12/31/08]

3.13.7.8 [RESERVED]

3.13.7.9 ITEMS NOT "MANUFACTURING EQUIPMENT":

Tangible personal property which is not a machine, mechanism or tool, or a component or fitting thereof, is not "manufacturing equipment" for the purpose of the Alternative Energy Product Manufacturers Tax Credit Act. Accordingly such items as furniture, shelving and supplies are not "manufacturing equipment". Equipment that is neither essential to nor used in conjunction with the manufacturing plant will not qualify for the alternative energy product manufacturers tax credit, even if that equipment is physically located in the plant. Nonqualifying equipment may include, but is not limited to: coffee makers, kitchen equipment used in an employee cafeteria and televisions or radios used in an employee lounge or in a reception area.

[3.13.7.9 NMAC - N, 12/31/08]

3.13.7.10 ITEMS WHICH MAY BE INCLUDED AS "MANUFACTURING EQUIPMENT":

The term "manufacturing operation" is defined as a plant where personnel perform production tasks "in conjunction with equipment not previously existing at the site" to produce alternative energy products. "Manufacturing equipment" must be exclusively and directly employed in the manufacturing process and must be physically located in the plant and used in conjunction with the production of alternative energy products. Therefore, equipment used in conjunction with the production of alternative energy

products may include, but is not limited to, such items as manufacturing process equipment, lights, boilers, air conditioners, smoke detectors and other equipment essential to maintaining the proper climate for the manufacturing process, packaging equipment used to put the manufactured product in marketable form, warehousing equipment and computers used to control the manufacturing process or to inventory and schedule the shipping of manufactured products.

[3.13.7.10 NMAC - N, 12/31/08]

3.13.7.11 VALUE OF QUALIFIED "MANUFACTURING EQUIPMENT":

The value of qualified manufacturing equipment shall be the adjusted basis established for the equipment under the applicable provisions of the Internal Revenue Code of 1986.

[3.13.7.11 NMAC - N, 12/31/08]

3.13.7.12 APPLICATION OF THE CREDIT:

A. The credit allowed by Section 7-9J-4 NMSA 1978 may not be applied against any local option gross receipts tax imposed by a county or municipality.

B. The credit may not be applied to a report period prior to the report period that includes the first day on which qualified expenditures were made for equipment included on the application for which the credit was approved by the department.

[3.13.7.12 NMAC - N, 12/31/08]

3.13.7.13 CARRY FORWARD OF UNUSED CREDITS:

Unused alternative energy product manufacturers tax credit may be carried forward for five years from the end of the calendar year in which the credit was first approved by the department.

[3.13.7.13 NMAC - N, 12/31/08]

3.13.7.14 USING THE CREDIT:

A. Any amount of alternative energy product manufacturers tax credit claimed and approved may be applied by the claimant only against the modified combined tax liability owed by the claimant. The credit amount may not be transferred to any other person, including an affiliate.

B. Examples:

(1) Corporation T sets up a manufacturing operation in New Mexico. T subsequently qualifies for $50,000 in alternative energy product manufacturer's tax credit. After applying $13,000 to its own modified combined tax liabilities, T creates a subsidiary corporation, S, to own and operate all of T's New Mexico business, including the manufacturing operation. T may not transfer the $37,000 remaining authorized alternative energy product manufacturer's tax credit to S nor may S apply any of the remaining tax credit to S's modified combined tax liability. T, to the extent T still has modified combined tax obligations, may apply the $37,000 balance against those obligations.

(2) When two or more corporations merge, the resultant corporation is a continuation of any predecessor corporation. When a business organization changes its form, as for example from a sole proprietorship to a corporation or from a corporation to a limited liability company, so that the resultant entity is a successor in business to the predecessor, the resultant entity shall be deemed a continuation of the predecessor for alternative energy product manufacturers tax credit purposes. In both cases, since there is no transfer, the resultant entity may claim any amount of approved but unclaimed alternative energy product manufacturers tax credit held by a predecessor.

[3.13.7.14 NMAC - N, 12/31/08]

3.13.7.15 EQUIVALENT OF ONE FULL-TIME EMPLOYEE:

To calculate the number of full-time-equivalent employees, add the average weekly hours worked or expected to be worked by all employees whose regular weekly work hours are or are expected to be less than 40 hours. Divide the total by 40 and round down to the nearest whole number. The rounded number plus the number of employees who work or are expected to work an average of 40 or more hours per week is the number of full-time equivalent employees.

[3.13.7.15 NMAC - N, 12/31/08]

3.13.7.16 REPORTING NUMBER OF EMPLOYEES - ESTIMATES:

To meet the employment requirement, the credit claimant must report the number of full-time-equivalent employees employed on the day the credit is applied for. This number is to be compared with the number of full-time-equivalent employees on the same day in the prior year. Because complete employee data may not be available for the day on which the credit is applied for, a credit claimant may estimate the number of full-time-equivalent employees employed on the day the credit is applied for, provided that the claimant must provide the actual number of full-time-equivalent employees within 45 days from the end of the calendar quarter in which the claim is applied for. The fact that an estimate is used in the claim must be clearly indicated. The department may withhold approval of the claim until the correct number is provided and will deny the claim if the correct number is not provided.

[3.13.7.16 NMAC - N, 12/31/08]

PART 8: OTHER TAX CREDITS [REPEALED]

[This part was repealed effective September 26, 2023.]

PART 9: FILM PRODUCTION TAX CREDIT

3.13.9.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.13.9.1 NMAC - N, 9/30/10]

3.13.9.2 SCOPE:

This part applies to all film production companies who may be eligible to obtain the film production tax credit.

[3.13.9.2 NMAC - N, 9/30/10]

3.13.9.3 STATUTORY AUTHORITY:

Sections 7-2F-1 and 9-11-6.2 NMSA 1978.

[3.13.9.3 NMAC - N, 9/30/10]

3.13.9.4 DURATION:

Permanent.

[3.13.9.4 NMAC - N, 9/30/10]

3.13.9.5 EFFECTIVE DATE:

9/30/10, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.13.9.5 NMAC - N, 9/30/10]

3.13.9.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the film production tax credit.

[3.13.9.6 NMAC - N, 9/30/10]

3.13.9.7 DEFINITIONS:

The terms defined in 3.13.9.7 NMAC apply to the implementation of the film production tax credit.

A. "Direct production expenditures" as defined in Subsection C of Section 7-2F-2 NMSA 1978 includes only those expenditures directly incurred and paid by the qualified production company to the vendor of the services or property and does not include expenditures incurred and paid by a third party even if incurred on behalf of the qualified production company.

B. "Performing artist" as used in Paragraph (1) of Subsection C of Section 7-2F-2 NMSA 1978 includes "stunt coordinators" when the stunt coordinator contracts with the production company under a standard stunt performer's contract.

[3.13.9.7 NMAC - N, 9/30/10, A, 6/28/13]

3.13.9.8 CLAIMING THE FILM PRODUCTION TAX CREDIT:

A. In order to claim an approved film production tax credit, a film production company must complete a timely filed tax return after the close of its taxable year.

B. When determining how an approved film production tax credit will be paid out pursuant to Subsection E of Section 7-2F-1 NMSA 1978, each tax return is equivalent to a single credit claim.

C. Example 1: Two separate film production companies elect to be part of a New Mexico consolidated tax return. Each film production company submits a separate film production tax credit application for approval of direct production expenditures; one application is for two million dollars ($2,000,000) and the second for one million dollars ($1,000,000). The department approves both applications. The total amount of three million dollars ($3,000,000) from the two approved applications will be considered a single credit claim since the two film production companies elect to file as part of a New Mexico consolidated tax return.

D. Example 2: X, a film production company, is organized as a corporation who files its income taxes on a calendar year basis. For tax year 2012, X will file its corporate income tax return on March 15, 2013, and claim the approved film production tax credit amount from the department. The credit claim will be considered received by the department because the taxpayer filed a complete and timely tax return pursuant to the Corporate Income and Franchise Tax Act.

E. Example 3: A film production company files a complete and timely tax return for a certain tax period. The department does not approve the production company's

application for the film production tax credit until after the production company has filed its tax return. The taxpayer ultimately files an amended tax return within three years of the end of the calendar year in which the payment of tax was originally due and at that time, claims the film production tax credit that was previously approved by the department. The credit claim will be considered received because the filing of the amended return by the production company was a complete and timely tax return pursuant to the Corporate Income and Franchise Tax Act.

[3.13.9.8 NMAC - N, 6/28/13]

3.13.9.9 DETERMINATION OF PHYSICAL PRESENCE FOR PURPOSES OF CLAIMING THE FILM PRODUCTION TAX CREDIT:

A. Any vendor (provider) who provides goods or performs services, who occupies and maintains one or more physical places of business in New Mexico, not a virtual or online business, has established "physical presence," for purposes of the film production tax credit, if the following conditions are present:

(1) a provider of goods or services, or its employees, or representatives, is available at that provider's place of business during established times;

(2) a provider of goods maintains an inventory of the goods sold at the provider's New Mexico place of business and those goods are held for sale in the vendor's ordinary course of business at that place of business; and

(3) critical elements of any service performed by a service provider occur, are managed at or coordinated from the service provider's place of business.

B. The following indicia will be considered in determining if the above conditions are present:

(1) the provider of the goods or services is a resident or has at least one laborer who is a New Mexico resident, as defined in the Income Tax Act;

(2) a telephone is assigned for the exclusive use by the provider of goods or services at the provider's place of business;

(3) the place of business has been designated for the use of the goods or services provided;

(4) the place of business contains office furniture or equipment for the use by the provider;

(5) the goods or services provider is identified by business name on a sign located in or adjacent to the place of business; and

(6) a client or other persons can expect to communicate, either in person or by telephone, with the goods or services provider, or employees or representatives of the provider, at the place of business.

[3.13.9.9 NMAC - N, 6/28/13]

3.13.9.10 QUALIFICATION OF DIRECT PRODUCTION EXPENDITURES:

A. A payment to a personal service business for the services of a performing artist qualifies as a direct production expenditure if the personal services business:

(1) pays gross receipts tax in New Mexico on the portion of those payments that are qualified expenditures for the film production tax credit; and

(2) deducts and remits withheld income tax pursuant to Subsection I of Section 7-3A-3 NMSA 1978 or the film production company deducts and remits, or causes to be deducted and remitted, withheld income tax at the maximum rate in New Mexico on the portion of those payments qualifying for the film production tax credit.

B. Example 1: S, a super loan-out company, receives payments for the services of a performing artist (personal services business) from a film production company. S pays gross receipts tax on the payments they receive and deducts and remits withheld income tax on the payments to the performing artist. The payment from the production company to S qualifies as a direct production expenditure for purposes of the film production tax credit.

C. Example 2: G, a super loan-out company, receives payments for the services of a performing artist from a film production company and pays gross receipts tax on the payments received. G contracts with P, a payroll service company, to provide payroll services. The film production company by agreement with P causes P to deduct and remit withheld income tax on the payments to the performing artist. The payment from the production company to G qualifies as a direct production expenditure for purposes of the film production tax credit.

D. Example 3: H, a super loan-out company, receives payments for the direct hires (performing artists who do not own their own company) from a film production company and pays gross receipts tax on the payments received. No tax is deducted and remitted on the payments for the direct hires pursuant to Subsection I of Section 7-3A-3 NMSA 1978 because the direct hires are employees of the super loan-out company and wages are excluded from this requirement to withhold. The payment from the production company to S for the services of the direct hires qualifies as a direct production expenditure for purposes of the film production tax credit.

E. Example 4: A, an actor loan-out company, receives payments for the services of a performing artist from S, a super loan out company. S executes a nontaxable transaction certificate to A and pays gross receipts tax on the payments they receive

from the production company for the services of the performing artist. S, or the payroll company by agreement with the production company, deducts and remits withheld income tax on the payments to the performing artist. The payment from the production company to S for the services of the performing artist qualifies as a direct production expenditure for purposes of the film production tax credit.

F. Example 5: Y, an actor loan-out company (owned by the performing artist), receives payments for the services of a performing artist who is a resident of New Mexico. Y pays gross receipts tax on the payments they receive. No withheld income tax is deducted or remitted on the payments that are due to the performing artist from Y (personal services business) because the obligation to deduct and withhold does not apply to payments made to an individual who is a resident of New Mexico (Subsection C of Section 7-3A-3 NMSA 1978). The payments from the production company to Y for the services of a performing artist qualify as direct production expenditures for purposes of the film production tax credit.

[3.13.9.10 NMAC - N, 6/28/13]

PART 10-18: [RESERVED]

PART 19: RENEWABLE ENERGY PRODUCTION TAX CREDIT

3.13.19.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[3.13.19.1 NMAC - N, 3-15-03]

3.13.19.2 SCOPE:

This part applies to the application and certification procedures for administration of the renewable energy production tax credit.

[3.13.19.2 NMAC - N, 3-15-03]

3.13.19.3 STATUTORY AUTHORITY:

These rules are established under the authority of NMSA 1978, Sections 7-2A-19 and 9-1-5E.

[3.13.19.3 NMAC - N, 3-15-03; A, 03-31-06]

3.13.19.4 DURATION:

Permanent.

[3.13.19.4 NMAC - N, 3-15-03]

3.13.19.5 EFFECTIVE DATE:

March 15, 2003 unless a later date is cited at the end of a section.

[3.13.19.5 NMAC - N, 3-15-03]

3.13.19.6 OBJECTIVE:

This part's objective is to establish procedures for administering the renewable energy production tax credit.

[3.13.19.6 NMAC - N, 3-15-03; A, 03-31-06]

3.13.19.7 DEFINITIONS:

A. "Applicant" means a business entity that holds title to a qualifying energy generator or leases property upon which a qualified energy generator operates from a county or municipality pursuant to an industrial revenue bond, or plans to develop a qualified energy generator and will hold title to the qualified energy generator or lease property upon which the qualified energy generator operates from a county or municipality pursuant to an industrial revenue bond at the time the division certifies that the facility is a qualified energy generator, and that applies to receive the renewable energy production tax credit pursuant to this part for itself or on other taxpayers' behalf.

B. "Biomass" means agricultural or animal waste; thinnings from trees less than 15 inches in diameter; slash and brush; lumber mill or sawmill residues; and salt cedar and other phreatophytes removed from watersheds or river basins;

C. "Confidential information" means information included in the renewable energy production tax credit application package or that the department requires the applicant to submit as part of the approval process that the applicant requests in writing to be held confidential.

D. "Department" means the energy, minerals and natural resources department.

E. "Director" means the director or head of the department's energy conservation and management division.

F. "Division" means the department's energy conservation and management division.

G. "Five percent ownership" means New Mexico corporate income taxpayers that individually or collectively, directly or indirectly, own at least five percent of a qualified energy generator or of the total capitalized cost to construct a qualified energy

generator; and are entitled to receive at least five percent of cash distributed to owners of the qualified energy generator over its useful life.

H. "Generating capacity" means a qualified energy generator's nominal rated electrical power output (nameplate capacity) in megawatts during optimum resource conditions, as the generator's manufacturer specifies. Generating capacity shall be at least 10 megawatts. If the prevailing resource conditions at a project site are insufficient for a qualified energy generator to attain full nameplate capacity output at the time the division issues the certification, the power output shall be that which corresponds to at least 10 megawatts nominal rating according to the equipment manufacturer's published performance ratings for those prevailing conditions.

I. "Interconnection agreement" means an agreement allowing the applicant to interconnect the qualified energy generator, of a specified type and size, to a suitable electric transmission or distribution line.

J. "Land rights agreement" means an agreement providing the applicant with control of land and the rights necessary to construct and operate a qualified energy generator.

K. "Notice of allocation" means a form the division prescribes that an applicant completes indicating the allocation of its or another entity's right to claim the tax credit to one or more taxpayers and each taxpayer's interest in the qualified energy generator.

L. "Power purchase agreement" means an agreement that binds an applicant to provide power at a specified price and a buyer to purchase power from the qualified energy generator.

M. "Project finance agreement" means an agreement that binds a capable entity to provide the financing necessary for a qualified energy generator's construction.

N. "Qualified energy generator" means a facility with at least 10 megawatts generating capacity located in New Mexico that produces electricity using a qualified energy resource and that sells electricity to an unrelated person.

O. "Qualified energy resource" means a resource that generates electrical energy by means of a fluidized bed technology or similar low-emissions technology or a zero-emissions generation technology that has substantial long-term production potential and that uses only the following energy sources: solar light, solar heat, wind, or biomass.

P. "Renewable energy production tax credit application package" or "application package" means the application documents submitted by an applicant to the division for certification to receive the renewable energy production tax credit.

Q. "Secretary" means the head of the department.

R. "Tax credit" means the renewable energy production tax credit.

S. "Unrelated person" means a person who is not a partner or joint venture participant who owns more than 50 percent of the profit interest or capital interest in the partnership or joint venture; shareholder who owns more than 50 percent of the shares, subsidiary, or parent company; or a trade or business that is under common control. If a corporation is a member of an affiliated group of corporations filing a consolidated tax return, the division will treat the corporation as selling electricity to an unrelated person if another member of the affiliated group sells the electricity to the person.

[3.13.19.7 NMAC - N, 3-15-03; A, 1-15-04; A, 03-31-06]

3.13.19.8 GENERAL PROVISIONS:

A. Only those taxpayers that meet the requirements of 3.13.19.14 NMAC are eligible for a tax credit.

B. A proposed project shall meet these required milestones. If a project fails to meet a milestone, the division shall reject the application.

(1) Applicant submits a complete renewable energy production tax credit application package to the division.

(2) Construction of a qualified energy generator shall commence within 12 months of the application’s approval. The applicant shall meet this requirement by entering into a construction contract and by the placement of a permanent, physical part of the facility, such as a poured concrete foundation. Applicant shall submit to the division a copy of the contract accompanied by a letter certifying that such construction has occurred.

(3) A qualified energy generator shall generate electrical power and achieve commercial operation, demonstrating at least 10 megawatts generating capacity, within 24 months of the division’s approval of the application.

(4) Within 24 months of the application’s approval, the applicant shall submit to the division:

(a) the name of the qualified energy generator;

(b) electric output meter readings documenting commercial operation and indicating at least 10 megawatts output;

(c) a copy of the bill of sale or other documentation sufficient to evidence a sale of the power indicating the amount of electrical energy produced, precise time period of production, and the name of the buyer of the electricity; and

(d) records to verify that the applicant is selling to unrelated persons.

C. NMSA 1978, Section 7-2A-19 limits the power production of a qualified energy generator eligible for a tax credit to 400,000 megawatt-hours per year. It also limits the eligible power production of all qualified energy generators to 2,000,000 megawatt-hours per year. When the 2,000,000 megawatt-hours limit is reached based on the total of applications approved, the division will no longer approve applications, but will accept them for future consideration in the event that approved facilities are not completed on schedule and tax credit becomes available. The division shall keep a record of the order of receipt of all applications.

[3.13.19.8 NMAC - N, 3-15-03; A, 1-15-04; A, 03-31-06]

3.13.19.9 APPLICATION:

A. A renewable energy production tax credit application form can be obtained from the division.

B. An applicant shall submit an application package to the division.

C. The application package shall consist of a completed renewable energy production tax credit application form, with the following required attachments:

(1) a copy of the land rights agreement;

(2) a copy of the interconnection agreement or a system impact study agreement between the applicant and the interconnect utility, or its functional equivalent; and

(3) a copy of the power purchase agreement, project finance agreement, or evidence of self-financing.

D. The division shall return an incomplete application to the applicant.

[3.13.19.9 NMAC - N, 3-15-03; A, 03-31-06]

3.13.19.10 APPLICATION REVIEW PROCESS:

A. The division shall consider applications in the order received, according to the day it receives them, but not the time of day. The division shall give applications it receives on the same day equal consideration. If the division approves applications it received on the same day and they would exceed the overall limit of tax credit availability, then the division shall divide the available credit among those applications on a prorated, per megawatt-hour basis.

B. The division shall approve or reject an application within 30 days following its receipt of the application package, or if the division requires more time it shall notify the applicant of the reason and shall approve or reject the application as soon as possible.

C. The division shall review the application package to determine if the proposed generator will be a qualified energy generator and if the requisite documentation specified in Subsection C of 3.13.19.9 NMAC, above, is valid.

D. The division shall check the accuracy of the applicant's estimated annual production potential and make any necessary adjustments to ensure the potential is reasonably achievable. The limit of the qualified energy generator's energy production eligible for the tax credit for the taxable year shall be the lesser of: the estimate the division approves, or 400,000 megawatt-hours, or the eligible electricity remaining of the 2,000,000 megawatt-hours total for the state.

E. If the division finds that the application package meets the required criteria and tax credit is available, the division shall approve the application. The division shall approve the application by issuing a letter to the applicant, which shall include the limit of the qualified energy generator's annual production eligible for the tax credit.

F. The division shall reject an application that is not complete or correct, does not meet the criteria for approval or fails to meet a required milestone. The division's rejection letter shall state the reasons why it rejected the application. The applicant may resubmit the application package for the rejected project. The division shall place the resubmitted application in the review schedule as if it were a new project.

[3.13.19.10 NMAC - N, 3-15-03; A, 1-15-04; A, 03-31-06]

3.13.19.11 CONFIDENTIALITY REQUESTS, WAIVERS, REVIEWS AND APPEALS:

A. An applicant may request in writing that the department hold materials submitted as part of the application package and certification process confidential pursuant to NMSA 1978, Section 71-2-8. The applicant shall address the request to the director.

B. An applicant may request in writing that the director waive any provision of the application unless NMSA 1978, Section 7-2A-19 requires the provision. The applicant shall address the request to the director, and include the facts and circumstances that support a waiver.

C. The applicant shall have the right to request in writing review of the director's decision to reject an application or review of the division's adjustments to the annual production estimate. The applicant shall address the request to the director and include the reasons that the director should review the decision.

D. Any person having an interest that the request does or may adversely affect may oppose an applicant's request to hold materials an applicant has submitted as part of an

application package confidential or the director grant an applicant's request to waive a provision of the application. The person shall submit the opposition in writing, within 10 days of the request, to the director and send a copy to the applicant. The opposition shall include the reasons that the department should not hold the information confidential or that the director should not grant the waiver.

(1) The director shall consider the request and the opposition, if any. The director may hold a hearing and appoint a hearing officer to conduct the hearing. The director shall send a final decision to the applicant and any person or entity opposing the request within 20 days after receiving the request, the opposition, if the request if opposed, or the date the hearing is held.

(2) The applicant or the person or entity opposing the request may appeal in writing to the secretary a director's decision. The notice of appeal shall include the reasons that the secretary should overturn the director's decision.

E. The secretary shall consider any appeal from a director's decision. The applicant must file the appeal and the reasons for with the secretary within 10 working days of the director's issuance of his decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the appellant within 20 days after receiving the request or the date the hearing concludes.

[3.13.19.11 NMAC - N, 3-15-03; A, 03-31-06]

3.13.19.12 CERTIFICATION:

A. When a qualified energy generator, for which the division has approved a tax credit application package, produces power and it is sold to an unrelated person, then the applicant may request certification from the division. If the applicant is different from the original applicant then the new applicant shall submit a revised application form to the division indicating who is eligible for the tax credit. The qualified energy generator must demonstrate at least 10 megawatts generating capacity. The applicant shall submit:

(1) the name of the qualified energy generator;

(2) electric power output meter readings indicating at least 10 megawatts generating capacity;

(3) a copy of the bill of sale or equivalent documentation indicating the amount of electrical energy the qualified energy generator produced, precise time period of production, and the name and relationship, if any, of the buyer of the electricity; and

(4) a notice of allocation indicating the allocation of the right to claim the tax credit and evidence of each taxpayers' ownership interest.

B. For purposes of monitoring the applicant's compliance with this part, the division or its authorized representative shall have the right to visit a qualified energy generator upon giving the applicant five days notice.

C. If the division finds that a qualified energy generator, for which it has approved an application package, meets this part's criteria, the division shall issue a certificate to the applicant stating that the facility is an eligible qualified energy generator, the facility's estimated annual production potential and the limit of that facility's energy production eligible for the tax credit.

[3.13.19.12 NMAC - N, 3-15-03; A, 1-15-04; A, 03-31-06]

3.13.19.13 CLAIMING THE TAX CREDIT:

A. To claim the renewable energy production tax credit, a taxpayer shall submit to the New Mexico taxation and revenue department the certificate the department issued to the applicant stating that the facility is an eligible qualified energy generator, a copy of the certificate the department issued to the taxpayer showing the taxpayer's right to claim all or a portion of the tax credit, documentation showing the taxpayer's ownership interest in the qualified energy generator, documentation of the amount of energy the qualified energy generator produced in the taxable year, and any other information the taxation and revenue department may require to determine the amount of the credit due to each taxpayer claiming the credit.

B. If the amount of tax credit the taxpayer claims exceeds the taxpayer's corporate income tax liability, the taxpayer may carry the excess forward for up to five consecutive taxable years.

C. Once the department has certified a facility as a qualified energy generator eligible for the tax credit taxpayers retain the original date of application for tax credits for that facility until either the qualified energy generator is out of production for more than six consecutive months in a year or until the qualified energy generator's 10-year eligibility has expired.

[3.13.19.13 NMAC - N, 3-15-03; A, 03-31-06]

3.13.19.14 ALLOCATION OF TAX CREDIT:

A. A business entity may allocate a taxpayer all or a portion of the right to claim a tax credit without regard to proportional ownership if:

(1) the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership;

(2) the business entity (a) is the applicant; (b) owns an interest in the business entity, the applicant, that is also taxed for federal income tax purposes as a

partnership; or (c) owns, through one or more intermediate business entities that are each taxed for federal income tax purposes as a partnership, an interest in a business entity, the applicant, as described in (b); and

(3) the taxpayer and all other taxpayers a business entity allocates a right to claim the renewable energy production tax credit pursuant to this section collectively have at least a five percent ownership interest in the applicant's qualified energy generator; collective ownership means that a business entity, which may be a partnership or have subsidiary business entities, owns at least a five percent interest in the qualified energy generator; a business entity that owns at least a five percent interest in the qualified energy generator may receive the right to all of a tax credit, but shall only allocate that right to its subsidiaries or partners based upon their actual ownership interest in the business entity; for example, the business entity owning the five percent interest is a partnership comprised of three business entities; one business entity owns a 40 percent interest in the business and the other two business entities each own a 30 percent interest; 90 percent of the tax credit is allocated to the business entity that owns a five percent interest in the qualified energy generator; the partner owning 40 percent is entitled to 36 percent of the total tax credit and the other two partners are each entitled to 27 percent of the total tax credit.

B. In order to allocate all or a portion of the right to claim a renewable energy production tax credit, a business entity shall notify the applicant of its allocation. The applicant shall then compile each business entity’s allocation and submit the notice of the allocation with documentation of each taxpayer's ownership interest to the department on forms the department provides.

C. Upon receiving the notice of allocation from the applicant, the department shall promptly certify the allocation in writing to the applicant and any taxpayer receiving the allocation if the taxpayer meets the criteria in Subsection A of 3.13.19.14 NMAC. A taxpayer receiving an allocation shall be entitled to claim all such tax credit allocated to it that was generated during the tax year.

D. If ownership of a business entity that has been allocated a right to claim all or a portion of the right to claim a tax credit changes, the replacement owner shall be entitled to claim the tax credit. The applicant may submit a revised notice of allocation only once in a calendar year and in no event later than December 31 of the calendar year for the revised allocation.

[3.13.19.14 NMAC - N, 03-31-06]

3.13.19.15 DETERMINATION OF WHETHER A GENERATOR IS A SEPARATE FACILITY:

When determining whether a generator is a separate facility or is one of several generators located in the same geographical location (e.g. mesa, section of land) that comprise a single facility, the division shall consider the following factors that indicate

whether or not the generators are operated as separate facilities. The division shall consider factors such as whether the same corporate entity holds title to or leases property from a county or municipality pursuant to an industrial revenue bond where the generating infrastructure is located; whether the same buyer is purchasing the electricity the generators produce; whether the generators have different interconnection agreements or system impact study agreements; whether the generators have different power purchase or project finance agreements; whether the generator is connected with other generators before entering the main transmission line; and any other factor the director deems relevant to the determination.

[3.13.19.15 NMAC - N, 03-31-06]

PART 20: LAND CONSERVATION INCENTIVES TAX CREDIT

3.13.20.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department and the Taxation and Revenue Department.

[3.13.20.1 NMAC - Rp, 3.13.20.1 NMAC, 6-16-2008]

3.13.20.2 SCOPE:

3.13.20 NMAC applies to application and certification procedures for administration of the land conservation incentives tax credit.

[3.13.20.2 NMAC - Rp, 3.13.20.2 NMAC, 6-16-2008]

3.13.20.3 STATUTORY AUTHORITY:

3.13.20 NMAC is adopted pursuant to NMSA 1978, Sections 7-2-18.10; 7-2A-8.9; 9-1-5(E) and 9-11-6.2 and the Land Conservation Incentives Act, NMSA 1978, Sections 75-9-1 to 75-9-6.

[3.13.20.3 NMAC - Rp, 3.13.20.3 NMAC, 6-16-2008]

3.13.20.4 DURATION:

Permanent.

[3.13.20.4 NMAC - Rp, 3.13.20.4 NMAC, 6-16-2008]

3.13.20.5 EFFECTIVE DATE:

June 16, 2008, unless a later date is cited at the end of a section.

[3.13.20.5 NMAC - Rp, 3.13.20.5 NMAC, 6-16-2008]

3.13.20.6 OBJECTIVE:

3.13.20 NMAC's objective is to establish procedures for certifying whether donations of land or interests in land to public or private conservation agencies made on or after January 1, 2004, are eligible for the land conservation incentives tax credit and to administer the land conservation incentives tax credit.

[3.13.20.6 NMAC - Rp, 3.13.20.6 NMAC, 6-16-2008]

3.13.20.7 DEFINITIONS:

A. "Applicant" means a taxpayer who on or after January 1, 2004, donates or partially donates (or for purposes of 3.13.20.8 NMAC plans to donate or partially donate) through a bargain sale for a conservation or preservation purpose, a perpetual less-than-fee interest in land that appears to qualify as a charitable contribution under 26 U.S.C. section 170(h) and its implementing regulations or a fee interest in land, which is subject to a perpetual conservation easement, to a public or private conservation agency. If more than one taxpayer owns an interest in the land or interest in land that is the donated or partially donated, they shall be considered one applicant, but the application shall include the names and addresses of all taxpayers that own an interest in the donated land or interest in land.

B. "Appraisal bureau" means the taxation and revenue department, property tax division, appraisal bureau.

C. "Bargain sale" means a sale where the taxpayer is paid less than the fair market value of the land or interest in land.

D. "Building envelope" means a designated area within a conservation easement identified in the deed of conservation easement that contains existing structures and activities or will contain future structures and activities for the grantor's continued use of the property but that are prohibited elsewhere within the conservation easement.

E. "Committee" means the committee established pursuant to the Natural Lands Protection Act, Sections 75-5-1 et seq. NMSA 1978.

F. "Conservation or preservation purpose" means open space, natural area preservation, land conservation or preservation, natural resource or biodiversity conservation including habitat conservation, forest land preservation, agricultural preservation, watershed preservation or historic or cultural property preservation, or similar uses or purposes such as protection of land for outdoor recreation purposes. The resources or areas contained in the donation must be significant or important.

G. "Cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

H. "Development approach" means a method of appraising undeveloped land having a highest and best use for subdivision into lots. This approach consists of estimating a final sale price for the total number of lots into which the property could best be divided and then deducting all development costs, including the developer's anticipated profit. The remaining sum, the residual, represents the raw land's market value.

I. "Governmental body" means the state of New Mexico or any of its political subdivisions.

J. "Interest in land" means a right in real property, including access, improvement, water right, fee simple interest, easement, land use easement, mineral right, remainder interest or other interest in or right in real property that complies with the requirements of 26 U.S.C. section 170(h)(2) and its implementing regulations, or any pertinent successor of 26 U.S.C. section 170(h)(2).

K. "Land" is defined in Subsection B of Section 75-9-3 NMSA 1978.

L. "Less-than-fee interest" means an interest in land that is less than the entire property or all the rights in the property or a non-possessory interest in land that imposes a limitation or affirmative obligation such as a conservation, land use or preservation restriction or easement.

M. "National register of historic places" means the register the United States secretary of the interior maintains of districts, sites, buildings, structures and objects significant in American history, architecture, archaeology, engineering or culture.

N. "Pass-through entity" means a business association other than a sole proprietorship; an estate or trust; a corporation, limited liability company, partnership or other entity not a sole proprietorship taxed as a corporation for federal income tax purposes for the taxable year; or a partnership organized as an investment partnership in which the partners' income is derived solely from interest, dividends and sales of securities.

O. "Public or private conservation agency" is defined in Subsection C of Section 75-9-3 NMSA 1978.

P. "Qualified appraisal" means a qualified appraisal as defined in 26 C.F.R. section 1.170A-17(a) or subsequent amendments and does not use the development approach as the sole means of determining fair market value. The appraisal for a conservation easement or restriction shall state whether the donation increases the value of other property the donor or a related person owns. In accordance with 26 C.F.R. section 1.170A-14(h)(3)(i), if the donation increases the value of other property

the donor or a related person owns the appraisal shall reflect the value of enhancement, whether or not the other property is contiguous with the donated property. The conservation contribution shall be reduced by the amount of the increase in value to the other property.

Q. "Qualified appraiser" means a qualified appraiser as defined in 26 C.F.R. section 1.170A-17(b) or subsequent amendments and who is a certified general real estate appraiser.

R. "Qualified intermediary" means any person who has not been previously convicted of a felony, who has not had a professional license revoked, who is not engaged in the practice of public accountancy as defined in Section 61-28B-3 NMSA 1978 or who is not identified in the Section 61-29-2 NMSA 1978, which governs real estate brokers and salespersons, or who is not an entity owned wholly or in part by or employing a person who has been previously convicted of a felony, who has had a professional license revoked, who is engaged in the practice of public accountancy as defined in Section 61-28B-3 NMSA 1978 or who is identified in Section 61-29-2 NMSA 1978.

S. "Taxpayer" is defined in Paragraph (2) of Subsection K of Section 7-2-18.10 NMSA 1978 and Paragraph (2) of Subsection K of Section 7-2A-8.9 NMSA 1978. A non-profit may be a taxpayer if organized as a United States domestic partnership, a limited liability company, a United States domestic corporation or a trust. A governmental body or other governmental entity is not a taxpayer.

T. "Tax filer" means a New Mexico taxpayer who files a New Mexico income tax return claiming a tax credit pursuant to the Land Conservation Incentives Act together with valid numbered documentation from the taxation and revenue department or valid sub-numbered documentation from a qualified intermediary.

U. "Secretary" means the secretary of energy, minerals and natural resources department or the secretary's designee.

[3.13.20.7 NMAC - Rp, 3.13.20.7 NMAC, 6/16/2008; A, 12/30/2010; A, 2/12/2016; A, 1/30/2024]

3.13.20.8 GENERAL PROVISIONS:

A. Only an applicant may apply for a land conservation incentives tax credit.

B. A taxpayer shall be listed as an owner on the deed conveying the land or interest in land to be eligible for the land conservation incentives tax credit (see Subsection N of 3.13.20.8 NMAC for use of a land conservation tax credit issued to a pass-through entity).

C. A taxpayer is not eligible for a land conservation incentives tax credit if they are or have been a subsidiary, partner, manager, member, shareholder or beneficiary of a domestic partnership, limited liability company, domestic corporation or pass-through entity that owns or has owned the donated land or interest in land in the five years preceding the date that the applicant conveyed the land or interest in land.

D. Qualified donations include a conveyance, on or after January 1, 2004, in perpetuity for a conservation or preservation purpose of a less-than-fee interest in land that appears to qualify as a charitable contribution under 26 U.S.C. section 170(h) and its implementing regulations or a fee interest in land.

E. Dedications of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits do not qualify for the land conservation incentives tax credit.

F. For a donation of a fee interest in land or less-than-fee interest in land the applicant conveys, the total amount of the land conservation incentives tax credit for the donation for which an applicant applies shall not exceed fifty percent of the fair market value of the land or interest in land the applicant donated in perpetuity, regardless of the value of the land or interest in land donated or the number of taxpayers owning an interest in the donated property. An applicant shall only apply for one land conservation incentives tax credit per taxpayer per taxable year.

G. For donations made prior to January 1, 2008, a taxpayer owning an interest in the donated land or interest in land may receive a land conservation incentives tax credit worth the lesser of $100,000 or the taxpayer's proportionate share, as determined by the taxpayer's ownership interest in the donated land or interest in land, of fifty percent of the donated land's or interest in land's fair market value. For donations made on or after January 1, 2008, a taxpayer owning an interest in the donated land or interest in land may receive a land conservation incentives tax credit worth the lesser of $250,000 or the taxpayer's proportionate share, as determined by the taxpayer's ownership interest in the donated land or interest in land, of fifty percent of the donated land or interest in land's fair market value. No matter the number of taxpayers owning the donated land or interest in land, the total land conservation incentives tax credit all taxpayers receive for the donated land or interest in land cannot exceed fifty percent of the donated land's or interest in land's fair market value. Therefore, if the applicant conveyed the donation on or after January 1, 2008, and there are 10 taxpayers owning an equal interest in donated land or interest in land worth $2,000,000, each taxpayer's land conservation incentives tax credit would be limited to $100,000.

H. For donations conveyed prior to January 1, 2008, married individuals who both own a recorded interest in the donated land or interest in land, as opposed to one spouse not being named on the deed but having a community property interest, may each receive a land conservation incentives tax credit worth the lesser of $100,000 or the spouse’s proportionate share, as determined by the spouse’s ownership interest in the donated land or interest in land, of fifty percent of the donated land's or interest in

land's fair market value. For donations made on or after January 1, 2008, married individuals who both own a recorded interest in a donated land or interest in land, as opposed to one spouse not being named on the deed but having a community property interest, may each receive a land conservation incentives tax credit worth the lesser of $250,000 or the spouse's proportionate share, as determined by the spouse's ownership interest in the donated land or interest in land, of fifty percent of the donated land's or interest in land's fair market value.

I. The land conservation incentives tax credit originates in the year the applicant conveys the donation, which shall be determined by the date the deed is recorded with the county clerk where the land or interest in land is located. Pursuant to Section 7-1-26 NMSA 1978, an applicant who files a tax return may amend the tax return and claim the land conservation incentives tax credit for three calendar years after the applicant has paid the tax. An applicant may apply for the land conservation incentives tax credit and then amend the applicant's tax return to the year the applicant conveyed the donation as long as the applicant receives approval of the land conservation incentives tax credit and files the amendment within the three year period provided in Section 7-1-26 NMSA 1978. The applicant may carry over portions of the land conservation incentives tax credit that are unused in prior taxable years for a maximum of 20 consecutive years following the taxable year in which the applicant donated the land or interest in land until fully expended.

J. If the applicant donated a portion of the land or interest in land's value, but received payment for the remaining fair market value of the land or interest in land, the applicant may claim only the land conservation incentives tax credit on that portion of the value the applicant donated.

K. An applicant claiming a tax credit pursuant to the Land Conservation Incentives Act shall not claim a credit pursuant to a similar law for costs related to the same donation.

L. A tax filer may claim the land conservation incentives tax credit against the tax liability the Income Tax Act or the Corporate Income and Franchise Tax Act impose.

M. The amount of the land conservation incentives tax credit a tax filer uses in a taxable year may not exceed the amount of the individual income or corporate income tax otherwise due.

N. A land conservation incentives tax credit a pass-through tax entity claims may be used either by the pass-through tax entity if it is the tax filer on behalf of the pass-through tax entity or by the member, manager, partner, shareholder or beneficiary, as applicable, in proportion to the interest in the pass-through tax entity if the income, deductions and tax liability pass through to the member, manager, partner, shareholder or beneficiary. Either (1) the pass-through tax entity or (2) the member, manager, partner, shareholder or beneficiary, but not both (1) and (2) may claim the land conservation incentives tax credit for the same donation.

[3.13.20.8 NMAC - Rp, 3.13.20.8 NMAC, 6/16/2008; A, 1/30/2024]

3.13.20.9 ASSESSMENT APPLICATION:

A. An applicant who plans to apply for a land conservation incentives tax credit shall apply for an assessment by the energy, minerals and natural resources department of the donation the applicant made or proposes to make for a conservation or preservation purpose of a fee interest in land or a less-than-fee interest in land. An applicant may submit the assessment application to the energy, minerals and natural resources department either prior to conveying the fee interest in land or less-than-fee interest in land or after conveying the fee interest in land or less-than-fee interest in land. The applicant does not need to submit an appraisal with the assessment application package.

B. An applicant may obtain an assessment application form from the energy, minerals and natural resources department.

C. An applicant shall submit the assessment application package, which shall include one signed, completed paper original and one electronic copy, to the energy, minerals and natural resources department. For the electronic copy the applicant shall submit a PDF of the assessment application package on a USB flash drive or by other method the energy, minerals and natural resources department approves. Any photographs submitted shall be in color.

D. The assessment application package shall consist of an assessment application form containing the applicant's name, address, telephone number, e-mail address if available and signature, with the following required attachments:

(1) a donation assessment report that includes:

(a) a detailed description of the donation or proposed donation including:

(i) whether the donation or proposed donation is a fee interest in land or a less-than-fee interest in land;

(ii) if the donation or proposed donation is a fee interest in land, to ensure the conservation or preservation purpose is protected in perpetuity, a description of who holds or will hold a conservation easement the applicant has placed or will place on the land and assurance the conservation easement will contain a provision that the conservation restrictions run with the land in perpetuity and any reserved use shall be consistent with the conservation or preservation purpose and separate donees will hold the fee interest and conservation easement;

(iii) the donation or proposed donation's conservation or preservation purpose and how the donation or proposed donation protects that purpose in perpetuity;

(iv) significant natural or cultural resources present on the property; and

(v) a description of any water rights associated with the property and whether the conservation easement or deed requires or will require any water rights associated with the property to remain with the property;

(b) the current property characteristics and condition with clear maps of appropriate scale to illustrate relevant details, and showing the property's location and boundaries including a survey plat if available, directions to the property, topography, relation to other properties applicant owns within a 10 mile radius of the property, and relation to adjacent land uses and ownership (i.e. federal, tribal, state, private, etc.) and other properties whose conservation or preservation purposes are protected in perpetuity that are adjacent to the property or within a five mile radius of the property;

(c) the size of the property in acres;

(d) a description of all structures existing on the property;

(e) if a donation or proposed donation is a less-than-fee interest, a description of any building envelopes including their size and exact location and the size of the buildings allowed within each building envelope;

(f) if a donation or proposed donation is a less-than-fee interest, a description of the reserved rights and permitted activities the applicant has or plans to retain or a copy of the completed or draft conservation easement;

(g) if a conservation or preservation purpose is for the preservation of a historically important land area, documentation the donation meets the requirements of 26 C.F.R. section 1.170A-14(d)(5); historically important land areas include an independently significant land area meeting the national register criteria for evaluation in 36 C.F.R section 60.4, a land area (including related historic resources) within a registered historic district including a building on the land area that can reasonably be considered as contributing to the district's significance and a land area adjacent to a property listed individually in the national register of historic places where the land area's physical or environmental features contribute to the property's historic or cultural integrity;

(h) if a conservation or preservation purpose is for the preservation of a certified historic structure, which means buildings, structures or land areas, documentation the structure is listed in the national register of historic places or is located in a registered historic district and is certified by the secretary of the interior to the secretary of treasury as being of historic significance to the district and the donation meets the requirements of 26 C.F.R. section 1.170A-14(d)(5);

(i) if a conservation or preservation purpose is for the preservation of land areas for outdoor recreation by or for the education of the general public, a detailed

description of how the conservation easement or deed will provide for the general public's substantial and regular use;

(j) if a conservation or preservation purpose is for the protection of a relatively natural area, a detailed description of the vegetative cover, wildlife use, how the property contributes to the functioning of the larger regional ecosystem and watershed and how the conservation easement will protect the soil, native plant cover and wildlife use of the property;

(k) if a conservation or preservation purpose is for the preservation of open space pursuant to a clearly delineated federal, state or local government policy, documentation of such policy and a detailed description identifying the significant public benefit;

(l) if a conservation or preservation purpose is for the preservation of open space that is not pursuant to a clearly delineated federal, state or local government policy, a detailed description of how the conservation easement or deed will provide for the general public's scenic enjoyment and identifying the significant public benefit;

(m)if a conservation or preservation purpose is for the protection of agricultural land, a detailed description of the property's crop or animal production potential, documentation the portion of the property claimed as agricultural land is currently subject to the special method of valuation of land used primarily for agricultural purposes as described in Section 7-36-20 NMSA 1978 (i.e., classified as either irrigated agricultural land, dryland agricultural land or grazing land under Paragraph (2) of Subsection F of 3.6.5.27 NMAC as shown on the statement of value issued by the county in which the land is located) and a description of how the conservation easement or deed will provide for agricultural use and the continued use of any water rights;

(n) the results of and a description of the physical inspection of the property the donee or proposed donee conducted for any indications of potentially hazardous materials or activities that have or may result in environmental contamination such as landfills, leaking petroleum storage tanks, hazardous material containers or spills, polychlorinated biphenyl containing equipment, asbestos insulation and abandoned mineral mining or milling facilities or other past activities using hazardous materials and the results of and a description of the interview the donee or proposed donee conducted with the landowner concerning the landowner's knowledge of such potentially hazardous materials or activities;

(2) if the donee or proposed donee or landowner identified the potential for potentially hazardous materials or activities in the donation assessment report, a phase I environmental site assessment of the property and a phase II environmental site assessment if recommended by the phase I environmental assessment;

(3) a copy of any formal donor or donee plan for management or stewardship of the property's conservation or preservation values;

(4) signed authorization from the applicant allowing personnel from the energy, minerals and natural resources department or members of the committee to enter upon the land or interest in land to view the conservation or preservation values conveyed or to be conveyed by the applicant for the purposes of reviewing the assessment application, upon the personnel or committee members providing the applicant with 48 hours prior notice; and

(5) a report from the public or private land conservation agency that has accepted or plans to accept the donation that provides the following:

(a) the number of fee lands held for conservation or preservation purposes or conservation easements the agency holds in New Mexico;

(b) the number of acres of each fee land held for conservation or preservation purposes or conservation easement the agency holds in New Mexico;

(c) the names of board members if the agency is a private nonprofit organization or the names of elected or appointed officials if the organization is a public entity; and

(d) a signed statement from the public or private conservation agency describing its commitment to protect the donation's conservation or preservation purposes, its resources to provide stewardship of and management for fee lands or to enforce conservation easement restrictions and, if a conservation easement, its resources and policies to annually monitor the conservation easement.

E. The secretary reviews the assessment applications in consultation with the committee. The secretary initiates consultation by sending the assessment application package to the committee members for review and comment or by calling a meeting of the committee. The secretary shall accept assessment application packages on a rolling basis or not fewer than three times per year spaced throughout the year, the deadlines for which shall be published in advance on the energy, minerals and natural resources department’s website. The committee shall meet not fewer than three times per year (within approximately 45 days after a set deadline for assessment application package submittals or otherwise spaced throughout the year) to consider timely and complete assessment applications unless no assessment applications are currently pending or the limited volume of the assessment application enables the secretary to consult with the committee without the need for a formal meeting. The secretary, in consultation with the committee, shall assess the donation or proposed donation, using the factors in 3.13.20.13 NMAC, to determine if the donation or proposed donation is for a conservation or preservation purpose and will protect the conservation or preservation purpose in perpetuity and the resources or areas contained in the donation or proposed donation are significant or important.

F. If the secretary finds the donation as conveyed or proposed is for a conservation or preservation purpose and will protect the conservation or preservation purpose in

perpetuity and the resources or areas contained in the donation or proposed donation are significant or important, the secretary shall notify the applicant by letter the applicant may file an application for certification of eligibility as provided in 3.13.20.10 NMAC. Approval of the application for certification of eligibility is contingent upon the applicant meeting the requirements in 3.13.20.10 NMAC, the completed conservation easement or deed accurately reflecting the donation or proposed donation described in the donation assessment report and the appraisal bureau issuing a favorable recommendation of the appraisal. To apply for certification of eligibility, the applicant may not change a proposed donation, donation assessment report or, if a proposed donation, the public or private conservation agency to which the applicant is making the donation after the applicant submits the assessment application. If the applicant makes such changes, the applicant shall submit a new assessment application or a letter describing the specific changes made and must receive a favorable finding from the secretary before applying for certification of eligibility.

G. The secretary shall reject an assessment application that is not complete or correct. If the secretary rejects the assessment application because the assessment application is incomplete or incorrect or finds the donation or proposed donation is not for a conservation or preservation purpose, the donation or proposed donation may not or will not protect the conservation or preservation purpose in perpetuity or the resources or areas contained in the donation or proposed donation are not significant or important, the applicant may not submit an application for certification of eligibility for the land conservation incentives tax credit. The secretary's letter shall state the specific reasons why the secretary found the assessment application incomplete or incorrect, the donation or proposed donation is not for a conservation or preservation purpose, the donation or proposed donation may not or will not protect the conservation or preservation purpose in perpetuity or the resources or areas contained in the donation or proposed donation are not significant or important.

H. If the secretary rejects the assessment application because the assessment application is incomplete or incorrect; or although the assessment application is complete and correct and the donation or proposed donation is for a conservation or preservation purpose the resources or areas contained in the donation or proposed donation are not significant or important; or the donation or proposed donation may not or will not protect the conservation or preservation purpose in perpetuity, the applicant may resubmit the application package with the complete or correct information or additional information addressing the requirement the resources or areas contained in the donation or proposed donation be significant or important or the donation or proposed donation protect the conservation or preservation purpose in perpetuity. The secretary shall place the resubmitted assessment application in the review schedule as if it were a new assessment application.

[3.13.20.9 NMAC - N, 6/16/2008; A, 12/30/2010; A, 1/30/2024]

3.13.20.10 APPLICATION FOR CERTIFICATION OF ELIGIBILITY:

A. An applicant who submitted an assessment application to the energy, minerals and natural resources department and received a finding from the secretary the donation or proposed donation is for a conservation or preservation purpose and will protect that conservation or preservation purpose in perpetuity and the resources or areas contained in the donation or proposed donation are significant or important may apply for certification of eligibility for a land conservation incentives tax credit. An applicant may not apply for certification of eligibility for a land conservation incentives tax credit without first submitting an assessment application pursuant to 3.13.20.9 NMAC and receiving a favorable finding from the secretary. The applicant shall certify in writing the applicant has not changed the donation or proposed donation, donation assessment report or the public or private conservation agency to which the applicant conveyed or planned to convey the donation since the applicant submitted the assessment application; or, if the applicant has made changes, the applicant shall describe the changes and provide a redline copy showing the changes or provide a letter describing the specific changes made. If the applicant has not made changes or the changes consist solely of increasing the acreage of the donation or decreasing the size of or removing a building envelope, the secretary shall review the application for certification of eligibility. If the applicant has made changes other than increasing the acreage of the donation or decreasing the size of or removing a building envelope the applicant shall submit a new assessment pursuant to 3.13.20.9 NMAC application or a letter describing the specific changes made and receive a favorable finding from the secretary before applying for certification of eligibility.

B. The applicant may obtain a land conservation incentives tax credit certification of eligibility application form from the energy, minerals and natural resources department.

C. An applicant shall submit the certification of eligibility application package, which shall include one signed, completed paper original and one paper copy and one electronic copy of the application package, to the energy, minerals and natural resources department. For the electronic copy the applicant shall submit a PDF of the certification application package on a USB flash drive or by other method the energy, minerals and natural resources department approves. Any photographs shall be provided in color. The applicant shall certify the information and documents included in the application for certification of eligibility are true and correct.

D. The completed application for certification of eligibility shall contain the applicant's name, address, telephone number, e-mail address if available, signature, federal employer identification number or social security number, and, if available, the New Mexico business tax identification number (BTIN) as well as the certifications, information and attachments required by Subsections E through I of 3.13.20.10 NMAC, as applicable. If more than one taxpayer owns the donated land or interest in land, the application shall include each taxpayer's federal employer identification number or social security number and, if available, New Mexico BTIN. The applicant shall indicate on the application whether the applicant is a United States citizen or resident, a United States domestic partnership, a limited liability company, a United States domestic

corporation, an estate or a trust. If more than one taxpayer owns the donated land or interest in land, the application shall include each taxpayer's status.

E. The application shall state whether the applicant made the donation as part of a bargain sale. If the applicant made the donation as part of a bargain sale, the application shall include the amount the applicant received from the sale of the land or interest in land.

F. The applicant shall certify on the certification of eligibility application none of the taxpayers listed on the certification of eligibility application is or was a subsidiary, partner, manager, member, shareholder or beneficiary of a domestic partnership, limited liability company, domestic corporation or pass-through entity that owns or has owned the land or interest in land in the five years preceding the date the applicant conveyed the land or interest in land. If an individual and a domestic partnership, limited liability company, domestic corporation or pass-through entity are listed as owners on the deed conveying the land or interest in land, the applicant shall certify on the certification of eligibility application the individual is not a partner, manager, member, shareholder or beneficiary of the domestic partnership, limited liability company, domestic corporation or pass-through-entity. If more than one domestic partnership, limited liability company, domestic corporation or pass-through entity are listed as an owner on the deed conveying the land or interest in land, the applicant shall certify on the certification of eligibility application none of the named entities is a subsidiary, partner, manager, member, shareholder or beneficiary of any of the other entities listed on the deed.

G. The certification of eligibility application package shall consist of a land conservation incentives tax credit application form, with the following required attachments as well as any attachments required in Subsection H of 3.13.20.10 NMAC for fee donations or Subsection I of 3.13.20.10 NMAC for less-than-fee donations:

(1) a copy of the letter from the secretary stating after reviewing the applicant's assessment application the donation or proposed donation is for a conservation or preservation purpose and will protect the conservation or preservation purpose in perpetuity and the resources or areas contained in the donation or proposed donation are significant or important;

(2) written certification signed by the applicant since the applicant submitted the assessment application and received approval of the assessment application or pursuant to Subsection F of 3.13.20.9 NMAC changes to the assessment application the applicant has not changed the

(a) donation or proposed donation or donation assessment report, or if the applicant has made changes, the changes consist solely of increasing the acreage of the donation or decreasing the size of or removing a building envelope, or

(b) public or private conservation agency to which the applicant conveyed or planned to convey the donation;

(3) a copy of the conservation easement or deed recorded with the county clerk of the county or counties where the land is located, which reflects the ownership interest of each individual or entity conveying the land or interest in land;

(4) a qualified appraisal of the land or interest in land donated a qualified appraiser prepared showing the fair market value of the land or interest in land with a statement from the appraiser who prepared the appraisal certifying the appraisal is a qualified appraisal and the appraiser is a qualified appraiser; the appraisal shall not be made more than 60 days prior to the date of the donation; the appraisal shall be a fully documented appraisal report commensurate with the complexity of the assignment;

(5) if the donation is to a private conservation agency, a copy of that agency's 501(c)(3) certification from the United States internal revenue service;

(6) a signed statement from the applicant certifying the applicant did not donate the land or interest in land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits;

(7) if the applicant owns other properties within a 10 mile radius of the donated land or interest in land, a legal description of those properties;

(8) signed authorization from the applicant authorizing personnel from the appraisal bureau to contact the appraiser that prepared the appraisal for the donation;

(9) a title opinion certifying the applicant owned the donated land or interest in land as of the date of the donation or a title insurance policy for the land or interest in land showing the applicant owned the donated land or interest in land as of the date of the donation;

(10) if the applicant owns the mineral interest under the land or the interest in land, a title opinion certifying such ownership, other documentation establishing such ownership or a report from a professional geologist finding the probability of surface mining occurring on such property is so remote as to be negligible, and a provision in the conservation easement or deed prohibiting any extraction or removal of minerals by any surface mining method; methods of mining that have limited, localized negative effects on the land and are not irremediably destructive of significant conservation interests may be allowed if the secretary finds the methods will have limited, localized negative effects and are not irremediably destructive of significant conservation interests; and

(11) if the ownership of the surface estate and mineral interest has been separate and remains separate, a report, satisfactory to the secretary, from a professional geologist finding the probability of surface mining occurring on such property is so remote as to be negligible; the secretary may have a geologist the state employs review the report; if the secretary finds the report unsatisfactory the secretary's

letter denying certification of eligibility shall state the reasons the report is unsatisfactory.

H. If the applicant donated the land in fee, the applicant shall also include the following attachments with the application package:

(1) a statement from the public or private conservation agency to which the applicant donated the land the applicant donated the land for conservation or preservation purposes and the public or private conservation agency will hold the land for such purposes;

(2) a copy of United States internal revenue service form 8283 for the donation signed by the public or private conservation agency and the appraiser who prepared the appraisal for the donation; and

(3) to ensure the land will be used in perpetuity for the purposes of the donation, documentation in the form of a conservation easement complying with 26 U.S.C. section 170(h) and its implementing regulations placed on the land containing a provision the conservation restrictions run with the land in perpetuity and any reserved use shall be consistent with the conservation or preservation purpose (separate donees must hold the fee and conservation easement).

I. If the applicant donated a less-than-fee interest in land, the applicant shall also include the following attachments with the application package:

(1) a copy of United States internal revenue service form 8283 for the donation signed by the public or private conservation agency and the appraiser who prepared the appraisal for the donation;

(2) a provision in the conservation easement identifying the donation's conservation or preservation purpose or purposes;

(3) a provision in the conservation easement providing the conveyance of the less-than-fee interest does not and will not adversely affect contiguous landowners' existing property rights;

(4) if a conservation or preservation purpose is for the conservation or preservation of land areas for outdoor recreation by or for the education of the general public, a provision in the conservation easement providing for the general public's substantial and regular use;

(5) if a conservation or preservation purpose is for the protection of a relatively natural habitat, a provision in the conservation easement describing the habitat;

(6) if a conservation or preservation purpose is for the preservation of open space pursuant to a clearly delineated federal, state or local government policy, a provision in the conservation easement identifying such policy and identifying the significant public benefit;

(7) if a conservation or preservation purpose is for the preservation of open space that is not pursuant to a clearly delineated federal, state or local government policy, a provision in the conservation easement stating how the easement or restriction provides for the general public's scenic enjoyment and identifying the significant public benefit;

(8) if a conservation or preservation purpose is for the property's continued use for irrigated agriculture, a provision providing sufficient water rights will remain with the property;

(9) a provision in the conservation easement the conservation restrictions run with the land in perpetuity;

(10) a provision in the conservation easement any reserved use shall be consistent with the conservation or preservation purpose;

(11) a provision in the conservation easement prohibiting the donee from subsequently transferring the interest in land unless the transfer is to another public or private conservation agency and the donee, as a condition of the transfer, requiring the conservation or preservation purposes for which the donation was originally intended continue to be carried out;

(12) a provision in the conservation easement providing the donation of the less-than-fee interest is a property right, immediately vested in the donee, and providing the less-than-fee interest has a fair market value at least equal to the proportionate value the conservation restriction at the time of the donation bears to the property as a whole at that time; the provision shall further provide if subsequent unexpected changes in the conditions surrounding the property make impossible or impractical the property's continued use for conservation or preservation purposes and judicial proceedings extinguish the easement or restrictions then the donee is entitled to a portion of the proceeds from the property's subsequent sale, exchange or involuntary conversion at least equal to the perpetual conservation restriction's proportionate value;

(13) if the applicant reserves rights if exercised may impair the conservation interests associated with the property, documentation sufficient to establish the property's condition at the time of the donation and a provision in the conservation easement whereby the applicant agrees to notify the public or private conservation agency receiving the donation before exercising any reserved right that may adversely impact the conservation or preservation purposes; and

(14) if the interest in land is subject to a mortgage, a subordination agreement, recorded with the county clerk of the county or counties where the land that is located, from the mortgage holder subordinating the mortgage holder's rights in the interest in land to the right of the public or private conservation agency to enforce the conservation or preservation purposes of the donation in perpetuity.

[3.13.20.10 NMAC - Rp, 3.13.20.9 NMAC, 6/16/2008; A, 12/30/2010; A, 2/12/2016; A, 1/30/2024]

3.13.20.11 CERTIFICATION OF ELIGIBILITY APPLICATION REVIEW PROCESS AND CERTIFICATION OF ELIGIBLE DONATION:

A. Authority to review. The secretary reviews certification of eligibility applications.

B. Appraisal review. Upon receiving the certification of eligibility application, the secretary requests that the taxation and revenue department review the appraisal and forwards the appraisal to the appraisal bureau for review. The appraisal bureau shall review the appraisal and advise the secretary whether the appraisal meets the requirements of 3.13.20 NMAC including whether the appraisal complies with the uniform standards of professional appraisal practice and whether the appraiser used proper methodology and reached a reasonable conclusion concerning value.

(1) If the appraisal bureau determines that the appraisal meets the requirements of 3.13.20 NMAC including whether the appraisal complies with the uniform standards of professional appraisal practice and the appraiser used proper methodology and reached a reasonable conclusion concerning value the appraisal bureau shall issue a final review of the appraisal to the energy, minerals and natural resources department.

(2) If the appraisal bureau determines the appraisal does not meet the requirements of 3.13.20 NMAC, the uniform standards of professional appraisal practice or the appraiser did not use proper methodology or reach a reasonable conclusion concerning value the appraisal bureau shall send a preliminary review of the appraisal to the energy, minerals and natural resources department identifying the reasons for the appraisal bureau's determination.

(3) The appraisal bureau's review does not preclude further audit by the taxation and revenue department or the United States internal revenue service.

C. Rejection of certification of eligibility applications. The secretary shall reject a certification of eligibility application if:

(1) the certification of eligibility application is incomplete or incorrect;

(2) since the applicant submitted and received approval of the assessment application or pursuant to Subsection F of 3.13.20.9 NMAC changes to the assessment application, the applicant changed the

(a) donation or proposed donation or donation assessment report, and the changes consist of more than increasing the acreage of the donation or decreasing the size of or removing a building envelope, or

(b) public or private conservation agency to which the applicant conveyed or planned to convey the donation;

(3) the donation does not meet the requirements of 3.13.20.8 NMAC or 3.13.20.10 NMAC;

(4) the completed conservation easement or deed does not accurately reflect the donation the applicant described in the applicant's assessment application; or

(5) the appraisal bureau provides a final unfavorable recommendation of the appraisal.

D. Notice of cause to reject. If the secretary determines that there is cause to reject the certification of eligibility application, the secretary shall issue notice to the applicant pursuant to 3.13.20.12 NMAC.

E. Resubmittal of rejected certification of eligibility applications.

(1) If the secretary rejects the certification of eligibility application because the certification of eligibility application was incomplete or incorrect; does not meet the requirements of 3.13.20.8 NMAC or 3.13.20.10 NMAC; the filed conservation easement or deed does not accurately reflect the donation the applicant described in the applicant's assessment application; or the appraisal bureau provides a final unfavorable recommendation of the appraisal, the applicant may resubmit the application package for the rejected certification of eligibility application with the complete or correct information or additional information addressing the requirements the donation does not meet. The secretary shall place the resubmitted certification of eligibility application in the review schedule as if it were a new certification of eligibility application.

(2) The applicant shall submit a new assessment application pursuant to 3.13.20.8 NMAC, if the secretary rejects the certification of eligibility application because the applicant changed the

(a) donation or proposed donation or donation assessment report, and the changes consist of more than increasing the acreage of the donation or decreasing the size of or removing a building envelope, or

(b) the public or private conservation agency to which the applicant conveyed or planned to convey the donation since the applicant submitted the assessment application.

F. Approval of certification of eligibility applications.

(1) The secretary approves the certification of eligibility application if the secretary finds:

(a) the donation of land or interest in land meets the requirements of 3.13.20.8 NMAC or 3.13.20.10 NMAC;

(b) the secretary issued a favorable finding on the applicant's assessment application and the applicant has not changed the donation or proposed donation, donation assessment report or the public or private conservation agency to which the applicant conveyed or planned to convey the donation since the applicant submitted the assessment application;

(c) the completed conservation easement or deed accurately reflects the donation the applicant described in the applicant's assessment application; the donation does not adversely affect contiguous landowners' property rights; and

(d) the appraisal meets the requirements of 3.13.20 NMAC including compliance with the uniform standards of professional appraisal practice and the appraiser used proper methodology and reached a reasonable conclusion concerning value.

(2) The secretary's approval is given by the issuance of a letter to the applicant. This letter shall certify the donation of land or interest in land includes the conveyance in perpetuity, on or after January 1, 2004, for a conservation or preservation purpose of a fee interest in land or a less-than-fee interest in land that meets the requirements of the Land Conservation Incentives Act; Sections 7-2-18.10 or 7-2A-8.9 NMSA 1978; and 3.13.20 NMAC, and include a calculation of the maximum amount of the land conservation incentives tax credit for which each taxpayer is eligible.

[3.13.20.11 NMAC - Rp, 3.13.20.10 NMAC, 6/16/2008; A, 12/30/2010; A, 1/30/2024]

3.13.20.12 NOTICE TO APPLICANT OF PROPOSED REJECTION OF CERTIFICATION OF ELIGIBILITY APPLICATION; APPLICANT RESPONSE; FINAL ACTION:

A. If after review of a certification of eligibility application, the secretary determines there is cause to reject the certification of eligibility application, the secretary shall issue a letter advising the applicant the secretary is proposing to reject the certification of eligibility application and stating the specific reasons for the proposed rejection. If the proposed rejection involves an unfavorable preliminary review of the appraisal from the

appraisal bureau, the energy, minerals and natural resources department shall include a copy of the unfavorable preliminary review of the appraisal with the secretary's letter.

B. The applicant shall have 45 days after the issuance of the letter to respond in writing to the reasons for the proposed rejection and submit a revised appraisal, information or other documentation demonstrating the application meets the requirements.

C. If the secretary's proposed rejection involves an unfavorable preliminary review of the appraisal from the appraisal bureau and the applicant responds to the preliminary review of the appraisal within 45 days of the issuance of the letter, the energy, minerals and natural resources department shall forward the applicant's response to the appraisal bureau for review of the response and issuance of the appraisal bureau's final review of the appraisal. If the applicant does not respond to the preliminary review of the appraisal within 45 days of the issuance of the letter, the energy, minerals and natural resources department shall notify the appraisal bureau the energy, minerals and natural resources department did not receive a response to the preliminary review of the appraisal from the applicant. After reviewing the applicant's response, if any, the appraisal bureau shall issue a final review of the appraisal and advise the secretary whether the appraisal meets the requirements of 3.13.20 NMAC including whether the appraisal complies with the uniform standards of professional appraisal practice and whether the appraiser used proper methodology and reached a reasonable conclusion concerning value.

D. After reviewing the applicant's response, if any, and the appraisal bureau's final review of the appraisal the secretary shall determine whether the information or documents the applicant has supplied satisfactorily address and resolve the specific reasons for the proposed rejection and issue a letter either rejecting the certification of eligibility application or approving the certification of eligibility application. If the secretary determines the applicant's response does not satisfactorily resolve the reasons for the rejection or if the appraisal bureau has issued a final unfavorable recommendation of the appraisal, the secretary shall issue a letter denying the certification of eligibility application. The secretary's letter shall state the specific reasons why the secretary rejected the certification of eligibility application.

[3.13.20.12 NMAC - N, 6/16/2008; A, 12/30/2010; A, 2/12/2016; A, 1/30/2024]

3.13.20.13 FACTORS IN DETERMINING SUITABILITY FOR CERTIFICATION OF ELIGIBILITY:

A. The donation shall meet the following three criteria for the secretary to consider the donation for certification eligibility:

(1) the land or interest in land fits one or more of the descriptions of purposes in Subsection D of 3.13.20.7 NMAC;

(2) the recipient is a public or private conservation agency with the ability and commitment to monitor and ensure the grantor's compliance with the conservation easement or provide stewardship of the fee land, as applicable; and

(3) the donation provides for the protection in perpetuity of the conservation or preservation purposes for which the applicant donated the land or interest in land through a conservation easement.

B. In determining an application's suitability for certification of eligibility, the secretary considers several factors including the following:

(1) property size;

(2) property condition or potential;

(3) presence of significant natural or cultural resources;

(4) property's location relative to other lands protected for conservation or preservation purposes;

(5) current and future management and use;

(6) contribution to local, regional or state conservation or preservation objectives;

(7) terms of the conservation easement or deed;

(8) qualifications and stewardship capacity of the public or private conservation agency holding the fee or conservation easement; and

(9) other factors affecting the property's long-term protection and viability.

C. The secretary also considers the criteria listed in the following table in determining whether the resources or areas contained in the donation are significant or important: These criteria relate to the property's overall condition and viability as well as the compatibility of future management and uses and surrounding land uses for maintenance of conservation values.

Ranking	**Site Condition**	**Development**	**Uses**	**Surroundings**	**Stewardship or Monitoring**
Favorable	Site is of uniformly good condition and sufficient size to maintain the conservation	Additional development of the property is specifically prohibited or additional development	Allowed uses of the property are consistent with the conservation or	Surrounding land uses are entirely compatible with site conservation or preservation	If a fee donation, the recipient has sufficient resources as well as a formal plan to

	or preservation purposes, assuming other favorable factors such as good potential for restoration if needed	that is allowed is consistent with the conservation or preservation purposes	preservation purposes	purposes, or site serves as a connection between other conservation lands or provides significant or important open space	provide stewardship for the conservation or preservation purposes. If a less-than-fee donation the recipient has sufficient resources to monitor and ensure the grantor's compliance with the conservation's easement's terms.
Marginal	Site is of minimum size and condition to maintain the conservation or preservation purposes, assuming other favorable factors	Additional development allowed that may impair the conservation or preservation purposes	Allowed uses of the property may be incompatible for long-term maintenance of the conservation or preservation purposes	Surrounding lands uses are not consistent with site conservation or preservation purposes, and site does not serve as a connection between other conservation lands or provide significant or important open space, but surrounding land uses do not seriously compromise site integrity	If a fee donation, the recipient has no formal plan and marginal capacity to provide stewardship of the conservation or preservation purposes. If a less-than-fee donation, the recipient has marginal resources to monitor and ensure the grantor's compliance with the conservation's easement's terms.
Unfavorable	Maintenance of conservation or preservation values is severely	Additional development allowed that is inconsistent with the conservation or	Allowed uses are clearly incompatible with the long-term maintenance of the	Surrounding land uses are clearly incompatible with site conservation or preservation	If a fee donation, the recipient has no plan or resources to provide stewardship of

	compromised by the site's size, configuration, location or condition	preservation purposes	conservation or preservation purposes	and threaten site integrity and the site does not serve as a connection between other conservation lands or provide significant or important open space	the conservation or preservation purposes. If a less-than-fee donation, the recipient has no or limited resources to monitor and ensure the grantor's compliance with the conservation's easement's terms.

D. The secretary evaluates each application in the context of the property's unique geographic setting and characteristics, but the secretary will not apply rigid standards relating to tract size or other factors. Instead, the secretary evaluates the donation's overall contribution to the indicated conservation or preservation purpose as well as the probability the purposes will be supported in perpetuity.

[3.13.20.13 NMAC - N, 6/16/2008; A, 1/30/2024]

3.13.20.14 FILING REQUIREMENTS:

A. After obtaining a certificate of eligibility from the energy, minerals and natural resources department, the applicant shall apply for the land conservation incentives tax credit with the taxation and revenue department on a form the taxation and revenue department develops. The applicant shall attach the certificate of eligibility received from the secretary.

B. If the applicant complies with all the requirements in Section 7-2-18.10 or Section 7-2A-8.9 NMSA 1978 and has received the certificate of eligibility from the secretary, the taxation and revenue department shall issue a document granting the land conservation incentives tax credit, which is numbered for identification and includes its date of issuance and the amount of the land conservation incentives tax credit allowed.

C. A tax filer shall use a claim form the taxation and revenue department develops to apply the land conservation incentives tax credit to the tax filer's income taxes. A tax filer shall submit the claim form with the tax filer’s income tax return.

D. A tax filer who has both a carryover credit and a new credit derived from a qualified donation in the taxable year for which the tax filer is filing the return shall first apply the amount of carryover credit against the income tax liability. A tax filer may apply one or more tax credits against the liability in a given year; provided however, the

tax credits applied shall not exceed the liability for that year. If the amount of liability exceeds the carryover credit, then the tax filer may apply the current year credit against the liability.

E. If an applicant claims a charitable deduction on the applicant's federal income tax for a contribution for which the applicant also claims a tax credit pursuant to the Land Conservation Incentives Act, the applicant's itemized deduction for New Mexico income tax shall be reduced by the deduction amount for the contribution to determine the applicant's New Mexico taxable income.

[3.13.20.14 NMAC - Rp, 3.13.20.11 NMAC, 6/16/2008; A, 12/30/2010; A, 1/30/2024]

3.13.20.15 TRANSFER OF THE LAND CONSERVATION INCENTIVES TAX CREDIT:

A. An applicant may sell, exchange or otherwise transfer an approved land conservation incentives tax credit, represented by the document the taxation and revenue department issues, for a conveyance made on or after January 1, 2008. A land conservation incentives tax credit or increment of a land conservation incentives tax credit may only be transferred once. An applicant may transfer the applicant’s land conservation incentives tax credit to any tax filer.

B. A tax filer to whom an applicant has transferred a land conservation incentives tax credit may use the land conservation incentives tax credit in the year the transfer occurred and carry forward unused amounts to succeeding taxable years, but may not use the land conservation incentives tax credit for more than 20 years after the taxation and revenue department originally issued the land conservation incentives tax credit. To use the land conservation incentives tax credit for that taxable year, the transfer of the land conservation incentives tax credit must occur on or before December 31 of that taxable year, if the individual or entity who will use the land conservation incentives tax credit has a taxable year of January 1 to December 31, or on or before the end of the taxable year if the individual or entity has a taxable year that is not January 1 to December 31.

C. An applicant may only transfer a land conservation incentives tax credit in increments of $10,000 or more.

D. An applicant shall use a qualified intermediary to transfer a land conservation incentives tax credit. The qualified intermediary shall notify the taxation and revenue department of the transfer and the date of the transfer on a taxation and revenue department-developed form within 10 days following the transfer. The qualified intermediary shall keep an account of the land conservation incentives tax credit transferred.

E. A qualified intermediary may issue sub-numbers registered with and obtained from the taxation and revenue department.

F. If an individual who owns an interest in the donated property dies prior to selling, exchanging or otherwise transferring the land conservation incentives tax credit, the donor's estate may sell, exchange or otherwise transfer the land conservation incentives tax credit.

[3.13.20.15 NMAC - N, 6/16/2008; A, 12/30/2010; A, 1/30/2024]

3.13.20.16 TRANSITION PROVISIONS:

3.13.20 NMAC, effective on June 16, 2008, shall apply to those applications for a land conservation incentives tax credit, an applicant submits on or after June 16, 2008 even if the applicant conveyed the donation prior to that date.

[3.13.20.16 NMAC - N, 6-16-2008]

PART 21: BIODIESEL BLENDING FACILITY TAX CREDIT

3.13.21.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[3.13.21.1 NMAC - N, 10-31-07]

3.13.21.2 SCOPE:

3.13.21 NMAC applies to the application and certification procedures for administration of the biodiesel blending facility tax credit for rack operations.

[3.13.21.2 NMAC - N, 10-31-07]

3.13.21.3 STATUTORY AUTHORITY:

3.13.21 NMAC is established under the authority of NMSA 1978, Section 7-9-79.2 and NMSA 1978, Section 9-1-5.

[3.13.21.3 NMAC - N, 10-31-07]

3.13.21.4 DURATION:

Permanent.

[3.13.21.4 NMAC - N, 10-31-07]

3.13.21.5 EFFECTIVE DATE:

October 31, 2007, unless a later date is cited at the end of a section.

[3.2.21.5 NMAC - N, 10-31-07]

3.13.21.6 OBJECTIVE:

3.13.21 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the biodiesel blending facility tax credit for rack operators.

[3.13.21.6 NMAC - N, 10-31-07]

3.13.21.7 DEFINITIONS:

A. "Annual cap" means the annual aggregate amount of the biodiesel blending facility tax credit available to taxpayers.

B. "Applicant" means a taxpayer that installs biodiesel blending equipment for the purpose of establishing or expanding a biodiesel blending facility and that desires to have the department issue a certificate of eligibility for a biodiesel blending facility tax credit.

C. "Application package" means the application documents an applicant submits to the department to receive a certificate of eligibility for a biodiesel blending facility tax credit.

D. "Biodiesel" means renewable, biodegradable, monoalkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets the ASTM International D 6751 standard specification for biodiesel B100 blend stock for distillate fuels (Copyright ASTM International , 100 Barr Harbor Drive, West Conshohocken, PA 19428. This document is available for public viewing only at the New Mexico state records center and archives and may not be reproduced, in full or part. A copy of this publication may be obtained from ASTM International, www.astm.org.)

E. "Biodiesel blending equipment" means equipment necessary for the process of blending biodiesel with diesel fuel to produce blended biodiesel fuel.

F. "Biodiesel blending facility" means an installation that is part of a rack operation for the purpose of blending biodiesel fuel, including reactivating existing blending and storage equipment in place, expanding storage equipment at an existing facility, installing a new blending facility or site specific blending at a retail facility.

G. "Biodiesel blending facility tax credit" means the gross receipts or compensating tax credit the state of New Mexico issues to an applicant for a biodiesel blending facility.

H. "Blended biodiesel fuel" means a diesel fuel that contains at least two percent biodiesel.

I. "Bulk storage" means the storage of special fuels in any tank or receptacle, other than a supply tank, for the purpose of sale by a dealer or for use by a user or for any other purpose.

J. "Bulk storage user" means a user who operates, owns or maintains bulk storage in this state from which the user places special fuel into the supply tanks of motor vehicles that the user owns or operates.

K. "Certificate of eligibility" means the document, with a unique identifying number that specifies the amount and taxable year for the approved biodiesel blending facility tax credit.

L. "Dealer" means any person who sells and delivers special fuel to a user.

M. "Department" means the energy, minerals and natural resources department.

N. "Diesel fuel" means any diesel-engine fuel used for the generation of power to propel a motor vehicle.

O. "Installation of equipment" means to assemble and construct biodiesel blending equipment, including equipment necessary for receiving and off-loading B100 or pre-blended biodiesel, equipment for storage of B100 or blended biodiesel fuel and equipment for on-loading and dispensing B100 or blended biodiesel fuel.

P. "Motor vehicle" means a self-propelled vehicle or device that is either subject to registration pursuant to NMSA 1978 Section 66-3-1 or is used or may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer.

Q. Rack operations" means a facility that is a refinery in this state, any facility where special fuel is blended in this state or where special fuel is stored at a pipeline terminal in this state.

R. "Rack operator" means the operator of a refinery in this state, any person who blends special fuel in this state or the owner of special fuel stored at a pipeline terminal in this state.

S. "Supply tank" means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains special fuel or special fuel is delivered into it.

T. "Taxable year" means the annual accounting period for purposes of filing corporate income taxes, as defined by the Unites States internal revenue service.

U. "Taxpayer" means a rack operator who owns the rack operation where the rack operator installs biodiesel blending equipment and who applies for certification of an operating biodiesel blending facility in order to receive a biodiesel blending facility tax credit and is liable for payment of gross receipts or compensating taxes.

V. "Taxpayer identification number" means an 11-digit number the New Mexico taxation and revenue department issues that indicates that the taxpayer is registered with the taxation and revenue department to pay gross receipts and compensating taxes.

[3.13.21.7 NMAC - N, 10-31-07]

3.13.21.8 GENERAL PROVISIONS:

A. Only a taxpayer who on or after July 1, 2007 installs biodiesel blending equipment in New Mexico for the purpose of establishing or expanding a biodiesel blending facility may receive a certificate of eligibility for a biodiesel blending facility tax credit.

B. The biodiesel blending facility tax credit is an amount equal to 30 percent of the biodiesel blending equipment's purchase cost plus 30 percent of the biodiesel blending equipment's installation cost.

C. The biodiesel blending facility tax credit shall not exceed $50,000 for biodiesel blending equipment installed at any one facility.

D. The annual aggregate amount of the biodiesel blending facility tax credit available to taxpayers is limited to $1,000,000. When the $1,000,000 limit for rack operations is reached based on the total certificates of eligibility the department has issued and New Mexico department of taxation and revenue has recorded, the department shall:

(1) if part of the eligible biodiesel blending facility tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable taxable year and issue a certificate of eligibility for the balance for the subsequent taxable year; or

(2) if no biodiesel blending facility tax credit funds are available, issue a certificate of eligibility for the next subsequent taxable year in which funds are available.

E. In the event of a discrepancy between a requirement of 3.13.21 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.13.21 NMAC's adoption, the existing rule governs.

[3.13.21.8 NMAC - N, 10-31-07]

3.13.21.9 CERTIFICATE OF ELIGIBILITY APPLICATION:

A. An applicant may obtain a certificate of eligibility application form from the department.

B. An application package shall include a completed certificate of eligibility application form and attachments as specified on the certificate of eligibility application form. The applicant shall submit the completed certificate of eligibility application form and required attachments at the same time. An applicant shall submit one certificate of eligibility application for each biodiesel blending facility. The applicant shall submit all material submitted in the application package on 8½ inch by 11 inch paper.

C. An applicant shall submit a complete application package to the department no later than 90 days before the end of taxable year for which the applicant seeks the biodiesel blending facility tax credit to allow time for approval and issuance of an approved certificate of eligibility. The department reviews application packages it receives after that date for the subsequent taxable year.

D. The completed certificate of eligibility application shall consist of the following information:

(1) taxpayer information, including the applicant's name, mailing address, telephone number, biodiesel blending facility tax credit's taxable year or years and CRS or taxpayer identification number;

(2) blending equipment information, including project location with county and legal description, blending equipment type (splash or injection), blending equipment description, blending equipment cost, blending equipment installation cost and date on which the biodiesel blending equipment and facility went into operation;

(3) proof of ownership of the rack, design schematic, equipment specifications and serial numbers, photographs, installation/construction documents, storage and blending capacities, description of operation, construction permit and environmental protection agency related plans with engineer's stamp and final inspection report;

(4) evidence of purchase of equipment and installation including receipts and invoices; and

(5) applicant agreement stating that the taxpayer agrees that all information in the application packet is true and correct to the best of the applicant's knowledge, that the applicant has read the certification requirements of 3.13.21 NMAC, that the applicant understands that there is an annual aggregate biodiesel blending facility tax credit limit, that the department must certify the biodiesel blending facility documented in the application package is eligible for the biodiesel blending facility tax credit and that the applicant allows the department or its authorized representative to inspect the biodiesel blending facility that is described in the application package from the

application package's submittal to three years after the department has certified the biodiesel blending facility upon the department providing a minimum of five days notice to the applicant.

[3.13.21.9 NMAC - N, 10-31-07]

3.13.21.10 APPLICATION REVIEW PROCESS:

A. The department considers certificate of eligibility applications in the order received, according to the day they are received, but not the time of day.

B. The department reviews the application package to calculate the biodiesel blending facility tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the biodiesel blending facility tax credit.

C. If the department verifies that no person has applied for a biodiesel blending facility tax credit for that biodiesel blending facility and if the department finds that the application package meets the requirements and funds for a biodiesel blending facility tax credit are available, the department issues the certificate of eligibility for a biodiesel blending facility tax credit. If funds for a biodiesel blending facility tax credit are partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year in which funds are available. The certificate of eligibility shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility project number, the biodiesel blending facility tax credit amount or amounts and the biodiesel blending facility tax credit's taxable year or years.

D. The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The department places the resubmitted application in the review schedule as if it were a new application.

[3.13.21.10 NMAC - N, 10-31-07]

3.13.21.11 CLAIMING THE BIODIESEL BLENDING FACILITY TAX CREDIT:

A. Upon receipt of a certificate of eligibility from the department, the taxpayer shall submit a completed form RPD-41339, biodiesel blending facility tax credit approval request form, to the taxation and revenue department. The taxpayer shall attach the certificate of eligibility received from the department and a copy of the invoice for the qualified equipment and installation costs. Once the taxation and revenue department notifies the taxpayer of approval for the biodiesel blending facility tax credit, the taxpayer may apply the biodiesel blending facility tax credit to gross receipts and compensating tax due. To apply the biodiesel blending facility tax credit, the taxpayer

shall submit form RPD-41321, biodiesel blending facility tax credit claim form, along with a CRS-1 long form for the report period to which the taxpayer wishes to apply the biodiesel blending facility tax credit. Unused biodiesel blending facility tax credit may be carried forward for four years from the date the department issues the certificate of eligibility.

B. If a rack operator who has claimed biodiesel blending facility tax credit against gross receipts tax or compensating tax due ceases biodiesel blending without completing at least 180 days of availability of the facility within the first 365 days after the department's issuance of a certificate of eligibility, the taxpayer shall notify taxation and revenue department that the taxpayer is no longer eligible for the approved biodiesel blending facility tax credit and that the liabilities for the reports to which the biodiesel blending facility tax credit had been applied are now due. The taxation and revenue department will extinguish any amount of the approved biodiesel blending facility tax credit not applied against the taxpayer's gross receipts tax or compensating tax liability and assess the taxpayer for the tax owed. The taxpayer shall pay the assessment within 425 days of the date of issuance of the certificate of eligibility. The taxpayer may still qualify for subsequent biodiesel blending facility tax credits, within the first 365 days after the department's issuance of the certificate of eligibility. When applying for biodiesel blending facility tax credits the taxpayer shall use only the CRS-1 long form.

C. Beginning with the taxable year on each certificate of eligibility, the taxation and revenue department applies 30 percent of the amount on the certificate of eligibility against the applicant's gross receipts or compensating tax liability for four years, unless the amount is less than or equal to $50,000, in which case the taxation and revenue department applies the entire biodiesel blending facility tax credit in the taxable year on the certificate.

D. If the amount of the biodiesel blending facility tax credit the applicant claims exceeds the applicant's gross receipts or compensating tax liability, the applicant may carry the excess forward for up to four consecutive taxable years.

[3.13.21.11 NMAC - N, 10-31-07]

CHAPTER 14: PARIMUTUEL TAXES [RESERVED]

CHAPTER 15: FRANCHISE TAXES

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2-99: [RESERVED]

PART 100: STATE FRANCHISE TAXES

3.15.100.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[1/15/97; 3.15.100.1 NMAC - Rn, 3 NMAC 15.100.1, 12/14/00]

3.15.100.2 SCOPE:

This part applies to all persons subject to the corporate franchise tax.

[1/15/97; 3.15.100.2 NMAC - Rn, 3 NMAC 15.100.2, 12/14/00]

3.15.100.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[1/15/97; 3.15.100.3 NMAC - Rn, 3 NMAC 15.100.3, 12/14/00]

3.15.100.4 DURATION:

Permanent.

[1/15/97; 3.15.100.4 NMAC - Rn, 3 NMAC 15.100.4, 12/14/00]

3.15.100.5 EFFECTIVE DATE:

1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1/15/97; 3.15.100.5 NMAC - Rn & A, 3 NMAC 15.100.5, 12/14/00]

3.15.100.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Corporate Income and Franchise Tax Act.

[1/15/97; 3.15.100.6 NMAC - Rn, 3 NMAC 15.100.6, 12/14/00]

3.15.100.7 DEFINITIONS:

Corporation defined for franchise tax purposes. As used in Section 7-2A-5.1 NMSA 1978 the term "corporation" includes each and every domestic and foreign corporation or other organization having or exercising its corporate franchise in this state, whether active or not, or engaging in business in or deriving income from this state, and which either is required to file a corporate income tax return under the Internal Revenue Code

or is a disregarded entity for federal income tax purposes. A "disregarded entity" is an entity with only one owner whose existence separate from the owner is disregarded for federal income tax purposes; see for example internal revenue service regulations 301.770-1-2 and 3.

[11/18/86, 9/16/88, 1/7/92, 1/15/97, 8/16/99; 3.15.100.7 NMAC - Rn & A, 3 NMAC 15.100.7, 12/14/00]

3.15.100.8 LIMITED LIABILITY COMPANIES:

A. If it is not required to file a return as a corporation for federal income tax purposes, a limited liability company formed in New Mexico pursuant to the Limited Liability Company Act or formed pursuant to a similar act of another state is not a domestic or foreign corporation and therefore is not subject to the franchise tax.

B. Any limited liability company which is required to file a return as a corporation for federal income tax purposes and exercises its franchise in New Mexico is a corporation subject to the franchise tax.

[12/28/94, 1/15/97; 3.15.100.8 NMAC - Rn, 3 NMAC 15.100.8, 12/14/00]

3.15.100.9 APPLICATION OF FRANCHISE TAX TO MEMBER OF A COMBINED OR CONSOLIDATED GROUP:

Each member of a combined group of unitary corporations and each member of a consolidated group of corporations shall be subject individually to the franchise tax imposed by Section 7-2A-5.1 NMSA 1978 even though a combined or consolidated state corporate income tax return is filed by the combined or consolidated group.

[11/18/86, 9/16/88, 1/7/92, 1/15/97; 3.15.100.9 NMAC - Rn & A, 3 NMAC 15.100.9, 12/14/00]

CHAPTER 16: MOTOR VEHICLE FUEL TAXES

PART 1: GASOLINE TAX - GENERAL PROVISIONS

3.16.1.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[8/31/96; 3.16.1.1 NMAC - Rn, 3 NMAC 16.1.1, 6/14/01]

3.16.1.2 SCOPE:

This part applies to all persons receiving, selling or dealing in gasoline in New Mexico, including refineries, pipeline terminals, importers and persons registered as distributors, wholesalers or retailers.

[8/31/96; 3.16.1.2 NMAC - Rn, 3 NMAC 16.1.2, 6/14/01]

3.16.1.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[8/31/96; 3.16.1.3 NMAC - Rn, 3 NMAC 16.1.3, 6/14/01]

3.16.1.4 DURATION:

Permanent.

[8/31/96; 3.16.1.4 NMAC - Rn, 3 NMAC 16.1.4, 6/14/01]

3.16.1.5 EFFECTIVE DATE:

8/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[8/31/96; 3.16.1.5 NMAC - Rn & A, 3 NMAC 16.1.5, 6/14/01]

3.16.1.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gasoline Tax Act.

[8/31/96; 3.16.1.6 NMAC - Rn, 3 NMAC 16.1.6, 6/14/01]

3.16.1.7 DEFINITIONS:

For purposes of Part 3.16.1 NMAC and forms and instructions of the department with respect to the Gasoline Tax Act and the taxes imposed by that act on or after July 1, 1999:

A. "acquired gasoline" means gasoline that comes into the possession of a person but which is not "received" within the meaning of Section 7-13-2.1 NMSA 1978 by that person;

B. "first receiver" means a refiner, an owner of stored gasoline, a person who for purposes of Subsection C of Section 7-13-2.1 NMSA 1978 blends gasoline with other substances, an owner of gasoline immediately after the gasoline is transported off a tribe’s territory or an importer;

C. "owner of stored gasoline" means the person who owns gasoline stored at a pipeline terminal immediately prior to the loading of the gasoline;

D. "refiner" means, except for purposes of Section 7-13-8 NMSA 1978, a person who produces, refines, manufactures, blends or compounds gasoline at a refinery or other facility; and

E. "tax refund gasoline" means gasoline purchased by a person holding a permit issued under Section 7-13-17 NMSA 1978 and used other than in motorboats or vehicles licensed by the motor vehicle division to be operated on the highways of New Mexico, whether such gasoline is dyed or undyed.

[8/31/96, 12/31/97, 9/30/99; 3.16.1.7 NMAC - Rn & A, 3 NMAC 16.1.7, 6/14/01]

3.16.1.8 CITATIONS:

Unless otherwise stated, all citations of statutes within Chapter 3.16 NMAC are to the New Mexico Statutes Annotated, 1978 (NMSA 1978).

[8/31/96; 3.16.1.8 NMAC - Rn & A, 3 NMAC 16.1.8, 6/14/01]

PART 2: [RESERVED]

PART 3: IMPOSITION AND RATE OF TAX

3.16.3.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[8/31/96; 3.16.3.1 NMAC - Rn, 3 NMAC 16.3.1, 6/14/01]

3.16.3.2 SCOPE:

This part applies to all persons (including Indian nations, tribes and pueblos) receiving, selling or dealing in gasoline in New Mexico, including refineries, pipeline terminals, importers and persons registered as distributors, wholesalers or retailers.

[8/31/96; 3.16.3.2 NMAC - Rn, 3 NMAC 16.3.2, 6/14/01]

3.16.3.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[8/31/96; 3.16.3.3 NMAC - Rn, 3 NMAC 16.3.3, 6/14/01]

3.16.3.4 DURATION:

Permanent.

[8/31/96; 3.16.3.4 NMAC - Rn, 3 NMAC 16.3.4, 6/14/01]

3.16.3.5 EFFECTIVE DATE:

8/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[8/31/96; 3.16.3.5 NMAC - Rn & A, 3 NMAC 16.3.5, 6/14/01]

3.16.3.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gasoline Tax Act.

[8/31/96; 3.16.3.6 NMAC - Rn, 3 NMAC 16.3.6, 6/14/01]

3.16.3.7 DEFINITIONS:

For the purposes of Part 3.16.3 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 Navaho 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; and

B. "tribe's territory" or "own tribal 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.

[8/31/96, 9/30/99; 3.16.3.7 NMAC - Rn & A, 3 NMAC 16.3.7, 6/14/01]

3.16.3.8 WHEN GASOLINE IS "RECEIVED" - FIRST INSTANCE:

A. On or after July 1, 1999, gasoline is "received" in the first instance in the five circumstances specified in this subsection.

(1) Gasoline produced, refined, manufactured, blended or compounded at a refinery or other facility in this state or stored at a pipeline terminal in this state by any person is "received" by that person when it is loaded at the refinery, other facility or the pipeline terminal into tank cars, tank trucks, tank wagons or other types of transportation equipment.

(2) Gasoline produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by any person is "received" by that person when it is placed into any tank or other container from which sales or deliveries not involving transportation are made.

(3) Except for gasoline imported by pipeline and stored at a pipeline terminal in New Mexico and gasoline imported in the fuel supply tanks of motor vehicles, gasoline imported into this state is "received" at the time and place it is imported into this state; the person who is the owner of the gasoline at the time of importation is the person who has received the gasoline.

(4) When any substance other than gasoline is blended in New Mexico to produce gasoline and the blending takes place at a place other than a refinery or pipeline terminal, the product becomes gasoline and is "received" at the time and place the blending is completed. The person who owns the blended product at the time of blending is the person who has "received" the gasoline. Example: Gasoline is purchased at a pipeline terminal in New Mexico and brought to a blending facility. Ethanol is also purchased from an ethanol-producing plant and brought to the blending facility. The gasoline and ethanol are blended at the plant in a 9 to 1 ratio. The resultant mixture is "gasoline" for the purposes of the Gasoline Tax Act. The person who blended the product is the person who "received" the additional gallons of gasoline (representing the addition of the ethanol) at the time of blending. See Section 3.16.5.9 NMAC.

(5) When an Indian tribe receives gasoline within its own tribal territory and does not pay gasoline tax with respect to that gasoline because of federal preemption, the gasoline is again received at the time and place it leaves that tribe’s territory by any means other than in the fuel supply tank of a motor vehicle. The person who owns the gasoline at the time the gasoline leaves the tribe’s territory is the person who has "received" the gasoline and, for purposes of reporting and paying tax in this situation, is deemed to be a distributor.

B. This version of this subsection applies to transactions taking place on or after July 1, 1999.

C. Although a first receiver is the first person to receive gasoline, the incidence of the tax and the obligation to report and pay gasoline taxes can be shifted to registered distributors. See Section 3.16.3.9 NMAC.

[8/31/96, 12/31/97, 9/30/99; 3.16.3.8 NMAC - Rn & A, 3 NMAC 16.3.8, 6/14/01]

3.16.3.9 WHEN GASOLINE IS "RECEIVED" - SHIFT TO REGISTERED DISTRIBUTOR:

A. The definition of "received" imposes the gasoline tax in the first instance on first receivers. If, however, gasoline is delivered at a pipeline terminal or refinery in New Mexico by an owner of stored gasoline or refiner to a distributor registered under the Gasoline Tax Act, the incidence of the tax shifts to the registered distributor. In this case the registered distributor has received the gasoline and is responsible for reporting and paying the gasoline tax with respect to the gasoline received. The distributor receiving the gasoline may not further shift the receipt of the gasoline and the obligation to report and pay gasoline tax to any other person, even if the gasoline is subsequently sold or otherwise transferred to another registered distributor.

(1) Example 1: At its refinery in New Mexico, refiner R loads 8,000 gallons of gasoline into a tank truck owned by distributor A. In this case A has received the gasoline at the refinery (the place of delivery) and is responsible for reporting and paying the gasoline tax.

(2) Example 2: Same facts as example 1, except that distributor A then sells some of the gasoline to distributor B and unloads it from the truck into a tank belonging to distributor B. Distributor A has received the gasoline and remains liable for the gasoline tax. Distributor B has not received the gasoline.

(3) Example 3: At the pipeline terminal in New Mexico, gasoline is loaded into a tank truck owned by T, a trucking company. T is not a registered distributor but picks up the gasoline for the account of, and delivers it to, 3 registered distributors. In this case, T has accepted delivery of the gasoline at the pipeline terminal as agent for the distributors. The three distributors have received gasoline and must report and pay gasoline tax in proportion to the gasoline each received.

B. If the first receiver delivers gasoline in this state and the person taking delivery of the gasoline is not a registered distributor and is not taking delivery for the account of any registered distributor, the incidence of the tax remains with the first receiver. The first receiver is responsible for reporting and paying the gasoline tax with respect to the gasoline received. Any person once registered as a distributor but who is no longer listed on the list of registered distributors promulgated by the department is not a registered distributor for any period after the person has been removed from the list.

C. When a first receiver is responsible for reporting and paying gasoline tax, that entity must report in the same time and manner as a registered distributor.

[8/31/96, 12/31/97, 9/30/99; 3.16.3.9 NMAC - Rn, 3 NMAC 16.3.9, 6/14/01]

3.16.3.10 PREEMPTION OF TAX BY FEDERAL LAW:

A. Gasoline received by an Indian tribe on its own territory is not subject to the taxes imposed by the Gasoline Tax Act if taxation of the gasoline received is prohibited by federal law.

B. On or after July 1, 1999, an Indian tribe that is a distributor receives gasoline on its own territory when:

(1) the Indian tribe imports gasoline into New Mexico directly onto the tribe’s territory without crossing any intervening ground in New Mexico that is not its own tribal territory;

(2) the Indian tribe blends on its own tribal territory a substance other than gasoline to produce gasoline; or

(3) the gasoline is loaded into the Indian tribe’s tank trucks or other transportation equipment at a rack located on its own tribal territory.

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

D. Like any other distributor, an Indian tribe that is a registered distributor cannot receive gasoline previously received by another distributor.

[8/31/96, 9/30/99; 3.16.3.10 NMAC - Rn, 3 NMAC 16.3.10, 6/14/01]

3.16.3.11 INVENTORY REPORT:

On or before the twenty-fifth day of August for those years in which there is an increase or decrease in the tax rate, each gasoline distributor and wholesaler shall report on forms provided by the department the number of gallons of gasoline which that distributor or wholesaler has in inventory as of July 1. Reports are required even if no inventory exists.

[1/5/81, 8/31/96; 3.16.3.11 NMAC - Rn, 3 NMAC 16.3.11, 6/14/01]

3.16.3.12 EXCHANGES:

A. Exchanges of gasoline between one refiner or pipeline terminal operator and another are exempt deliveries of gasoline under Paragraph 2 of Subsection N of Section 7-13-2 NMSA 1978. When pipeline terminal operators or refiners exchange gasoline, the person to whom the gasoline is delivered takes the place of the person who delivered the gasoline.

B. Example: X is a pipeline terminal operator in New Mexico. Y is a refiner in another state and operates no refinery or pipeline terminal in New Mexico. Z is a registered distributor in New Mexico who distributes Y's brands of gasoline. Because Y does not operate a refinery or pipeline terminal in New Mexico from which it can supply its own distributors and retailers, Y arranges with X to exchange Y's gasoline stored at a pipeline terminal out of state with X's gasoline stored at a New Mexico pipeline terminal. Y then ships or delivers Y's New Mexico gasoline to Z. In this example, Y will be treated as a pipeline terminal operator in New Mexico. Because Y ships or delivers gasoline to Z, a registered distributor, Z has received the gasoline and the obligation to report and pay the tax, just as if X had shipped or delivered the gasoline to Z.

[8/31/96, 12/31/97; 3.16.3.12 NMAC - Rn & A, 3 NMAC 16.3.12, 6/14/01]

PART 4: DEDUCTIONS

3.16.4.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[8/31/96; 3.16.4.1 NMAC - Rn, 3 NMAC 16.4.1, 6/14/01]

3.16.4.2 SCOPE:

This part applies to all persons receiving, selling or dealing in gasoline in New Mexico, including refineries, pipeline terminals, importers and persons registered as distributors, wholesalers or retailers.

[8/31/96; 3.16.4.2 NMAC - Rn, 3 NMAC 16.4.2, 6/14/01]

3.16.4.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[8/31/96; 3.16.4.3 NMAC - Rn, 3 NMAC 16.4.3, 6/14/01]

3.16.4.4 DURATION:

Permanent.

[8/31/96; 3.16.4.4 NMAC - Rn, 3 NMAC 16.4.4, 6/14/01]

3.16.4.5 EFFECTIVE DATE:

8/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[8/31/96; 3.16.4.5 NMAC - Rn & A, 3 NMAC 16.4.5, 6/14/01]

3.16.4.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gasoline Tax Act.

[8/31/96; 3.16.4.6 NMAC - Rn, 3 NMAC 16.4.6, 6/14/01]

3.16.4.7 DEFINITIONS:

[Reserved.]

[8/31/96; 3.16.4.7 NMAC - Rn, 3 NMAC 16.4.7, 6/14/01]

3.16.4.8 SATISFACTORY PROOF:

A. Satisfactory proof of the export of gasoline consists of a manifest or bill of lading showing the amount of gasoline, the name and address of the person to whom the gasoline is sent and the destination outside New Mexico. The person must also comply with the requirements of Subsection A of Section 7-13-4 NMSA 1978.

B. Proof of sale to the United States or any agency or instrumentality thereof or a NATO force shall be furnished to the department upon request. Proof includes documentation, such as contracts, purchase orders and invoices, showing that the purchaser was the United States or a NATO force.

C. 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 gasoline was sold.

D. This section is applicable to exports or sales for export on or after June 1, 1997.

[1/23/73, 8/31/96, 12/31/97, 4/15/98; 3.16.4.8 NMAC - Rn & A, 3 NMAC 16.4.8, 6/14/01]

3.16.4.9 DEDUCTION - SALES TO OTHER DISTRIBUTORS:

A. Gasoline received by a distributor and sold to another distributor may not be deducted from the amount of gasoline received in New Mexico, even though the other

distributor is bonded and registered, because the purchasing distributor did not "receive" gasoline within the meaning of the act.

B. The tax consequences of sales to other distributors and sales by them to the United States 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 gasoline 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.

C. Examples:

(1) A, a registered gasoline distributor in New Mexico, received one thousand (1,000) gallons of gasoline in June. B, also a registered distributor who is located in the same city as A, needed one thousand (1,000) gallons of gasoline of the type A had received and arranged to purchase the one thousand (1,000) gallons from A. A may not deduct the one thousand (1,000) gallons from the amount of gasoline A received in June. B is not liable for tax on this gasoline because B did not receive it.

(2) In addition to the facts in example 1, B delivered the one thousand (1,000) gallons of gasoline purchased from A to the United States. A must report the one thousand (1,000) gallons of gasoline as received. A may deduct one thousand (1,000) gallons from the amount of gasoline received as provided in Subsection B of Section 7-13-4 NMSA 1978 if A provides satisfactory proof as required in Section 3.16.4.8 NMAC.

[1/23/73, 8/31/96; 3.16.4.9 NMAC - Rn & A, 3 NMAC 16.4.9, 6/14/01; A, 10/15/02]

3.16.4.10 INDIRECT SALES TO THE UNITED STATES OR FOR EXPORT:

A. The tax consequences of sales of gasoline to the United States or for export by a wholesaler or retailer 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 gasoline 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.

B. Examples:

(1) X, a distributor, received one hundred (100) gallons of gasoline in May, paid the gasoline tax and resold the gasoline to Y, a wholesaler. Y then sold the gasoline to the United States. Y reported this sale on the monthly report to the department as required by Section 7-13-6 NMSA 1978. If Y furnishes satisfactory proof to X, X may either deduct the one hundred (100) gallons from the amount of gasoline received for that month of May or may elect to take the deduction in any subsequent month in which gasoline is received. Satisfactory proof 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 gasoline was sold.

(2) X, a distributor, received one hundred (100) gallons of gasoline in May, paid the gasoline tax and resold the gasoline to Y, a wholesaler, who resold it to Z, a retailer. Z sold ten (10) gallons to the United States when a United States government vehicle filled up at Z's station. Z reports to Y that this amount of gasoline had been sold to the United States. Y reported this sale on the monthly report to the department as required by Section 7-13-6 NMSA 1978. If Y furnishes satisfactory proof to X, X may deduct ten (10) gallons from the amount of gasoline received in that month of May or any subsequent month in which gasoline is received. Satisfactory proof of Z's sale to the United States is required to be retained by X and Y for at least three years from the end of the calendar year in which the gasoline was sold.

(3) X, a distributor, received one hundred (100) gallons of gasoline in May, paid the gasoline tax and resold the gasoline to Y, a wholesaler. Y delivers the one hundred (100) gallons of gasoline to a customer in Texas. Y reported this export sale on the monthly report pursuant to Section 7-13-6 NMSA 1978. If Y furnishes satisfactory proof to X, X may deduct one hundred (100) gallons from the amount of gasoline received in that month of May or any subsequent month in which gasoline is received. Satisfactory proof 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.

[1/23/73, 8/31/96; 3.16.4.10 NMAC - Rn & A, 3 NMAC 16.4.10, 6/14/01]

3.16.4.11 DEDUCTION - SALES TO A NON-UNITED STATES SIGNATORY OF THE NORTH ATLANTIC TREATY - PROOF OF SALE:

A. For purposes of Section 3.16.4.11 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, gasoline sold to a NATO force may be deducted from the total amount of gasoline received in New Mexico.

C. [Reserved.]

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 gasoline was sold.

E. Pursuant to Article IX, Section 8 of the North Atlantic Treaty, gasoline 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 gasoline tax.

F. Section 3.16.4.11 NMAC is applicable to sales made to a NATO force on or after July 1, 1995.

[12/22/95, 8/31/96, 4/15/98; 3.16.4.11 NMAC - Rn & A, 3 NMAC 16.4.11, 6/14/01]

3.16.4.12 INDIRECT SALES TO REGISTERED INDIAN TRIBAL DISTRIBUTORS:

Gasoline received and subsequently sold to a registered Indian tribal distributor may be deducted under Subsection E of Section 7-13-4 NMSA 1978 from the total amount of gasoline received in New Mexico if, for the reporting period in which the sale was made, the distributor's Indian nation, tribe or pueblo has in effect a tax on gasoline substantially equivalent to the gasoline tax. In that case the number of gallons of gasoline that may be deducted equals the product of the number of gallons sold times a fraction, the numerator of which is rate of the tribal tax, expressed in cents per gallon, and the denominator is the rate of the gasoline tax, in the same units. Proof that the tribal tax has been paid with respect to the gasoline must accompany the claim for deduction.

[9/30/99; 3.16.4.12 NMAC - Rn & A, 3 NMAC 16.4.12, 6/14/01]

3.16.4.13 INDIRECT SALES TO PERSONS ELIGIBLE FOR THE DEDUCTION PROVIDED UNDER SUBSECTION F OF SECTION 7-13-4 NMSA 1978:

A. The deduction provided by Subsection F of Section 7-13-4 NMSA 1978 is available only to those distributors certified by the secretary as meeting the qualifications of Subsection F of Section 7-13-4 NMSA 1978. Such distributors, for the purposes of Section 3.16.4.13 NMAC, may be referred to as "certified distributors".

B. Gasoline received and subsequently sold to a certified distributor may be deducted under Subsection F of Section 7-13-4 NMSA 1978 from the total amount of gasoline received in New Mexico, provided that the total amount deducted under this provision by all receivers of gasoline may not exceed 30,000,000 gallons per certified distributor in any calendar year. The certified distributors are responsible for informing each of their suppliers whenever the number of gallons purchased by the certified distributor exceeds 30,000,000 per calendar year; gasoline tax is due on all such excess gallons. The certified distributor shall be liable for paying gasoline tax with respect to any gallons received in excess of the 30,000,000 limit.

C. The deduction provided at Subsection F of Section 7-13-4 NMAC 1978 applies in the instance in which gasoline is received pursuant to Subsection D of Section 7-13-2.1 NMSA 1978. Once gasoline is properly deducted by a certified distributor pursuant

to Subsection F of Section 7-13-4 NMSA 1978, that gasoline is not again subject to the gasoline tax as long as the gasoline does not leave New Mexico prior to retail sale.

[9/30/99; 3.16.4.13 NMAC - Rn & A, 3 NMAC 16.4.13, 6/14/01]

3.16.4.14 GASOLINE DYE:

When gasoline is used in any manner other than those set forth in Subsection A of Section 7-13-17 NMSA 1978 or for propelling vehicles on the highways or propelling boats, it shall be dyed using the dye specified by instruction of the department. If gasoline is not dyed when it is required to be dyed, then no deduction under Subsection D of Section 7-13-4 NMSA 1978 may be claimed with respect to that gasoline.

[9/30/99; 3.16.4.14 NMAC - Rn & A, 3 NMAC 16.4.14, 6/14/01]

PART 5: TAX RETURNS AND PAYMENT OF TAX

3.16.5.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[8/31/96; 3.16.5.1 NMAC - Rn, 3 NMAC 16.5.1, 6/14/01]

3.16.5.2 SCOPE:

This part applies to all persons receiving, selling or dealing in gasoline in New Mexico, including refineries, pipeline terminals, importers and persons registered as distributors, wholesalers or retailers.

[8/31/96; 3.16.5.2 NMAC - Rn, 3 NMAC 16.5.2, 6/14/01]

3.16.5.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[8/31/96; 3.16.5.3 NMAC - Rn, 3 NMAC 16.5.3, 6/14/01]

3.16.5.4 DURATION:

Permanent.

[8/31/96; 3.16.5.4 NMAC - Rn, 3 NMAC 16.5.4, 6/14/01]

3.16.5.5 EFFECTIVE DATE:

8/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[8/31/96; 3.16.5.5 NMAC - Rn & A, 3 NMAC 16.5.5, 6/14/01]

3.16.5.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gasoline Tax Act.

[8/31/96; 3.16.5.6 NMAC - Rn, 3 NMAC 16.5.6, 6/14/01]

3.16.5.7 DEFINITIONS:

[Reserved.]

[8/31/96; 3.16.5.7 NMAC - Rn, 3 NMAC 16.5.7, 6/14/01]

3.16.5.8 GASOLINE TAX RETURN:

The distributor's gasoline tax report shall be submitted on forms provided or approved by the department and must be signed by the distributor or his authorized agent.

[1/23/73, 8/31/96; 3.16.5.8 NMAC - Rn, 3 NMAC 16.5.8, 6/14/01]

3.16.5.9 ETHANOL BLENDED FUEL TAX RETURN:

A. Only those distributors engaged in the receipt, production, blending, sale, distribution or transfer of ethanol blended fuel are required to file an ethanol blended fuel tax return. Once a distributor has filed an ethanol blended fuel tax return, the distributor is required to report each month even though no transactions occurred during a given month. If the distributor anticipates no further ethanol blended fuel transactions, the distributor may cease filing monthly returns provided the distributor has received written permission from the department.

B. The distributor's ethanol blended fuel tax report shall be submitted on forms provided or approved by the department and be signed by the distributor or authorized agent.

[1/5/81, 8/31/96; 3.16.5.9 NMAC - Rn, 3 NMAC 16.5.9, 6/14/01]

3.16.5.10 ETHANOL MANUFACTURERS' REPORTING REQUIREMENTS:

Any person doing business in the state of New Mexico as an ethanol manufacturer shall file monthly reports as required by Section 3.1.12.9 NMAC.

[12/4/89, 8/31/96; 3.16.5.10 NMAC - Rn & A, 3 NMAC 16.5.10, 6/14/01]

3.16.5.11 DETERMINATION OF TIMELINESS:

Determination of timeliness for notices, returns, applications and payments of any tax, rebate or surcharge imposed under the Gasoline Tax Act will be made in conformance with the requirements of Section 7-1-9 NMSA 1978 and regulations thereunder.

[1/5/81, 8/31/96; 3.16.5.11 NMAC - Rn & A, 3 NMAC 16.5.11, 6/14/01]

3.16.5.12 CHANGE OF ADDRESS:

Taxpayers must inform the department of any change of address. Any notice to a taxpayer is presumed to be effective and binding upon that taxpayer when it is sent to the last address shown in the department's records.

[1/5/81, 8/31/96; 3.16.5.12 NMAC - Rn, 3 NMAC 16.5.12, 6/14/01]

3.16.5.13 RETURN MUST REPORT ON UNTAXED SALES:

Gasoline tax returns filed by distributors must include reports of sales of gasoline on which the gasoline excise tax has not been paid. Such reports shall be made in the form prescribed by the secretary and shall include the number of gallons sold, the identity of the purchaser, including the taxpayer identification number, and the date of the sale. The retailer of such gasoline not taxed under the gasoline tax act will be responsible for the gross receipts tax on its receipts from the sale of the gasoline.

[8/31/96; 3.16.5.13 NMAC - Rn, 3 NMAC 16.5.13, 6/14/01]

PART 6: RETURNS BY WHOLESALERS - EXCEPTION

3.16.6.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[8/31/96; 3.16.6.1 NMAC - Rn, 3 NMAC 16.6.1, 6/14/01]

3.16.6.2 SCOPE:

This part applies to all wholesalers of gasoline.

[8/31/96; 3.16.6.2 NMAC - Rn, 3 NMAC 16.6.2, 6/14/01]

3.16.6.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[8/31/96; 3.16.6.3 NMAC - Rn, 3 NMAC 16.6.3, 6/14/01]

3.16.6.4 DURATION:

Permanent.

[8/31/96; 3.16.6.4 NMAC - Rn, 3 NMAC 16.6.4, 6/14/01]

3.16.6.5 EFFECTIVE DATE:

8/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[8/31/96; 3.16.6.5 NMAC - Rn & A, 3 NMAC 16.6.5, 6/14/01]

3.16.6.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gasoline Tax Act.

[8/31/96; 3.16.6.6 NMAC - Rn, 3 NMAC 16.6.6, 6/14/01]

3.16.6.7 DEFINITIONS:

[Reserved.]

[8/31/96; 3.16.6.7 NMAC - Rn, 3 NMAC 16.6.7, 6/14/01]

3.16.6.8 GASOLINE WHOLESALER'S REPORT:

The gasoline wholesaler's report shall be submitted on forms provided by the department and be signed by the wholesaler or the wholesaler's authorized agent.

[1/23/73, 8/31/96; 3.16.6.8 NMAC - Rn, 3 NMAC 16.6.8, 6/14/01]

PART 7: REGISTRATION AS DISTRIBUTOR, WHOLESALER OR RETAILER

3.16.7.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[8/31/96; 3.16.7.1 NMAC - Rn, 3 NMAC 16.7.1, 6/14/01]

3.16.7.2 SCOPE:

This part applies to all distributors, wholesalers or retailers of gasoline.

[8/31/96; 3.16.7.2 NMAC - Rn, 3 NMAC 16.7.2, 6/14/01]

3.16.7.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[8/31/96; 3.16.7.3 NMAC - Rn, 3 NMAC 16.7.3, 6/14/01]

3.16.7.4 DURATION:

Permanent.

[8/31/96; 3.16.7.4 NMAC - Rn, 3 NMAC 16.7.4, 6/14/01]

3.16.7.5 EFFECTIVE DATE:

8/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[8/31/96; 3.16.7.5 NMAC - Rn & A, 3 NMAC 16.7.5, 6/14/01]

3.16.7.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gasoline Tax Act.

[8/31/96; 3.16.7.6 NMAC - Rn, 3 NMAC 16.7.6, 6/14/01]

3.16.7.7 DEFINITIONS:

[Reserved.]

[8/31/96; 3.16.7.7 NMAC - Rn, 3 NMAC 16.7.7, 6/14/01]

3.16.7.8 REGISTRATION - LIST OF REGISTERED DISTRIBUTORS:

A. Each person engaged in selling gasoline as a distributor, wholesaler or retailer shall register with the department by filing an application for registration for combined reporting of gross receipts, compensating and withholding tax.

B. The department will prepare and make available to refineries, pipeline terminals, importers and distributors a list of all persons currently registered as distributors under

the Gasoline Tax Act. The department will answer all inquiries as to whether a person is included in this list.

[1/23/73, 8/31/96; 3.16.7.8 NMAC - Rn, 3 NMAC 16.7.8, 6/14/01]

3.16.7.9 ETHANOL MANUFACTURERS REGISTER AS GASOLINE DISTRIBUTORS:

Ethanol manufacturers receiving gasoline for use as denaturant in ethanol shall register as gasoline distributors pursuant to Section 7-13-7 NMSA 1978 to obtain that gasoline prior to the payment of tax.

[12/4/89, 8/31/96; 3.16.7.9 NMAC - Rn & A, 3 NMAC 16.7.9, 6/14/01]

3.16.7.10 [RESERVED]

[2/21/86, 8/31/96; R 7/30/99; 3.16.7.10 NMAC - Rn, 3 NMAC 16.7.10, 6/14/01]

3.16.7.11 DEPARTMENT MAY REMOVE NONCOMPLYING DISTRIBUTORS FROM LIST:

A. In accordance with Section 3.16.7.11 NMAC, the department may cancel the registration of a distributor as a distributor of gasoline and remove its name from the list of distributors registered under the Gasoline Tax Act if the distributor does not substantially comply with the requirements to file gasoline tax returns in the form and manner prescribed by the secretary or to file petroleum products loading fee reports in the form and manner prescribed by the secretary with respect to gasoline loaded or imported by the distributor.

B. The department shall notify the distributor of its intent to cancel the distributor's registration as a distributor of gasoline and to remove its name from the list. The notice shall provide for a hearing at least ten days after the date of the date notice is provided. At the hearing the distributor will be given an opportunity to demonstrate substantial compliance. If, in the judgment of the hearing officer, substantial compliance is not demonstrated, the hearing officer shall order the immediate cancellation of registration as a distributor and removal from the list of distributors.

[8/31/96; 3.16.7.11 NMAC - Rn & A, 3 NMAC 16.7.11, 6/14/01; A, 10/15/02]

3.16.7.12 LISTING OF REGISTERED INDIAN TRIBAL DISTRIBUTORS:

A. A person registered with the taxation and revenue department as a distributor under the Gasoline Tax Act and who is an Indian nation, tribe or pueblo or an agency or instrumentality thereof, or a corporation or other enterprise wholly owned by an Indian nation, tribe or pueblo or by one or more members thereof, may be designated only by the person’s own Indian nation, tribe or pueblo to be a "registered Indian tribal

distributor". For purposes of the deduction provided by Subsection E of Section 7-13-4 NMSA 1978, the person shall not be considered a "registered Indian tribal distributor" until the department is notified of the designation in writing on official letterhead, signed by the appropriate tribal official. Once the department has been notified that a person has been designated as a "registered Indian tribal distributor", the designation shall remain in effect until the person is no longer a distributor or the designation is withdrawn by the Indian nation, tribe or pueblo.

B. The department will maintain a list of registered Indian tribal distributors and of certified distributors. The list will be made available to the public. Additions to and deletions from the list will be made promptly and the department shall answer all inquiries as to whether a particular person is a registered Indian tribal distributor.

[9/30/99; 3.16.7.12 NMAC - Rn & A, 3 NMAC 16.7.12, 6/14/01]

PART 8: RESTRICTIONS ON STORAGE AND USE OF DRIP GASOLINE

3.16.8.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[8/31/96; 3.16.8.1 NMAC - Rn, 3 NMAC 16.8.1, 6/14/01]

3.16.8.2 SCOPE:

This part applies to the general public and producers, refiners and pipeline companies.

[8/31/96; 3.16.8.2 NMAC - Rn, 3 NMAC 16.8.2, 6/14/01]

3.16.8.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[8/31/96; 3.16.8.3 NMAC - Rn, 3 NMAC 16.8.3, 6/14/01]

3.16.8.4 DURATION:

Permanent.

[8/31/96; 3.16.8.4 NMAC - Rn, 3 NMAC 16.8.4, 6/14/01]

3.16.8.5 EFFECTIVE DATE:

8/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[8/31/96; 3.16.8.5 NMAC - Rn & A, 3 NMAC 16.8.5, 6/14/01]

3.16.8.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gasoline Tax Act.

[8/31/96; 3.16.8.6 NMAC - Rn, 3 NMAC 16.8.6, 6/14/01]

3.16.8.7 DEFINITIONS:

A. As used in Section 7-13-8 NMSA 1978 and in Part 3.16.8 NMAC:

(1) "pipeline company" means any person who owns or operates a pipeline for the transportation of petroleum products, including natural gas;

(2) "producer" means any person regularly engaged in the production of petroleum products, including natural gas, by drilling or operating wells for that purpose;

(3) "recognized" means publicly holding oneself out as and generally known to be engaged in the specified activity;

(4) "refiner" means any person regularly engaged in refining petroleum products, including natural gas, to separate the components thereof for sale;

(5) "seller of gasoline" means a distributor, wholesaler or retailer as defined in Subsections C, S and O of Section 7-13-2 NMSA 1978; and

(6) "store" includes storing for any purpose including, but not limited to, storing for resale, storing while awaiting consumption, storing in the tank of a motor vehicle and storing while awaiting transportation.

B. The above definitions shall be construed so that a person may be a producer, refiner, pipeline company and seller of gasoline all at the same time.

[8/31/96; 3.16.8.7 NMAC - Rn & A, 3 NMAC 16.8.7, 6/14/01]

PART 9-10: [RESERVED]

PART 11: CLAIM FOR REFUND OR CREDIT OF GASOLINE TAX PAID ON GASOLINE DESTROYED BY FIRE, ACCIDENT OR ACTS OF GOD BEFORE RETAIL SALE

3.16.11.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[8/31/96; 3.16.11.1 NMAC - Rn, 3 NMAC 16.11.1, 6/14/01]

3.16.11.2 SCOPE:

This part applies to all distributors, wholesalers or retailers of gasoline.

[8/31/96; 3.16.11.2 NMAC - Rn, 3 NMAC 16.11.2, 6/14/01]

3.16.11.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[8/31/96; 3.16.11.3 NMAC - Rn, 3 NMAC 16.11.3, 6/14/01]

3.16.11.4 DURATION:

Permanent.

[8/31/96; 3.16.11.4 NMAC - Rn, 3 NMAC 16.11.4, 6/14/01]

3.16.11.5 EFFECTIVE DATE:

8/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[8/31/96; 3.16.11.5 NMAC - Rn & A, 3 NMAC 16.11.5, 6/14/01]

3.16.11.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gasoline Tax Act.

[8/31/96; 3.16.11.6 NMAC - Rn, 3 NMAC 16.11.6, 6/14/01]

3.16.11.7 DEFINITIONS:

"Destroyed" includes being rendered unusable as fuel or as a cleaning fluid in some manner other than a "use" as defined in Section 3.16.14.7 NMAC.

[1/23/73, 8/31/96; 3.16.11.7 NMAC - Rn & A, 3 NMAC 16.11.7, 6/14/01]

3.16.11.8 SATISFACTORY PROOF:

Proof of the destruction of gasoline shall state the amount of gasoline in the person's possession immediately prior to the destruction and the amount remaining immediately after the destruction. The proof shall state the circumstances of the destruction and shall be attested by the claimant. The proof shall be on forms provided by the department and shall accompany the person's application for refund.

[1/23/73, 8/31/96; 3.16.11.8 NMAC - Rn, 3 NMAC 16.11.8, 6/14/01]

3.16.11.9 ACCIDENT:

A. An "accident" includes any event happening by chance, unexpectedly taking place or occurring not according to the usual course of events. An event may sometimes be termed accidental even though it results from ordinary negligence. The following examples illustrate the effect of this definition.

B. Examples:

(1) X is a distributor. X's driver while delivering to a service station negligently dumps diesel fuel into the gasoline storage tank (Tank A) and gasoline into the diesel fuel storage tank (Tank B). Each tank is nearly full. In order to return the station to operation, X pumps both tanks dry and dumps the resulting mixture into another tank (Tank C) which contains a small amount of gasoline. In this situation, the gasoline dumped into Tank B and the gasoline in Tank A into which diesel fuel was dumped are destroyed, because each becomes a mixture which does not satisfy the definition contained in Subsection H of Section 7-13-2 NMSA 1978. All this gasoline was destroyed by accident within the meaning of Section 3.16.11.9 NMAC, and X may obtain a refund for gasoline tax paid on the gasoline dumped into Tank B and the gasoline in Tank A upon submission of satisfactory proof. The gasoline in Tank C was also destroyed within the meaning of Section 3.16.11.7 NMAC. However, the gasoline in Tank C was not destroyed by accident because X knew there was some gasoline in the tank and knew it would be destroyed when the diesel fuel and gasoline mixture was dumped into it. X will not be granted a refund for gasoline tax paid on the gasoline in Tank C.

(2) Y is a distributor. An underground pipe develops a leak because of corrosion and some gasoline is destroyed. The department will not grant a refund since corrosion is not an accident within the meaning of Section 7-13-11 NMSA 1978.

[1/23/73, 8/31/96; 3.16.11.9 NMAC - Rn & A, 3 NMAC 16.11.9, 6/14/01]

3.16.11.10 [RESERVED]

[3.16.11.10 NMAC - Rn, 3 NMAC 16.11.10, 6/14/01]

3.16.11.11 STATUTE OF LIMITATIONS:

No refund may be made under Section 7-13-11 NMSA 1978 unless the person claiming the refund notifies the department of the destruction of the gasoline within thirty (30) days of the actual destruction, and the claim for refund is made within six (6) months of the date of destruction.

[1/5/81, 8/31/96; 3.16.11.11 NMAC - Rn & A, 3 NMAC 16.11.11, 6/14/01]

PART 12: MANIFEST OR BILL OF LADING REQUIRED WHEN TRANSPORTING GASOLINE

3.16.12.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[8/31/96; 3.16.12.1 NMAC - Rn, 3 NMAC 16.12.1, 6/14/01]

3.16.12.2 SCOPE:

This part applies to all distributors, wholesalers or retailers of gasoline and all persons transporting, importing or exporting gasoline, other than by pipeline.

[8/31/96; 3.16.12.2 NMAC - Rn, 3 NMAC 16.12.2, 6/14/01]

3.16.12.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[8/31/96; 3.16.12.3 NMAC - Rn, 3 NMAC 16.12.3, 6/14/01]

3.16.12.4 DURATION:

Permanent.

[8/31/96; 3.16.12.4 NMAC - Rn, 3 NMAC 16.12.4, 6/14/01]

3.16.12.5 EFFECTIVE DATE:

8/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[8/31/96; 3.16.12.5 NMAC - Rn & A, 3 NMAC 16.12.5, 6/14/01]

3.16.12.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gasoline Tax Act.

[8/31/96; 3.16.12.6 NMAC - Rn, 3 NMAC 16.12.6, 6/14/01]

3.16.12.7 DEFINITIONS:

[Reserved.]

[8/31/96; 3.16.12.7 NMAC - Rn, 3 NMAC 16.12.7, 6/14/01]

3.16.12.8 MANIFEST OR BILL OF LADING:

A. A manifest or bill of lading shall be satisfactory if it contains the following information and is signed by the consignor:

(1) the type and amount of gasoline originally shipped;

(2) the amount of gasoline accepted by the company or consignee as certified by the signature of the consignee or consignees;

(3) the date and place of shipment; and

(4) the name of the carrier.

B. The consignor is required to retain these manifests or bills of lading for three years from the end of the calendar year in which the gasoline is transported within, imported into or exported from New Mexico.

[1/23/73, 8/31/96; 3.16.12.8 NMAC - Rn, 3 NMAC 16.12.8, 6/14/01]

PART 13: PERMIT TO PURCHASE DYED GASOLINE AND APPLY FOR REFUND OF TAX ON GASOLINE USED OFF-HIGHWAY

3.16.13.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[8/31/96; 3.16.13.1 NMAC - Rn, 3 NMAC 16.13.1, 6/14/01]

3.16.13.2 SCOPE:

This part applies to all distributors, wholesalers or retailers of gasoline and all persons wishing to dye gasoline to mark its off-highway use and to claim refunds of gasoline tax

paid for gasoline not used in a motor boat or in a vehicle licensed to operate on the highways of this state.

[8/31/96; 3.16.13.2 NMAC - Rn, 3 NMAC 16.13.2, 6/14/01]

3.16.13.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[8/31/96; 3.16.13.3 NMAC - Rn, 3 NMAC 16.13.3, 6/14/01]

3.16.13.4 DURATION:

Permanent.

[8/31/96; 3.16.13.4 NMAC - Rn, 3 NMAC 16.13.4, 6/14/01]

3.16.13.5 EFFECTIVE DATE:

8/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[8/31/96; 3.16.13.5 NMAC - Rn & A, 3 NMAC 16.13.5, 6/14/01]

3.16.13.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gasoline Tax Act.

[8/31/96; 3.16.13.6 NMAC - Rn, 3 NMAC 16.13.6, 6/14/01]

3.16.13.7 DEFINITIONS:

[Reserved.]

[8/31/96; 3.16.13.7 NMAC - Rn, 3 NMAC 16.13.7, 6/14/01]

3.16.13.8 PERMIT TO PURCHASE DYED GASOLINE:

A. Any person who desires to purchase gasoline dyed in accordance with Section 7-13-18 NMSA 1978 and obtain a refund of gasoline tax paid on the gasoline shall apply for and obtain a permit from the department. An application for such a permit shall be on a form provided by the department and shall contain the information and statements required by Section 3.16.13.10 NMAC. No claim for refund shall be honored until the applicant possesses a permit issued by the department.

B. All applications for issuance of a refund permit shall be signed by the permittee in the case of an individual, a partner in the case of a partnership or an officer or authorized agent in the case of a corporation.

[1/23/73, 8/31/96; 3.16.13.8 NMAC - Rn & A, 3 NMAC 16.13.8, 6/14/01]

3.16.13.9 SUSPENSION OF PERMIT TO PURCHASE DYED GASOLINE:

A. Whenever the department has reason to believe that any person has made a false statement on an application for a permit under Section 3.16.13.8 NMAC or on a claim for refund under Section 3.16.14.8 NMAC, has used tax refund gasoline in a motor boat or in a vehicle licensed to operate on the highways of New Mexico or has violated any other provision of the Gasoline Tax Act or the regulations promulgated thereunder, the department shall schedule a formal hearing pursuant to the provisions of Section 7-1-24 NMSA 1978 of the Tax Administration Act to determine whether or not the person's permit to purchase tax refund gasoline should be suspended.

B. The person shall be notified of the hearing. Notification shall inform the permittee of suspected violations of particular provisions of the Gasoline Tax Act and shall briefly advise the permittee of the procedures employed in formal hearings and of remedies subsequent to the formal hearing if the permit is suspended. At the end of the hearing, or within thirty (30) days thereafter, the department shall enter a written decision and order.

C. The department may schedule an informal conference with the person before holding the formal hearing.

[1/23/73, 8/31/96; 3.16.13.9 NMAC - Rn & A, 3 NMAC 16.13.9, 6/14/01]

3.16.13.10 EQUIPMENT LIST REQUIRED:

A. As part of the application for a gasoline tax refund permit, each person is required to submit to the department a written list of the machinery or equipment which will consume tax refund fuel. The description, year, make, model and motor number or serial number of each item of machinery or equipment shall be included in the list.

B. Each person holding a refund permit must file annually, within thirty (30) days of the end of the calendar year, a list of changes on the equipment list, stating the description, year, make, model and motor number or serial number of each item of equipment added or deleted and the place of purchase or lease or bailment, as the case may be, of each of the items of machinery or equipment added.

C. Upon notice and after a hearing as described in Section 3.16.13.9 NMAC, the department may suspend the gasoline tax refund permit of any person who fails to file an updated equipment list.

[1/23/73, 8/31/96; 3.16.13.10 NMAC - Rn & A, 3 NMAC 16.13.10, 6/14/01]

PART 14: CLAIM FOR REFUND OF GASOLINE TAX PAID ON GASOLINE USED OFF-HIGHWAY

3.16.14.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[8/31/96; 3.16.14.1 NMAC - Rn, 3 NMAC 16.14.1, 6/14/01]

3.16.14.2 SCOPE:

This part applies to all distributors, wholesalers or retailers of gasoline and all persons wishing to claim refunds of gasoline tax paid for gasoline not used in a motor boat or in a vehicle licensed to operate on the highways of this state.

[8/31/96; 3.16.14.2 NMAC - Rn, 3 NMAC 16.14.2, 6/14/01]

3.16.14.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[8/31/96; 3.16.14.3 NMAC - Rn, 3 NMAC 16.14.3, 6/14/01]

3.16.14.4 DURATION:

Permanent.

[8/31/96; 3.16.14.4 NMAC - Rn, 3 NMAC 16.14.4, 6/14/01]

3.16.14.5 EFFECTIVE DATE:

8/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[8/31/96; 3.16.14.5 NMAC - Rn & A, 3 NMAC 16.14.5, 6/14/01]

3.16.14.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gasoline Tax Act.

[8/31/96; 3.16.14.6 NMAC - Rn, 3 NMAC 16.14.6, 6/14/01]

3.16.14.7 DEFINITIONS:

"**USE" DEFINED:** "Use" of gasoline occurs when it is consumed in the operation of an internal combustion engine or stove or when it becomes so adulterated in a dry cleaning process that it is no longer suitable for fuel.

[1/23/73, 8/31/96; 3.16.14.7 NMAC - Rn, 3 NMAC 16.14.7, 6/14/01]

3.16.14.8 MINIMUM GALLONAGE:

A. In order to be eligible for a refund, individual purchases of non-aviation gasoline must be made in quantities of fifty (50) gallons or more. There is no minimum gallonage applicable to individual purchases of aviation gasoline.

B. Applications for refunds will be processed only for refunds of tax on one hundred (100) gallons of gasoline or more. Purchasers of gasoline may accumulate invoices to reach this one hundred (100) gallon minimum subject to the fifty (50) gallon minimum individual purchase requirement. The following example illustrates the effect of Section 3.16.14.8 NMAC.

C. Example: Alpha purchased one twenty-five (25) gallon lot of tax refund non-aviation gasoline during each of the months of January, February, March and April of a year. In May of that same year, Alpha applied for a refund on one hundred (100) gallons of dyed gasoline purchased and used within six (6) months. The refund will not be granted because the purchases were not in fifty (50) gallon quantities.

[1/23/73, 8/31/96; 3.16.14.8 NMAC - Rn & A, 3 NMAC 16.14.8, 6/14/01]

3.16.14.9 DOCUMENTS REQUIRED TO SUPPORT A CLAIM FOR REFUND:

All claims for refund shall be submitted on the original copy of department form GTR-1. This form must be completed and signed by the permittee in the case of an individual, a partner in the case of a partnership or an officer or authorized agent in the case of a corporation or limited liability company. All GTR-1 claims must also be completed and signed by the seller. A notarized affidavit on a form provided by the department may be submitted in lieu of a lost, original form GTR-1 if filed within the time limitation required by Subsection C of Section 7-1-26 NMSA 1978.

[5/10/78, 8/31/96; 3.16.14.9 NMAC - Rn & A, 3 NMAC 16.14.9, 6/14/01]

3.16.14.10 PAYMENT REQUIRED:

No refund shall be made unless it appears to the satisfaction of the department that the entire price of the gasoline, including passed-on tax required by Subsection C of Section 7-13-3 NMSA 1978, has been paid.

[1/23/73, 8/31/96; 3.16.14.10 NMAC - Rn & A, 3 NMAC 16.14.10, 6/14/01]

3.16.14.11 TIMELY CLAIM:

A. A claim for refund of gasoline tax on tax refund gasoline must be filed within six (6) months of the date the gasoline was purchased and used. The department shall consider the postmark of the claim for refund as its date. The gasoline must have been used prior to the time the claim for refund is submitted. The following examples illustrate the effect of Section 7-13-17 NMSA 1978.

B. Example 1: C purchased fifty (50) gallons of tax refund gasoline on January 1. On July 10 of that same year, C bought a second fifty (50) gallons of tax refund gasoline. On the following July 20, C filed an application for a refund on one hundred (100) gallons. This refund will not be allowed since the first purchase was not within six (6) months of the date of the application for refund as required by Section 3.16.14.11 NMAC and the second purchase by itself does not meet the one hundred (100) gallon minimum required by Section 3.16.14.8.

C. Example 2: P purchased fifty (50) gallons of tax refund gasoline on January 1. On the following June 30, P purchased a second fifty (50) gallons of tax refund gasoline and on the same day filed an application for refund. The claim for refund will not be allowed unless P can show that all the gasoline was used before July 1 of that same year.

D. Example 3: D purchased fifty (50) gallons of tax refund non-aviation gasoline in January. D purchased another fifty (50) gallons in the following March. D used the one hundred (100) gallons of gasoline and filed a claim for refund in April of that same year. The refund will be made because:

(1) the individual purchases were of fifty (50) gallons each;

(2) the refund applies to one hundred (100) gallons of gasoline; and

(3) the one hundred (100) gallons of gasoline were used before the claim for refund was filed.

[6/13/84, 12/4/89, 8/31/96; 3.16.14.11 NMAC - Rn & A, 3 NMAC 16.14.11, 6/14/01]

3.16.14.12 CONTAINERS:

A. Tax refund gasoline shall be placed in containers which are labeled with the words "Tax Refund Gasoline" in letters at least two inches high and the label shall be permanently attached to the container and maintained so as to be clearly legible. If the container is underground, the required label must be displayed above ground at the point where gasoline is placed in the container and removed from the container, or if

gasoline is placed in the container at one point and removed from the container at a different point, such a label must be placed at each point.

B. In addition to the above, aviation gasoline to be used for aviation purposes shall be placed only in containers labeled with the words "For Aviation Use Only" in letters at least two inches high, which label shall be permanently attached to the container and maintained so as to be clearly legible. If the container is underground, such a label must be displayed above ground in the same manner required of the "Tax Refund Gasoline" label.

C. Containers bearing these markings may not be used for any purpose other than the storage of aviation gasoline or properly dyed tax refund gasoline.

D. Any penalty imposed by the department for any violation of Section 3.16.14.12 NMAC will be presumed to apply both to the permittee and to the person filling the container.

[1/23/73, 8/31/96; 3.16.14.12 NMAC - Rn & A, 3 NMAC 16.14.12, 6/14/01]

PART 15: GASOLINE FOR OFF-HIGHWAY USE - ADOPTION OF IDENTIFYING DYE

3.16.15.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[8/31/96; 3.16.15.1 NMAC - Rn, 3 NMAC 16.15.1, 6/14/01]

3.16.15.2 SCOPE:

This part applies to all distributors, wholesalers or retailers of gasoline and all persons dyeing gasoline to mark its off-highway use or claiming refunds of gasoline tax paid for gasoline not used in a motor boat or in a vehicle licensed to operate on the highways of this state.

[8/31/96; 3.16.15.2 NMAC - Rn, 3 NMAC 16.15.2, 6/14/01]

3.16.15.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[8/31/96; 3.16.15.3 NMAC - Rn, 3 NMAC 16.15.3, 6/14/01]

3.16.15.4 DURATION:

Permanent.

[8/31/96; 3.16.15.4 NMAC - Rn, 3 NMAC 16.15.4, 6/14/01]

3.16.15.5 EFFECTIVE DATE:

8/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[8/31/96; 3.16.15.5 NMAC - Rn & A, 3 NMAC 16.15.5, 6/14/01]

3.16.15.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gasoline Tax Act.

[8/31/96; 3.16.15.6 NMAC - Rn, 3 NMAC 16.15.6, 6/14/01]

3.16.15.7 DEFINITIONS:

[Reserved.]

[8/31/96; 3.16.15.7 NMAC - Rn, 3 NMAC 16.15.7, 6/14/01]

3.16.15.8 DYE:

A. An amount of dye sufficient to make the gasoline appear purple to a person with normal vision shall be added to all tax refund gasoline except that sold pursuant to Section 3.16.15.10 NMAC. It shall be the responsibility of the wholesalers and distributors, as well as the permittee, to make certain that all applicable tax refund gasoline is dyed.

B. In addition to grounds set forth in other regulations, any of the following violations may result in the suspension of the gasoline tax refund permit of a person pursuant to Section 3.16.13.9 NMAC:

(1) if dyed gasoline is found in a fuel tank of a vehicle licensed to be operated on the highway;

(2) if undyed gasoline is found in a storage container labeled "Tax Refund Gasoline";

(3) if dyed gasoline is found in an unlabeled storage container; or

(4) if dyed gasoline is found in a fuel tank of a motor boat.

[1/23/73, 5/16/73, 8/31/96; 3.16.15.8 NMAC - Rn & A, 3 NMAC 16.15.8, 6/14/01]

3.16.15.9 PERSON TO WHOM DYED GASOLINE MAY BE SOLD:

Distributors and wholesalers may sell dyed gasoline only to persons possessing a valid permit issued by the department to buy dyed gasoline under the provisions of Section 7-13-17 NMSA 1978.

[1/23/73, 8/31/96; 3.16.15.9 NMAC - Rn & A, 3 NMAC 16.15.9, 6/14/01]

3.16.15.10 PURCHASE OF TAX REFUND GASOLINE WITHOUT DYE:

Persons using gasoline in the operation of dry cleaning establishments and in stoves or other gasoline burning appliances and persons using aviation gasoline solely in the operation of aircraft may buy gasoline for these purposes without dye upon proof to the department that they qualify to buy such gasoline. An application for such a permit shall establish to the satisfaction of the department that the applicant is in one of the classes entitled to purchase tax refund gasoline which has not been dyed.

[1/23/73, 8/31/96; 3.16.15.10 NMAC - Rn, 3 NMAC 16.15.10, 6/14/01]

PART 16-99: [RESERVED]

PART 100: GENERAL PROVISIONS - SPECIAL FUELS

3.16.100.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[6/15/96; 3.16.100.1 NMAC - Rn, 3 NMAC 20.1.1, 6/14/01]

3.16.100.2 SCOPE:

General public, all special fuel suppliers, dealers, users and permit holders and all alternative fuel distributors and permit or license holders.

[6/15/96; 3.16.100.2 NMAC - Rn, 3 NMAC 20.1.2, 6/14/01]

3.16.100.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[6/15/96; 3.16.100.3 NMAC - Rn, 3 NMAC 20.1.3, 6/14/01]

3.16.100.4 DURATION:

Permanent.

[6/15/96; 3.16.100.4 NMAC - Rn, 3 NMAC 20.1.4, 6/14/01]

3.16.100.5 EFFECTIVE DATE:

6/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[6/15/96; 3.16.100.5 NMAC - Rn, 3 NMAC 20.1.5 & A, 6/14/01]

3.16.100.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Special Fuels Supplier Tax Act.

[6/15/96; 3.16.100.6 NMAC - Rn, 3 NMAC 20.1.6 & A, 6/14/01]

3.16.100.7 DEFINITIONS:

[Reserved.]

[6/15/96; 3.16.100.7 NMAC - Rn, 3 NMAC 20.1.7, 6/14/01]

3.16.100.8 CITATIONS TO STATUTE:

Unless otherwise indicated in the text, all citations to statute in this chapter are to the New Mexico Statutes Annotated 1978.

[6/15/96; 3.16.100.8 NMAC - Rn, 3 NMAC 20.1.8 & A, 6/14/01]

3.16.100.9 PRIOR AGREEMENTS AND RULINGS:

Any rulings or other agreements between the department or one of its predecessor agencies and a taxpayer concerning the calculation of tax liability under the Special Fuels Tax Act applies only to liabilities under that act. No such ruling or agreement applies to tax liabilities arising under the Special Fuels Supplier Tax Act.

[2/1/93, 12/31/96; 3.16.100.9 NMAC - Rn, 3 NMAC 20.1.9, 6/14/01]

PART 101: RECEIVED

3.16.101.1 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; 3.16.101.1 NMAC - Rn, 3 NMAC 20.2.1, 6/14/01]

3.16.101.2 SCOPE:

This part applies to every person receiving or using special fuel in New Mexico.

[12/31/96; 3.16.101.2 NMAC - Rn, 3 NMAC 20.2.2, 6/14/01]

3.16.101.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[12/31/96; 3.16.101.3 NMAC - Rn, 3 NMAC 20.2.3, 6/14/01]

3.16.101.4 DURATION:

Permanent.

[12/31/96; 3.16.101.4 NMAC - Rn, 3 NMAC 20.2.4, 6/14/01]

3.16.101.5 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; 3.16.101.5 NMAC - Rn, 3 NMAC 20.2.5 & A, 6/14/01]

3.16.101.6 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; 3.16.101.6 NMAC - Rn, 3 NMAC 20.2.6, 6/14/01]

3.16.101.7 DEFINITIONS:

[Reserved.]

[12/31/96; 3.16.101.7 NMAC - Rn, 3 NMAC 20.2.7, 6/14/01]

3.16.101.8 WHEN SPECIAL FUEL IS "RECEIVED" - FIRST INSTANCE:

A. Generally, special fuel is "received" in the first instance in the four circumstances specified in Subsection A of Section 3.16.101.8 NMAC. The rack operator or the importer is the person who has "received" the special fuel.

(1) Special fuel produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by any person is "received" by that person when it is loaded at the refinery or pipeline terminal into tank cars, tank trucks, tank wagons or other types of transportation equipment.

(2) Special fuel produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by any person is "received" by that person when it is placed into any tank or other container from which sales or deliveries not involving transportation are made.

(3) Except for special fuel imported by pipeline and stored at a pipeline terminal in New Mexico or imported in the supply tank of a motor vehicle, special fuel imported into this state is "received" at the time and place it is first imported into this state; the person who is the owner of the special fuel at the time of importation is the person who has received the special fuel.

(4) Special fuel is also "received" when it has been initially received by an Indian tribe within that tribe’s territory and subsequently is moved from that tribe’s territory to any other part of New Mexico, whether for sale or use, by any means other than in the fuel supply tank of a motor vehicle or by pipeline. The person who owns the fuel at the time it leaves the tribe’s territory must report and pay tax with respect to the special fuel received. If this person does not report and pay tax, every other person who subsequently owns the special fuel is liable for the tax until it is paid. For the purposes of Part 3.16.101 NMAC and for reporting purposes, a person who has received special fuel under Paragraph (4) of Subsection A of Section 3.16.101.8 NMAC is an "importer".

B. In the special case in which any substance other than special fuel is blended to produce special fuel and the blending takes place at a place other than a refinery or pipeline terminal, the product becomes special fuel and is "received" at the time and place the blending is completed. The person who owns the blended product at the time of blending is the person who must report and pay tax with respect to the product received.

C. When a rack operator is the first person to "receive" special fuel, the incidence of the tax and the obligation to report and pay the special fuel excise tax can be shifted to registered suppliers. See Section 3.16.101.9 NMAC. When an importer, including a person receiving special fuel under Subsection B of Section 3.16.101.8 NMAC, is the first person to "receive" special fuel, the incidence of the tax and the obligation to report remain with the importer and may not be shifted to registered suppliers.

D. This version of Section 3.16.101.8 NMAC applies to special fuel received on or after June 1, 1997.

[12/31/96, 12/31/97; 3.16.101.8 NMAC - Rn, 3 NMAC 20.2.8 & A, 6/14/01]

3.16.101.9 WHEN SPECIAL FUEL IS "RECEIVED" - SHIFT TO REGISTERED SUPPLIER:

A. The definition of "received" imposes the special fuel excise tax in the first instance on rack operators or importers. If, however, a rack operator delivers special fuel at the refinery or pipeline terminal to or for the account of a supplier registered under the Special Fuels Supplier Tax Act, the incidence of the tax shifts to the registered supplier. In this case the registered supplier has received the special fuel and is responsible for reporting and paying the special fuel excise tax with respect to the special fuel received. The supplier receiving the special fuel may not further shift the receipt of the special fuel and the obligation to report and pay special fuel excise tax to any other person, even if the special fuel is subsequently sold or otherwise transferred to another registered supplier. In all other cases, responsibility for reporting and paying special fuel excise tax remains with the rack operator.

(1) Example 1: At its refinery, Refinery R loads 8,000 gallons of special fuel into a tank truck owned by Supplier A. In this case A has received the special fuel at the refinery (the place of delivery) and is responsible for reporting and paying the special fuel excise tax.

(2) Example 2: Same facts as example 1, except that Supplier A then sells some of the special fuel to Supplier B and unloads it from the truck into a tank belonging to Supplier B. Supplier A has received the special fuel and remains liable for the special fuel excise tax. Supplier B has not received the special fuel.

(3) Example 3: At the pipeline terminal, special fuel is loaded into a tank truck owned by T, a trucking company. T is not a registered supplier but picks up the special fuel for the account of, and delivers it to, three registered suppliers. In this case, T has accepted delivery of the special fuel at the pipeline terminal as agent for the suppliers. The three suppliers have received special fuel and must report and pay special fuel excise tax in proportion to the special fuel each received.

B. Any person once registered as a supplier but who is no longer listed on the list of registered suppliers promulgated by the department is not a registered supplier.

C. When a rack operator or importer is responsible for reporting and paying special fuel excise tax, that entity must report in the same time and manner as a registered supplier unless the department directs otherwise.

D. This version of Section 3.16.101.9 NMAC applies to transactions occurring and special fuel received on or after June 1, 1997.

[12/31/96, 12/31/97, 1/29/99; 3.16.101.9 NMAC - Rn, 3 NMAC 20.2.9 & A, 6/14/01]

3.16.101.10 EXCHANGES:

A. Exchanges of special fuel between one refiner or pipeline terminal operator and another are exempt deliveries of special fuel under Section 7-16A-2.1 NMSA 1978. When pipeline terminal operators or refiners exchange special fuel, the person to whom the special fuel is delivered takes the place of the person who delivered the special fuel.

B. Example: X is a pipeline terminal operator in New Mexico. Y is a refinery in another state. Z is a registered supplier in New Mexico who distributes Y's brands of special fuel. Because Y does not operate a pipeline terminal in New Mexico from which it can supply its own suppliers and retailers, Y arranges with X to exchange Y's special fuel stored at a pipeline terminal out of state with X's special fuel stored at a New Mexico pipeline terminal. Y then ships or delivers Y's New Mexico special fuel to Z. In this example, Y will be treated as a pipeline terminal operator in New Mexico. Because Y ships or delivers special fuel to Z, a registered supplier, Z has received the special fuel and the obligation to report and pay the tax, just as if X had shipped or delivered the special fuel to Z.

[12/31/96, 1/29/99; 3.16.101.10 NMAC - Rn, 3 NMAC 20.2.10 & A, 6/14/01]

PART 102: 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]

PART 103: DUE DATE

3.16.103.1 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; 3.16.103.1 NMAC - Rn, 3 NMAC 20.4.1, 6/14/01]

3.16.103.2 SCOPE:

This part applies to every person receiving or using special fuel in New Mexico.

[12/31/96; 3.16.103.2 NMAC - Rn, 3 NMAC 20.4.2, 6/14/01]

3.16.103.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[12/31/96; 3.16.103.3 NMAC - Rn, 3 NMAC 20.4.3, 6/14/01]

3.16.103.4 DURATION:

Permanent.

[12/31/96; 3.16.103.4 NMAC - Rn, 3 NMAC 20.4.4, 6/14/01]

3.16.103.5 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; 3.16.103.5 NMAC - Rn, 3 NMAC 20.4.5 & A, 6/14/01]

3.16.103.6 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; 3.16.103.6 NMAC - Rn, 3 NMAC 20.4.6, 6/14/01]

3.16.103.7 DEFINITIONS:

[Reserved.]

[12/31/96; 3.16.103.7 NMAC - Rn, 3 NMAC 20.4.7, 6/14/01]

3.16.103.8 DETERMINATION OF DUE DATE FOR SPECIAL FUEL INVENTORY TAX:

When an increase in special fuel excise tax is effective on the first day of any month, the special fuel inventory tax is due on the twenty-fifth day of that same month.

[2/1/93, 12/31/96; 3.16.103.8 NMAC - Rn, 3 NMAC 20.4.8, 6/14/01]

PART 104: INVENTORY

3.16.104.1 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; 3.16.104.1 NMAC - Rn, 3 NMAC 20.5.1, 6/14/01]

3.16.104.2 SCOPE:

This part applies to every person receiving or using special fuel in New Mexico.

[12/31/96; 3.16.104.2 NMAC - Rn, 3 NMAC 20.5.2, 6/14/01]

3.16.104.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[12/31/96; 3.16.104.3 NMAC - Rn, 3 NMAC 20.5.3, 6/14/01]

3.16.104.4 DURATION:

Permanent.

[12/31/96; 3.16.104.4 NMAC - Rn, 3 NMAC 20.5.4, 6/14/01]

3.16.104.5 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; 3.16.104.5 NMAC - Rn, 3 NMAC 20.5.5 & A, 6/14/01]

3.16.104.6 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; 3.16.104.6 NMAC - Rn, 3 NMAC 20.5.6, 6/14/01]

3.16.104.7 DEFINITIONS:

[Reserved.]

[12/31/96; 3.16.104.7 NMAC - Rn, 3 NMAC 20.5.7, 6/14/01]

3.16.104.8 INVENTORY REPORT:

On or before the due date for payment of the special fuel inventory tax, each special fuel supplier, dealer and bulk storage user shall report on forms provided by the department the number of gallons of special fuel which that supplier, dealer or bulk storage user has in inventory on the day prior to the day on which the change in rate is effective. Reports are required even if no inventory is on hand as of the determination date.

[2/1/93, 12/31/96; 3.16.104.8 NMAC - Rn, 3 NMAC 20.5.8, 6/14/01]

PART 105-106: [RESERVED]

PART 107: BULK STORAGE

3.16.107.1 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; 3.16.107.1 NMAC - Rn, 3 NMAC 20.8.1, 6/14/01]

3.16.107.2 SCOPE:

This part applies to every person receiving or using special fuel in New Mexico.

[12/31/96; 3.16.107.2 NMAC - Rn, 3 NMAC 20.8.2, 6/14/01]

3.16.107.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[12/31/96; 3.16.107.3 NMAC - Rn, 3 NMAC 20.8.3, 6/14/01]

3.16.107.4 DURATION:

Permanent.

[12/31/96; 3.16.107.4 NMAC - Rn, 3 NMAC 20.8.4, 6/14/01]

3.16.107.5 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; 3.16.107.5 NMAC - Rn, 3 NMAC 20.8.5 & A, 6/14/01]

3.16.107.6 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; 3.16.107.6 NMAC - Rn, 3 NMAC 20.8.6, 6/14/01]

3.16.107.7 DEFINITIONS:

[RESERVED]

[2/1/93, 12/31/96; 3.16.107.7 NMAC - Rn, 3 NMAC 20.8.7, 6/14/01; Repealed, 9/15/08]

3.16.107.8 [RESERVED]

[2/1/93, 12/31/96; 3.16.107.8 NMAC - Rn, 3 NMAC 20.8.8 & A, 6/14/01; Repealed, 9/15/08]

3.16.107.9 [RESERVED]

[2/1/93, 12/31/96; 3.16.107.9 NMAC - Rn, 3 NMAC 20.8.9 & A, 6/14/01; Repealed, 9/15/08]

3.16.107.10 [RESERVED]

[2/1/93, 12/31/96; 3.16.107.10 NMAC - Rn, 3 NMAC 20.8.10 & A, 6/14/01; Repealed, 9/15/08]

3.16.107.11 [RESERVED]

[2/1/93, 12/31/96; 3.16.107.11 NMAC - Rn, 3 NMAC 20.8.11 & A, 6/14/01; Repealed, 9/15/08]

3.16.107.12 [RESERVED]

[2/1/93, 12/31/96; 3.16.107.12 NMAC - Rn, 3 NMAC 20.8.12 & A, 6/14/01; Repealed, 9/15/08]

3.16.107.13 [RESERVED]

[2/1/93, 12/31/96; 3.16.107.13 NMAC - Rn, 3 NMAC 20.8.13 & A, 6/14/01; Repealed, 9/15/08]

PART 108: RETURNS

3.16.108.1 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; 3.16.108.1 NMAC - Rn, 3 NMAC 20.9.1, 6/14/01]

3.16.108.2 SCOPE:

This part applies to every person receiving or using special fuel in New Mexico.

[12/31/96; 3.16.108.2 NMAC - Rn, 3 NMAC 20.9.2, 6/14/01]

3.16.108.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[12/31/96; 3.16.108.3 NMAC - Rn, 3 NMAC 20.9.3, 6/14/01]

3.16.108.4 DURATION:

Permanent.

[12/31/96; 3.16.108.4 NMAC - Rn, 3 NMAC 20.9.4, 6/14/01]

3.16.108.5 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; 3.16.108.5 NMAC - Rn, 3 NMAC 20.9.5 & A, 6/14/01]

3.16.108.6 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; 3.16.108.6 NMAC - Rn, 3 NMAC 20.9.6, 6/14/01]

3.16.108.7 DEFINITIONS:

[Reserved.]

[12/31/96; 3.16.108.7 NMAC - Rn, 3 NMAC 20.9.7, 6/14/01]

3.16.108.8 SPECIAL FUEL SUPPLIER TAX RETURN:

The special fuel supplier tax return shall be submitted on forms provided or approved by the department and must be signed by the taxpayer or the taxpayer’s authorized agent.

[2/1/93, 12/31/96, 12/31/97; 3.16.108.8 NMAC - Rn, 3 NMAC 20.9.8, 6/14/01]

3.16.108.9 DETERMINATION OF TIMELINESS:

Determination of timeliness for notices, returns, applications and payments of any tax or fee imposed under the Special Fuels Supplier Tax Act will be made in conformance with the requirements of Section 7-1-9 NMSA 1978 and the regulations thereunder.

[2/1/93, 12/31/96; 3.16.108.9 NMAC - Rn, 3 NMAC 20.9.9 & A, 6/14/01]

3.16.108.10 CHANGE OF ADDRESS:

Taxpayers must inform the department of any change of address. Any notice to a taxpayer is presumed to be effective and binding on that taxpayer when it is sent to the last address shown in the department's records.

[2/1/93, 12/31/96; 3.16.108.10 NMAC - Rn, 3 NMAC 20.9.10, 6/14/01]

3.16.108.11 RETURN MUST REPORT ON UNTAXED SALES:

Special fuel tax returns filed by suppliers, rack operators or importers must include reports of sales of special fuel on which the special fuel excise tax has not been paid. Such reports shall be made in the form prescribed by the secretary and shall include the number of gallons sold, the identity of the purchaser, including the taxpayer identification number, and the date of the sale. The retailer of such special fuel not taxed under the Special Fuels Supplier Tax Act will be responsible for the gross receipts tax on its receipts from the sale of the special fuel.

[12/31/96, 12/31/97, 1/29/99; 3.16.108.11 NMAC - Rn, 3 NMAC 20.9.11, 6/14/01]

PART 109: 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]

PART 110: COMPUTATION

3.16.110.1 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; 3.16.110.1 NMAC - Rn, 3 NMAC 20.11.1, 6/14/01]

3.16.110.2 SCOPE:

This part applies to every person receiving or using special fuel in New Mexico.

[12/31/96; 3.16.110.2 NMAC - Rn, 3 NMAC 20.11.2, 6/14/01]

3.16.110.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[12/31/96; 3.16.110.3 NMAC - Rn, 3 NMAC 20.11.3, 6/14/01]

3.16.110.4 DURATION:

Permanent.

[12/31/96; 3.16.110.4 NMAC - Rn, 3 NMAC 20.11.4, 6/14/01]

3.16.110.5 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; 3.16.110.5 NMAC - Rn, 3 NMAC 20.11.5 & A, 6/14/01]

3.16.110.6 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; 3.16.110.6 NMAC - Rn, 3 NMAC 20.11.6, 6/14/01]

3.16.110.7 DEFINITIONS:

[Reserved.]

[12/31/96; 3.16.110.7 NMAC - Rn, 3 NMAC 20.11.7, 6/14/01]

3.16.110.8 COMPUTATION OF MILES-PER-GALLON FACTOR:

A. For purposes of calculating the gallons of special fuel used on the highways of this state, any computation of the average miles per gallon everywhere shall be carried out to two significant decimal places. Rounding rules for the third decimal place are:

(1) round down if the digit is a zero, 1, 2, 3, or 4; and

(2) round up if the digit is a 5, 6, 7, 8, or 9.

B. Example 1: Trucker's fleet logged 1,000,000 miles with 100,000 traveled in New Mexico. Trucker used 202,100 gallons of special fuel. Trucker has used 20,202 gallons in New Mexico, computed as follows:

1,000,000 miles everywhere

divided by 202,100 gallons of special fuel everywhere

equals 4.948 = 4.95 average miles per gallon

100,000 New Mexico miles

divided by 4.95 average miles per gallon

equals 20,202 New Mexico special fuel gallons

C. Example 2: Hauler's fleet traveled 2,000,000 miles, 500,000 of which were in New Mexico. Hauler used 413,050 gallons of special fuel during the reporting period. Hauler has used 103,306 gallons of special fuel in New Mexico, computed as follows:

2,000,000 miles everywhere

divided by 413,050 gallons of special fuel everywhere

equals 4.842 = 4.84 average miles per gallon

500,000 New Mexico miles

divided by 4.84 average miles per gallon

equals 103,306 New Mexico special fuel gallons

[2/1/93, 12/31/96; 3.16.110.8 NMAC - Rn, 3 NMAC 20.11.8, 6/14/01]

3.16.110.9 REQUIRED RECORDS:

Special fuel users shall maintain the following records on a reporting period basis. All records shall be referenced by vehicle unit number.

A. Vehicle trip mileage records for each vehicle operated in New Mexico. The mileage records shall reflect the total miles traveled in every state and country and the total miles traveled in New Mexico.

B. Vehicle itineraries including each vehicle trip origin and destination point, and routes taken.

C. Total quantities of special fuel placed into the fuel supply tank(s) of each vehicle and the location and date of each acquisition of special fuel.

[2/1/93, 12/31/96; 3.16.110.9 NMAC - Rn, 3 NMAC 20.11.9, 6/14/01]

3.16.110.10 ALTERNATIVE CALCULATION AVAILABLE FOR CERTAIN VEHICLES:

A. An alternative calculation to determine the special fuel excise tax due under Section 7-16A-11 NMSA 1978 is available under Section 3.16.110.12 NMAC for vehicles which:

(1) are registered with the state under the annual renewal program or the international registration program (IRP);

(2) are equipped with a power take-off (PTO) from the transmission or main engine to operate some form of auxiliary equipment or a non-automotive apparatus mounted on the vehicle, provided a common supply tank for special fuel is used to propel the vehicle along the highway and to operate the auxiliary equipment or non-automotive apparatus; and

(3) are equipped with an operating odometer, if the vehicle is a non-combination vehicle; if the vehicle is a combination, the tractor must have an operating odometer and the trailer or semitrailer must have an operating hub mileage gauge known as a "hubometer".

B. In addition, the owner or operator of the vehicle must:

(1) have applied for and been issued an annual special fuel permit and tax qualification card, valid for the vehicle; and

(2) be registered with the department under Section 7-1-12 NMSA 1978 as a CRS taxpayer for reporting and remitting compensating tax.

C. An annual election to use the alternative computation is made for each eligible vehicle by a declaration on form SF-11 specifying the type of vehicle, the principle use of the vehicle if not self-explanatory by type, the vehicle identification number of the power unit, type of auxiliary equipment or non-automotive apparatus, the use of odometer or hubometer or notification of the absence of either for agricultural or construction equipment and the name and address of the owner and operator. Use of the alternative calculation is mandatory for each specified vehicle for the entire calendar year, or portion thereof in the case of a newly registered vehicle.

[2/1/93, 12/31/96; 3.16.110.10 NMAC - Rn, 3 NMAC 20.11.10 & A, 6/14/01]

3.16.110.11 RECORDS REQUIRED FOR ALTERNATIVE CALCULATION METHOD:

A. The alternative calculation may be used only when the auxiliary equipment or non-automotive apparatus is in use in New Mexico. A contemporaneous daily trip report must be maintained for each vehicle using the alternative calculation method. At a minimum, date, beginning hub or odometer miles and time, ending hub or odometer miles and time and miles traveled must be entered on the daily trip report. The log must clearly identify the times the auxiliary equipment or non-automotive apparatus was in use.

B. In addition to the daily trip record, the driver, owner or operator of the vehicle must record all fuel purchases by date, price per gallon, gallons delivered into the main supply tank of the vehicle, and the total cost of the fuel. This recordation is required

even if the fuel is withdrawn from bulk storage. In the case of bulk fuel withdrawal, any reasonable method of determining and allocating cost will be accepted by the department. This reasonable method must be documented in writing.

C. Failure to maintain and retain the required trip reports and fuel records will result in disallowance of the alternative computation method, and special fuel excise tax will be assessed on all fuel consumed in the state, whether for PTO use or propelling the vehicle.

[2/1/93, 12/31/96; 3.16.110.11 NMAC - Rn, 3 NMAC 20.11.11, 6/14/01]

3.16.110.12 APPLICATION OF ALTERNATIVE CALCULATION METHOD:

A. All special fuel used to propel the vehicle, or associated with such propulsion, must be reported as taxable. No exclusions, adjustments or allowances for idling time or use of special fuel for propulsion, or associated with propulsion, are permitted in using the alternative calculation method.

B. The following factors shall be used:

If gross declared vehicle weight		Then, the assumed
is at least:	But is less than:	mpg factor is:
12,000 pounds	26,000 pounds	4.50 mpg
26,001 pounds	54,000 pounds	4.35 mpg
54,001 pounds	80,000 pounds	4.00 mpg
80,001 pounds or over		3.85 mpg

C. The specified assumed mpg factor may be subject to adjustment if the special fuel user can establish through clear and compelling evidence presented in the form of a ruling request addressed to the department that a different mpg factor is appropriate. The specified assumed mpg factor must be used until a formal ruling is issued by the department to the special fuel user.

D. Determine the average cost of special fuel purchased during the period by dividing the total cost of the purchased fuel by the total gallons purchased. Divide the number of propelled miles by the mpg factor for the appropriate weight class to determine the number of gallons used for propulsion. Subtract the number of gallons used for propulsion from the number of total gallons to obtain the number of gallons used in the operation of auxiliary equipment or non-automotive apparatus (PTO gallons). Multiply PTO gallons by the average price of special fuel to determine the value of fuel used for non-propulsion purposes. This value multiplied by the

compensating tax rate provided in Section 7-9-7 NMSA 1978 will determine the amount of compensating tax due on special fuel for non-propulsion purposes.

E. If an election to use the alternative computation method was made for more than one vehicle, the calculation must be performed separately for each vehicle.

[2/1/93, 12/31/96; 3.16.110.12 NMAC - Rn, 3 NMAC 20.11.12 & A, 6/14/01]

3.16.110.13 NO OTHER EXCLUSIONS, ADJUSTMENTS OR ALLOWANCES PROVIDED:

A. No other exclusions, adjustments or allowances for special fuel used for non-propulsion purposes, other than the alternative computation method provided in Sections 3.16.110.10 through 3.16.110.12 NMAC, are allowable in determining special fuel excise tax liability under Section 7-16A-11 NMSA 1978.

B. Idling time associated with on-highway use of a motor vehicle is taxable at the special fuel excise tax rate provided in Section 7-16A-3 NMSA 1978. Evidence from "black box" records, or similar computerized monitoring equipment, is not accepted in determining fleet fuel consumption.

[2/1/93, 12/31/96; 3.16.110.13 NMAC - Rn, 3 NMAC 20.11.13 & A, 6/14/01]

PART 111: DETERMINATION OF AMOUNT PAID

3.16.111.1 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; 3.16.111.1 NMAC - Rn, 3 NMAC 20.12.1, 6/14/01]

3.16.111.2 SCOPE:

This part applies to every person receiving or using special fuel in New Mexico.

[12/31/96; 3.16.111.2 NMAC - Rn, 3 NMAC 20.12.2, 6/14/01]

3.16.111.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[12/31/96; 3.16.111.3 NMAC - Rn, 3 NMAC 20.12.3, 6/14/01]

3.16.111.4 DURATION:

Permanent.

[12/31/96; 3.16.111.4 NMAC - Rn, 3 NMAC 20.12.4, 6/14/01]

3.16.111.5 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; 3.16.111.5 NMAC - Rn, 3 NMAC 20.12.5 & A, 6/14/01]

3.16.111.6 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; 3.16.111.6 NMAC - Rn, 3 NMAC 20.12.6, 6/14/01]

3.16.111.7 DEFINITIONS:

[Reserved.]

[12/31/96; 3.16.111.7 NMAC - Rn, 3 NMAC 20.12.7, 6/14/01]

3.16.111.8 DETERMINING SPECIAL FUEL EXCISE TAX PAID:

Any temporary special fuel user permit fee paid during the reporting period under the provisions of Section 7-16A-19 NMSA 1978 is not special fuel excise tax paid and any temporary special fuel user permit fee paid may not be used in determining the credit available under Section 7-16A-12 NMSA 1978.

[2/1/93, 12/31/96; 3.16.111.8 NMAC - Rn, 3 NMAC 20.12.8 & A, 6/14/01]

3.16.111.9 REFUND OF EXCESS CREDIT IN REPORTING PERIOD:

Any credit which exceeds the sum of the calculated special fuel excise tax due and the weight distance tax due for a reporting period may be refunded to the special fuel user if the special fuel user tax return required by Section 7-16A-11 NMSA 1978 is accompanied by a claim for refund.

[2/1/93, 12/31/96; 3.16.111.9 NMAC - Rn, 3 NMAC 20.12.9 & A, 6/14/01]

PART 112: DESTRUCTION

3.16.112.1 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; 3.16.112.1 NMAC - Rn, 3 NMAC 20.13.1, 6/14/01]

3.16.112.2 SCOPE:

This part applies to every person receiving or using special fuel in New Mexico.

[12/31/96; 3.16.112.2 NMAC - Rn, 3 NMAC 20.13.2, 6/14/01]

3.16.112.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[12/31/96; 3.16.112.3 NMAC - Rn, 3 NMAC 20.13.3, 6/14/01]

3.16.112.4 DURATION:

Permanent.

[12/31/96; 3.16.112.4 NMAC - Rn, 3 NMAC 20.13.4, 6/14/01]

3.16.112.5 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; 3.16.112.5 NMAC - Rn, 3 NMAC 20.13.5 & A, 6/14/01]

3.16.112.6 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; 3.16.112.6 NMAC - Rn, 3 NMAC 20.13.6, 6/14/01]

3.16.112.7 DEFINITIONS:

A. Accident:

(1) An "accident" includes any event happening by chance, unexpectedly taking place or occurring not according to the usual course of events. An event may sometimes be termed accidental even though it results from ordinary negligence.

(2) Example 1: X is a special fuel supplier. X's driver while delivering to a service station negligently dumps diesel fuel into the gasoline storage tank (tank G) and gasoline into the diesel fuel storage tank (tank D). Each tank is nearly full. In order to return the station to operation, X pumps both tanks dry and dumps the resulting mixture into another tank (tank M) which contains a small amount of diesel fuel. In this situation, the diesel fuel dumped into tank G and the diesel fuel in tank D into which gasoline was dumped is "destroyed", because each tank became a mixture that was rendered unusable as a special fuel. All this special fuel was "destroyed" by "accident" within the meaning of Subsection A of Section 3.16.112.7 NMAC, and X may obtain a refund for special fuel excise tax paid on the special fuel dumped into tank G and the special fuel in tank D on submission of satisfactory proof. The special fuel in tank M was also "destroyed" within the meaning of Subsection B of Section 3.16.112.7 NMAC. However, the special fuel in tank M was not "destroyed" by "accident" because X knew there was some special fuel in the tank and knew it would be "destroyed" when the diesel fuel and gasoline mixture was dumped into it. X will not be granted a refund for special fuel excise tax paid on the special fuel in tank M.

(3) Example 2: Y is a special fuel supplier. An underground pipe develops a leak because of corrosion and some special fuel is "destroyed". The department will not grant a refund since corrosion is not an "accident" within the meaning of Section 7-16A-13 NMSA 1978.

B. "Destroyed" includes being rendered unusable as fuel due to adulteration.

[2/1/93, 12/31/96; 3.16.112.7 NMAC - Rn, 3 NMAC 20.13.7 & A, 6/14/01]

3.16.112.8 PROOF SATISFACTORY TO THE DEPARTMENT:

Proof satisfactory to the department of the destruction of special fuel shall state the amount of special fuel in the person's possession immediately prior to the destruction and the amount remaining immediately after the destruction. The proof shall state the circumstances of the destruction and shall be attested to by the claimant. The proof shall be on forms provided by the department and shall accompany the person's application for refund or credit.

[2/1/93, 12/31/96; 3.16.112.8 NMAC - Rn, 3 NMAC 20.13.8, 6/14/01]

3.16.112.9 STATUTE OF LIMITATIONS:

No refund may be made under Section 7-16A-13 NMSA 1978 unless the person claiming the refund notifies the department of the destruction of the special fuel within thirty (30) days of the actual destruction, and the claim for refund is made within six (6) months of the date of destruction.

[2/1/93, 12/31/96; 3.16.112.9 NMAC - Rn, 3 NMAC 20.13.9 & A, 6/14/01]

PART 113: REGISTRATION

3.16.113.1 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; 3.16.113.1 NMAC - Rn, 3 NMAC 20.14.1, 6/14/01]

3.16.113.2 SCOPE:

This part applies to every person receiving or using special fuel in New Mexico.

[12/31/96; 3.16.113.2 NMAC - Rn, 3 NMAC 20.14.2, 6/14/01]

3.16.113.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[12/31/96; 3.16.113.3 NMAC - Rn, 3 NMAC 20.14.3, 6/14/01]

3.16.113.4 DURATION:

Permanent.

[12/31/96; 3.16.113.4 NMAC - Rn, 3 NMAC 20.14.4, 6/14/01]

3.16.113.5 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; 3.16.113.5 NMAC - Rn, 3 NMAC 20.14.5 & A, 6/14/01]

3.16.113.6 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; 3.16.113.6 NMAC - Rn, 3 NMAC 20.14.6, 6/14/01]

3.16.113.7 DEFINITIONS:

[Reserved.]

[12/31/96; 3.16.113.7 NMAC - Rn, 3 NMAC 20.14.7, 6/14/01]

3.16.113.8 REGISTRATION:

A. Each person engaged in selling special fuel as a rack operator, importer, supplier or dealer shall register with the department by filing an application for registration for combined reporting of gross receipts, compensating and withholding tax.

B. The department will prepare and make available to rack operators, importers and suppliers a list of all persons currently registered as suppliers under the Special Fuels Supplier Tax Act. The department will answer all inquiries as to whether a person is included in this list.

[2/1/93, 12/31/96, 12/31/97; 3.16.113.8 NMAC - Rn, 3 NMAC 20.14.8, 6/14/01]

3.16.113.9 DEPARTMENT MAY REMOVE NONCOMPLYING SUPPLIERS FROM LIST:

A. In accordance with Section 3.16.113.9 NMAC, the department may cancel the registration of a supplier as a supplier of special fuel and remove its name from the list of suppliers registered under the Special Fuels Supplier Tax Act if the supplier does not substantially comply with the requirements to file special fuel tax returns in the form and manner prescribed by the secretary.

B. The department shall notify the supplier of its intent to cancel the supplier's registration as a supplier of special fuel and to remove its name from the list. The notice shall provide for a hearing at least ten days after the date of the date notice is provided. At the hearing the supplier will be given an opportunity to demonstrate substantial compliance. If, in the judgment of the hearing officer, substantial compliance is not demonstrated, the hearing officer shall order the immediate cancellation of registration as a supplier and removal from the list of suppliers or to file petroleum products loading fee reports in the form and manner prescribed by the secretary with respect to special fuel loaded or imported by the supplier.

[12/31/96; 3.16.113.9 NMAC - Rn, 3 NMAC 20.14.9 & A, 6/14/01]

PART 114: SECURITY

3.16.114.1 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; 3.16.114.1 NMAC - Rn, 3 NMAC 20.15.1, 6/14/01]

3.16.114.2 SCOPE:

This part applies to every person receiving or using special fuel in New Mexico.

[12/31/96; 3.16.114.2 NMAC - Rn, 3 NMAC 20.15.2, 6/14/01]

3.16.114.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[12/31/96; 3.16.114.3 NMAC - Rn, 3 NMAC 20.15.3, 6/14/01]

3.16.114.4 DURATION:

Permanent.

[12/31/96; 3.16.114.4 NMAC - Rn, 3 NMAC 20.15.4, 6/14/01]

3.16.114.5 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; 3.16.114.5 NMAC - Rn, 3 NMAC 20.15.5 & A, 6/14/01]

3.16.114.6 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; 3.16.114.6 NMAC - Rn, 3 NMAC 20.15.6, 6/14/01]

3.16.114.7 DEFINITIONS:

[Reserved.]

[12/31/96; 3.16.114.7 NMAC - Rn, 3 NMAC 20.15.7, 6/14/01]

3.16.114.8 SECURITY:

A. The department may request security in addition to the bond required under Section 7-16A-15 NMSA 1978 as needed.

B. If any person fails to provide the security required by Section 3.16.114.8 NMAC within thirty (30) days, the department may demand, by certified mail or in person, that the security be provided. If the person does not comply within ten (10) days, the department may institute proceedings to enjoin that person from engaging in business in New Mexico in accordance with Section 7-1-53 NMSA 1978 of the Tax Administration Act.

[2/1/93, 12/31/96, 12/31/97; 3.16.114.8 NMAC - Rn, 3 NMAC 20.15.8 & A, 6/14/01]

PART 115: OFF-LOADING NOT A VIOLATION IN CERTAIN CASES

3.16.115.1 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; 3.16.115.1 NMAC - Rn, 3 NMAC 20.16.1, 6/14/01]

3.16.115.2 SCOPE:

This part applies to every person receiving or using special fuel in New Mexico.

[12/31/96; 3.16.115.2 NMAC - Rn, 3 NMAC 20.16.2, 6/14/01]

3.16.115.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[12/31/96; 3.16.115.3 NMAC - Rn, 3 NMAC 20.16.3, 6/14/01]

3.16.115.4 DURATION:

Permanent.

[12/31/96; 3.16.115.4 NMAC - Rn, 3 NMAC 20.16.4, 6/14/01]

3.16.115.5 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; 3.16.115.5 NMAC - Rn, 3 NMAC 20.16.5 & A, 6/14/01]

3.16.115.6 OBJECTIVE:

The objective of this art is to interpret, exemplify, implement and enforce the provisions of the Special Fuels Supplier Tax Act.

[12/31/96; 3.16.115.6 NMAC - Rn, 3 NMAC 20.16.6, 6/14/01]

3.16.115.7 DEFINITIONS:

[Reserved.]

[12/31/96; 3.16.115.7 NMAC - Rn, 3 NMAC 20.16.7, 6/14/01]

3.16.115.8 OFF-LOADING NOT A VIOLATION IN CERTAIN CASES:

Any authorized enforcement employee of the motor transportation division or any authorized law enforcement officer may require that special fuel be off-loaded or otherwise removed from the supply tank of a motor vehicle to eliminate an unsafe or hazardous operating condition.

[2/1/93, 12/31/96; 3.16.115.8 NMAC - Rn, 3 NMAC 20.16.8, 6/14/01]

PART 116: SPECIAL BULK [RESERVED]

PART 117: LEASES [RESERVED]

PART 118: REFUNDS

3.16.118.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[5/31/97; 3.16.118.1 NMAC - Rn, 3 NMAC 20.19.1, 6/14/01]

3.16.118.2 SCOPE:

This part applies to every person receiving or using special fuel in New Mexico.

[5/31/97; 3.16.118.2 NMAC - Rn, 3 NMAC 20.19.2, 6/14/01]

3.16.118.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[5/31/97; 3.16.118.3 NMAC - Rn, 3 NMAC 20.19.3, 6/14/01]

3.16.118.4 DURATION:

Permanent.

[5/31/97; 3.16.118.4 NMAC - Rn, 3 NMAC 20.19.4, 6/14/01]

3.16.118.5 EFFECTIVE DATE:

5/31/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[5/31/97; 3.16.118.5 NMAC - Rn, 3 NMAC 20.19.5 & A, 6/14/01]

3.16.118.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Special Fuels Supplier Tax Act.

[5/31/97; 3.16.118.6 NMAC - Rn, 3 NMAC 20.19.6, 6/14/01]

3.16.118.7 DEFINITIONS:

[Reserved.]

[5/31/97; 3.16.118.7 NMAC - Rn, 3 NMAC 20.19.7, 6/14/01]

3.16.118.8 TEMPORARY SPECIAL FUEL USER PERMIT FEE NOT REFUNDABLE:

The temporary special fuel user permit fee is not refundable and may not be claimed as an amount of special fuel tax paid in determining any special fuel excise tax due under Section 7-16A-19 NMSA 1978. This regulation is applicable to special fuel tax returns filed for periods ending on or after December 31, 1996.

[2/1/93, 5/31/97; 3.16.118.8 NMAC - Rn, 3 NMAC 20.19.8 & A, 6/14/01]

PART 119: [RESERVED]

PART 120: PRIOR AGREEMENTS AND RULINGS [RESERVED]

PART 121-199: [RESERVED]

PART 200: GENERAL PROVISIONS - PETROLEUM PRODUCTS LOADING FEES

3.16.200.1 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; 3.16.200.1 NMAC - Rn, 3 NMAC 17.1.1, 6/14/01]

3.16.200.2 SCOPE:

This part applies to all distributors of petroleum products.

[12/31/96; 3.16.200.2 NMAC - Rn, 3 NMAC 17.1.2, 6/14/01]

3.16.200.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[12/31/96; 3.16.200.3 NMAC - Rn, 3 NMAC 17.1.3, 6/14/01]

3.16.200.4 DURATION:

Permanent.

[12/31/96; 3.16.200.4 NMAC - Rn, 3 NMAC 17.1.4, 6/14/01]

3.16.200.5 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; 3.16.200.5 NMAC - Rn, 3 NMAC 17.1.5 & A, 6/14/01]

3.16.200.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Petroleum Products Loading Fee Act.

[12/31/96; 3.16.200.6 NMAC - Rn, 3 NMAC 17.1.6, 6/14/01]

3.16.200.7 DEFINITIONS:

[Reserved.]

[12/31/96; 3.16.200.7 NMAC - Rn, 3 NMAC 17.1.7, 6/14/01]

3.16.200.8 CITATIONS:

All statutory references in Parts 200 through 205 of Chapter 16 are to the New Mexico Statutes Annotated, 1978 (NMSA 1978).

[11/7/90, 12/31/96; 3.16.200.8 NMAC - Rn, 3 NMAC 17.1.8 & A, 6/14/01]

PART 201: DEFINITIONS [RESERVED]

PART 202: IMPOSITION AND RATES OF FEES

3.16.202.1 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; 3.16.202.1 NMAC - Rn, 3 NMAC 17.3.1, 6/14/01]

3.16.202.2 SCOPE:

This part applies to all distributors of petroleum products.

[12/31/96; 3.16.202.2 NMAC - Rn, 3 NMAC 17.3.2, 6/14/01]

3.16.202.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[12/31/96; 3.16.202.3 NMAC - Rn, 3 NMAC 17.3.3, 6/14/01]

3.16.202.4 DURATION:

Permanent.

[12/31/96; 3.16.202.4 NMAC - Rn, 3 NMAC 17.3.4, 6/14/01]

3.16.202.5 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; 3.16.202.5 NMAC - Rn, 3 NMAC 17.3.5 & A, 6/14/01]

3.16.202.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Petroleum Products Loading Fee Act.

[12/31/96; 3.16.202.6 NMAC - Rn, 3 NMAC 17.3.6, 6/14/01]

3.16.202.7 DEFINITIONS:

For the purposes of this part:

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; 3.16.202.7 NMAC - Rn, 3 NMAC 17.3.7 & A, 6/14/01]

3.16.202.8 INCIDENCE OF FEE:

A. The duty to report and pay the petroleum products loading fee is imposed on these persons at these times:

(1) the distributor when it loads the petroleum products from a rack at a refinery or pipeline terminal in this state into a cargo tank; or

(2) the person, whether a distributor or not, who imports petroleum products into New Mexico for sale or consumption in this state at the time of importation.

B. The duty to report and pay the fee is not transferred when the petroleum products are sold or otherwise transferred to another person.

C. Example: X is a refiner and a registered distributor. X loads petroleum products into tank trucks at its own refinery and delivers the products to Y. Y is an Indian tribe; Y is also a registered distributor. X must report and pay the petroleum products loading fee with respect to these products. X loaded the products. X may not transfer the obligation to report and pay to anyone else.

[12/31/96; 3.16.202.8 NMAC - Rn, 3 NMAC 17.3.8, 6/14/01]

3.16.202.9 PREEMPTION OF TAX BY FEDERAL LAW:

A. When imposition of the fee is prohibited by federal law, no petroleum products loading fee applies when a distributor who is an Indian tribe loads petroleum products on its own tribe's territory.

B. When imposition of the fee is prohibited by federal law, no petroleum products loading fee applies when a distributor who is an Indian tribe imports petroleum products directly onto the tribe's territory without crossing any land within New Mexico that is not the tribe's territory.

C. If an Indian tribe is a distributor and it either loads petroleum products at any place in New Mexico other than on the tribe's territory or imports petroleum products into any part of New Mexico other than directly onto the tribe's territory, imposition of the petroleum products loading fee is not barred by federal law and that distributor must report and pay the fee.

D. Like any other distributor, an Indian tribe that is a registered distributor is not liable for reporting and payment of the petroleum products loading fee with respect to the loading or importation of petroleum products by another distributor. This shall not be construed to prohibit the distributor who reports and pays the petroleum products loading fee from adjusting the price of the petroleum products it sells to other distributors or customers to cover the cost of the fee paid.

[12/31/96; 3.16.202.9 NMAC - Rn, 3 NMAC 17.3.9, 6/14/01]

PART 203: EXEMPTIONS

3.16.203.1 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; 3.16.203.1 NMAC - Rn, 3 NMAC 17.4.1, 6/14/01]

3.16.203.2 SCOPE:

This part applies to all distributors of petroleum products.

[12/31/96; 3.16.203.2 NMAC - Rn, 3 NMAC 17.4.2, 6/14/01]

3.16.203.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[12/31/96; 3.16.203.3 NMAC - Rn, 3 NMAC 17.4.3, 6/14/01]

3.16.203.4 DURATION:

Permanent.

[12/31/96; 3.16.203.4 NMAC - Rn, 3 NMAC 17.4.4, 6/14/01]

3.16.203.5 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; 3.16.203.5 NMAC - Rn, 3 NMAC 17.4.5 & A, 6/14/01]

3.16.203.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Petroleum Products Loading Fee Act.

[12/31/96; 3.16.203.6 NMAC - Rn, 3 NMAC 17.4.6, 6/14/01]

3.16.203.7 DEFINITIONS:

[Reserved.]

[12/31/96; 3.16.203.7 NMAC - Rn, 3 NMAC 17.4.7, 6/14/01]

3.16.203.8 SATISFACTORY PROOF:

A. Satisfactory proof of the export of petroleum product consists of the proof required under Section 3.16.4.8 NMAC with respect to gasoline and under Section 3.16.109.9 NMAC with respect to special fuels.

B. Proof of sale to the United States or any agency or instrumentality thereof or a NATO force shall be furnished to the department upon request. Proof of sale shall consist of, for sales of gasoline, the documentation required under Section 3.16.4.8 NMAC and, for special fuel, the documentation required under Section 3.16.109.9 NMAC.

C. 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 petroleum product was exported from New Mexico for resale and consumption outside of New Mexico or was sold to the United States.

[11/7/90, 12/31/96, 4/15/98; 3.16.203.8 NMAC - Rn, 3 NMAC 17.4.8 & A, 6/14/01]

3.16.203.9 SALES TO OTHER DISTRIBUTORS ARE NOT DEDUCTIBLE:

Petroleum product loaded or imported by a distributor and sold to another distributor may not be deducted from the amount of petroleum product loaded in New Mexico, even though the other distributor is bonded and registered, because the purchasing distributor did not "load" petroleum product within the meaning of the act.

[11/7/90, 12/31/96, 4/15/98; 3.16.203.9 NMAC - Rn, 3 NMAC 17.4.9, 6/14/01]

3.16.203.10 INDIRECT SALES TO THE UNITED STATES OR A NATO FORCE FOR EXPORT:

A. The petroleum products loading fee consequences of sales of petroleum product to the United States or a NATO force by a wholesaler, dealer or retailer or for export for resale and consumption outside of New Mexico 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 petroleum products to the seller. The fact that the price may include an amount corresponding to the petroleum products loading fee does not make that amount a fee on the purchaser.

B. Examples:

(1) X, a distributor, paid the petroleum product loading fee with respect to one hundred (100) gallons of petroleum product loaded or imported in May and resold the petroleum product to Y, a wholesaler or dealer. Y then sold the petroleum product in that same May to the United States or a NATO force. If Y furnishes satisfactory proof to X, X may either deduct the one hundred (100) gallons from the amount of petroleum product subject to the petroleum product loading fee for that month of May, or may elect to take the deduction in any subsequent month in which X is subject to the fee for 100 or more gallons of petroleum product. Satisfactory proof of Y's sale to the United States or NATO force 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 petroleum product was sold.

(2) X, a distributor, paid the petroleum product loading fee with respect to one hundred (100) gallons of petroleum product loaded or imported in May, and resold the petroleum product to Y, a wholesaler or dealer, who resold it to Z, a retailer. Z sold ten (10) gallons to the United States when a United States government vehicle filled up at Z's station in that same May. Z reports to Y that this amount of petroleum product had been sold to the United States. If Y furnishes satisfactory proof to X, X may deduct ten (10) gallons from the amount of petroleum product subject to the fee in that May, or any subsequent month in which X is subject to the fee for 100 or more gallons of petroleum product. Satisfactory proof of Z's sale to the United States is required to be retained by X and Y for at least three years from the end of the calendar year in which the petroleum product was sold.

(3) X, a distributor, paid the petroleum product loading fee with respect to one hundred (100) gallons of petroleum product loaded or imported in May, and resold the petroleum product to Y, a wholesaler or dealer. Y delivers in that same May the one hundred (100) gallons of petroleum product to a customer in Texas. If Y furnishes satisfactory proof to X, X may deduct one hundred (100) gallons from the amount of petroleum product subject to the fee in that May, or any subsequent month in which X is subject to the fee for 100 or more gallons of petroleum product. Satisfactory proof 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.

[11/7/90, 12/31/96, 4/15/98; 3.16.203.10 NMAC - Rn, 3 NMAC 17.4.10 & A, 6/14/01]

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

A. For purposes of this section:

(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, petroleum products sold to a NATO force may be deducted from the total amount of petroleum products loaded in New Mexico.

C. [Reserved.]

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 petroleum products were sold.

E. Pursuant to Article IX, Section 8 of the North Atlantic Treaty, petroleum products 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 petroleum products loading fee.

F. Section 3.16.203.11 NMAC is applicable to sales made to a NATO force on or after July 1, 1995.

[12/31/96; 4/15/98; 3.16.203.11 NMAC - Rn, 3 NMAC 17.4.11 & A, 6/14/01]

PART 204: DEDUCTION - GASOLINE OR OTHER FUELS RETURNED

3.16.204.1 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; 3.16.204.1 NMAC - Rn, 3 NMAC 17.5.1, 6/14/01]

3.16.204.2 SCOPE:

This part applies to all distributors of petroleum products.

[12/31/96; 3.16.204.2 NMAC - Rn, 3 NMAC 17.5.2, 6/14/01]

3.16.204.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[12/31/96; 3.16.204.3 NMAC - Rn, 3 NMAC 17.5.3, 6/14/01]

3.16.204.4 DURATION:

Permanent.

[12/31/96; 3.16.204.4 NMAC - Rn, 3 NMAC 17.5.4, 6/14/01]

3.16.204.5 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; 3.16.204.5 NMAC - Rn, 3 NMAC 17.5.5 & A, 6/14/01]

3.16.204.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Petroleum Products Loading Fee Act.

[12/31/96; 3.16.204.6 NMAC - Rn, 3 NMAC 17.5.6, 6/14/01]

3.16.204.7 DEFINITIONS:

[Reserved.]

[12/31/96; 3.16.204.7 NMAC - Rn, 3 NMAC 17.5.7, 6/14/01]

3.16.204.8 SUBSEQUENT COLLECTION OF UNCOLLECTIBLE ACCOUNTS OR SUBSEQUENT SALE OF RETURNED PRODUCTS:

Any person, who has previously paid the petroleum products loading fee and deducted an amount for gallons of petroleum product which represents an account which has been determined to be uncollectible, shall pay the petroleum products loading fee when

the total or any portion of the amount of the uncollectible account is subsequently collected. Any person, who has paid the petroleum products loading fee and deducted an amount for gallons of petroleum product returned by the purchaser, shall be liable for the petroleum products loading fee when the returned product is resold.

[11/7/90, 12/31/96; 3.16.204.8 NMAC - Rn, 3 NMAC 17.5.8, 6/14/01]

3.16.204.9 DETERMINING UNCOLLECTIBLE AMOUNTS:

A. Amounts deductible as uncollectible shall be determined based on the accounting method employed by the person who has previously paid the petroleum products loading fee on the gasoline or special fuel, the sale of which created a debit to the account receivable maintained for that purchaser which was subsequently determined to be uncollectible. For purposes of this deduction, the balance of the account determined to be uncollectible shall be representative of the most recent sales transaction with the purchaser and gallons shall be determined by the source document (sales invoice, delivery ticket, etc.) used to post those transactions into the accounts receivable. Any payment or other credit to the account shall be applied to the oldest debit to that account in determining the balance of the uncollectible account.

B. For persons using an accrual basis of accounting, the deduction will be allowed for only those accounts which have actually been written off the books and records as uncollectible. For persons using other than an accrual basis of accounting, the deduction will be allowed for only those accounts which have been turned over to a third party for further collection activity. The term "turned over to a third party for further collection" includes those accounts which have been assigned to a collection agency or attorney to pursue the collection of the account on behalf of the creditor or those accounts where the creditor has pursued collection through a court of law where the creditor received but has not collected a judgment against the purchaser.

[11/7/90, 12/31/96; 3.16.204.9 NMAC - Rn, 3 NMAC 17.5.9 & A, 6/14/01]

PART 205: FEE RETURNS AND PAYMENTS

3.16.205.1 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; 3.16.205.1 NMAC - Rn, 3 NMAC 17.6.1, 6/14/01]

3.16.205.2 SCOPE:

This part applies to all distributors of petroleum products.

[12/31/96; 3.16.205.2 NMAC - Rn, 3 NMAC 17.6.2, 6/14/01]

3.16.205.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[12/31/96; 3.16.205.3 NMAC - Rn, 3 NMAC 17.6.3, 6/14/01]

3.16.205.4 DURATION:

Permanent.

[12/31/96; 3.16.205.4 NMAC - Rn, 3 NMAC 17.6.4, 6/14/01]

3.16.205.5 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; 3.16.205.5 NMAC - Rn, 3 NMAC 17.6.5 & A, 6/14/01]

3.16.205.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Petroleum Products Loading Fee Act.

[12/31/96; 3.16.205.6 NMAC - Rn, 3 NMAC 17.6.6, 6/14/01]

3.16.205.7 DEFINITIONS:

[Reserved.]

[12/31/96; 3.16.205.7 NMAC - Rn, 3 NMAC 17.6.7, 6/14/01]

3.16.205.8 PETROLEUM PRODUCTS LOADING FEE RETURN:

The petroleum products loading fee shall be submitted on forms provided or approved by the department and must be signed by the distributor or the distributor's authorized agent.

[11/7/90, 12/31/96; 3.16.205.8 NMAC - Rn, 3 NMAC 17.6.8, 6/14/01]

3.16.205.9 DETERMINATION OF TIMELINESS:

Determination of timeliness for notices, returns, applications and payments of petroleum products loading fee imposed under the Petroleum Products Loading Fee Act will be made in conformance with the requirements of Section 7-1-9 NMSA 1978 and regulations thereunder.

[11/7/90, 12/31/96; 3.16.205.9 NMAC - Rn, 3 NMAC 17.6.9 & A, 6/14/01]

3.16.205.10 CHANGE OF ADDRESS:

Persons subject to the provisions of the Petroleum Products Loading Fee Act must inform the department of any change of address. Any notice to such person is presumed to be effective and binding upon that person when it is sent to the last address shown in the department's records.

[11/7/90, 12/31/96; 3.16.205.10 NMAC - Rn, 3 NMAC 17.6.10, 6/14/01]

PART 206-299: [RESERVED]

PART 300: ALTERNATIVE FUELS - EXCLUSIONS, EXEMPTIONS AND DEDUCTIONS

3.16.300.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[6/15/96; 3.16.300.1 NMAC - Rn, 3 NMAC 20.100.1, 6/14/01]

3.16.300.2 SCOPE:

This part applies to all fuel distributors and permit or license holders.

[6/15/96; 3.16.300.2 NMAC - Rn, 3 NMAC 20.100.2, 6/14/01]

3.16.300.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[6/15/96; 3.16.300.3 NMAC - Rn, 3 NMAC 20.100.3, 6/14/01]

3.16.300.4 DURATION:

Permanent.

[6/15/96; 3.16.300.4 NMAC - Rn, 3 NMAC 20.100.4, 6/14/01]

3.16.300.5 EFFECTIVE DATE:

6/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[6/15/96; 3.16.300.5 NMAC - Rn, 3 NMAC 20.100.5 & A, 6/14/01]

3.16.300.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Alternative Fuel Tax Act.

[6/15/96; 3.16.300.6 NMAC - Rn, 3 NMAC 20.100.6, 6/14/01]

3.16.300.7 DEFINITIONS:

[Reserved.]

[6/15/96; 3.16.300.7 NMAC - Rn, 3 NMAC 20.100.7, 6/14/01]

3.16.300.8 NON-HIGHWAY USE OF ALTERNATIVE FUEL - TAXABILITY:

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

B. Alternative fuel is sold for non-highway use when it is delivered for use in stationary equipment or for residential or commercial heating or cooling purposes.

C. Any alternative fuel distributor delivering alternative 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.

D. Section 3.16.300.8 NMAC is applicable to sales of alternative fuel on or after January 1, 1996.

[6/15/96; 3.16.300.8 NMAC - Rn, 3 NMAC 20.100.8 & A, 6/14/01]

3.16.300.9 RECORDS REQUIRED TO PROVE SALE TO UNITED STATES, NEW MEXICO OR INDIAN ENTITY:

A. Proof of sale to the United States, the state of New Mexico, an Indian nation, tribe or pueblo or any agency or instrumentality thereof shall be furnished to the department on request by means of the following:

(1) documentation showing that the purchaser was the United States, the state of New Mexico, an Indian nation, tribe or pueblo or any agency or instrumentality thereof;

(2) a purchase order issued by the United States, the state of New Mexico, an Indian nation, tribe, or pueblo or any agency or instrumentality thereof; or

(3) an invoice showing that the alternative fuel was charged to the United States, the state of New Mexico, an Indian nation, tribe or pueblo or any agency or instrumentality thereof.

B. Copies of all documents supporting deductible or exempt sales must be retained for at least three years from the end of the calendar year in which the special fuel or alternative fuel was sold.

C. Section 3.16.300.9 NMAC is applicable to all sales of special fuel on or after January 1, 1993 and all sales of alternative fuel on or after January 1, 1996.

[6/15/96; 3.16.300.9 NMAC - Rn, 3 NMAC 20.100.9 & A, 6/14/01]

3.16.300.10 RECORDS REQUIRED TO PROVE COMPLIANCE - ALTERNATIVE FUEL:

Distributors shall indicate the alternative fuel user's permit number on all documents used to support deduction of alternative fuel distributed to persons holding a valid permit under Section 7-16B-7 NMSA 1978.

[6/15/96; 3.16.300.10 NMAC - Rn, 3 NMAC 20.100.10 & A, 6/14/01]

PART 301: [RESERVED]

PART 302: ALTERNATIVE FUELS - REGISTRATION, LICENSES AND PERMITS

3.16.302.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[6/15/96; 3.16.302.1 NMAC - Rn, 3 NMAC 20.102.1, 6/14/01]

3.16.302.2 SCOPE:

This part applies to all fuel distributors and permit or license holders.

[6/15/96; 3.16.302.2 NMAC - Rn, 3 NMAC 20.102.2, 6/14/01]

3.16.302.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[6/15/96; 3.16.302.3 NMAC - Rn, 3 NMAC 20.102.3, 6/14/01]

3.16.302.4 DURATION:

Permanent.

[6/15/96; 3.16.302.4 NMAC - Rn, 3 NMAC 20.102.4, 6/14/01]

3.16.302.5 EFFECTIVE DATE:

6/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[6/15/96; 3.16.302.5 NMAC - Rn, 3 NMAC 20.102.5 & A, 6/14/01]

3.16.302.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Alternative Fuel Tax Act.

[6/15/96; 3.16.302.6 NMAC - Rn, 3 NMAC 20.102.6, 6/14/01]

3.16.302.7 DEFINITIONS:

[Reserved.]

[6/15/96; 3.16.302.7 NMAC - Rn, 3 NMAC 20.102.7, 6/14/01]

3.16.302.8 ALTERNATIVE FUEL USER PERMIT:

An alternative fuel user permit issued by the department under the provisions of Section 7-16B-7 NMSA 1978 shall apply only to the vehicle described in the application for the permit. The permit is not transferable to another vehicle or to another person.

[6/15/96; 3.16.302.8 NMAC - Rn, 3 NMAC 20.102.8 & A, 6/14/01]

3.16.302.9 ALTERNATIVE FUEL DISTRIBUTOR LICENSE REQUIREMENT:

Each person applying for an alternative fuel distributor license shall establish to the satisfaction of the department that they are registered with the department for combined reporting of gross receipts, compensating and withholding tax.

[6/15/96; 3.16.302.9 NMAC - Rn, 3 NMAC 20.102.9, 6/14/01]

CHAPTER 17: [RESERVED]

CHAPTER 18: OIL AND GAS TAXES (SEVERANCE TAX)

PART 1: GENERAL PROVISIONS

3.18.1.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.18.1.1 NMAC - Rn, 3 NMAC 18.1.1, 12/29/00]

3.18.1.2 SCOPE:

This part applies to all persons severing or engaging in the business of severing oil, natural gas, liquid hydrocarbons other than oil and carbon dioxide, to all persons having an interest in the products severed, to all persons operating oil, natural gas or carbon dioxide leases and to all persons affiliated with such persons.

[11/15/96; 3.18.1.2 NMAC - Rn, 3 NMAC 18.1.2, 12/29/00]

3.18.1.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.18.1.3 NMAC - Rn, 3 NMAC 18.1.3, 12/29/00]

3.18.1.4 DURATION:

Permanent.

[11/15/96; 3.18.1.4 NMAC - Rn, 3 NMAC 18.1.4, 12/29/00]

3.18.1.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.18.1.5 NMAC - Rn & A, 3 NMAC 18.1.5, 12/29/00]

3.18.1.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil

and Gas Emergency School Tax Act and the Oil and Gas Ad Valorem Production Tax Act.

[11/15/96; 3.18.1.6 NMAC - Rn, 3 NMAC 18.1.6, 12/29/00]

3.18.1.7 DEFINITIONS:

A. **ACTUAL PRICE:** "Actual price" means the money or other consideration received or accrued for the product undiminished by adjustments except as provided in Sections 3.18.6.8 through 3.18.6.10 NMAC. Actual price includes all receipts, whether the receipt is characterized as a payment for the product, a reimbursement for tax or other expense, a price adjustment pursuant to Sections 7-29-4.2, 7-30-6, 7-31-6, and 7-32-6 NMSA 1978, or a payment or reimbursement for services such as sweetening, dehydration, measurement, compression or gathering. Receipts from take-or-pay contracts or negotiated contract settlements become part of the actual price to the extent that such receipts are consideration received for product severed and sold. "Actual price" also includes insurance proceeds received for stolen product.

B. **"ARM'S-LENGTH" - AFFILIATED PERSONS:**

(1) "Arm's-length" means a transaction, contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that transaction, contract or agreement.

(2) Two persons are affiliated if one of the persons either directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the other person. Based on the ownership of the voting securities of a person or based on other forms of ownership:

(a) ownership in excess of fifty percent constitutes control;

(b) ownership of 10 through 50 percent creates a presumption of control; and

(c) ownership of less than ten percent creates a presumption of noncontrol which the department may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates.

(3) Two natural persons are affiliated if related by blood to the third degree or by marriage. Transactions between relatives are not transactions under arm's-length contracts.

(4) To be considered arm's-length for any production month, a contract must meet the requirements of Subsection 3.18.1.7B NMAC for that production month as well as when the contract was executed. Two persons are affiliated for any production month if they are affiliated for any part of that month.

C. [Reserved.]

D. **GATHERING:** "Gathering" is the movement of product from the production unit, as that term is defined in Paragraph 3.18.1.7E(1) NMAC, to a central accumulation point or processing or treatment point. This version of Subsection 3.18.1.7D NMAC is applicable to gathering occurring on or after July 15, 1998.

E. **PRODUCTION UNIT:**

(1) For purposes of determining value with respect to production on or after July 15, 1998, a production unit is the wellhead and the equipment associated with the wellhead. Equipment associated with the wellhead consists of all pipe and equipment supporting separation, dehydration, compression, sweetening, product storage, metering and other activities prior to and including the first place of physical measurement.

(a) For oil and condensate, the first place of physical measurement is either the outlet of the initial storage facility or the outlet of the lease automatic custody transfer unit.

(b) For natural gas and carbon dioxide, the first place of physical measurement is the outlet of the custody transfer meter, the allocation meter or the sales meter, whichever occurs first.

(2) For reporting purposes, the department may designate any of the following as a production unit:

(a) property subject to an oil and gas lease on which one or more wells are located;

(b) an area subject to an order for unitization or communitization;

(c) an area subject to a producer's division order;

(d) any producing well;

(e) any other place from which products are severed; or

(f) a proration unit approved by the oil conservation division of the energy, minerals and natural resources department.

F. **REASONABLE RATE OF RETURN:** A "reasonable rate of return" is a rate of return which does not exceed the industrial rate associated with Standard and Poor's BBB monthly average rate, as published in the ***Standard and Poor's Bond Guide***, for January of the preceding calendar year.

G. **TRUCKING:** "trucking" means the transportation by truck of product; transportation by any other means, such as pipeline or railroad, is not trucking.

[5/24/91, 11/15/96, 10/31/98, 5/31/99; 3.18.1.7 NMAC - Rn & A, 3 NMAC 18.1.7, 12/29/00]

PART 2: [RESERVED]

PART 3: IMPOSITION OF TAX RATES

3.18.3.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.18.3.1 NMAC - N, 12/29/00]

3.18.3.2 SCOPE:

This part applies to all persons severing or engaging in the business of severing oil, natural gas, liquid hydrocarbons other than oil and carbon dioxide, to all persons having an interest in the products severed, to all persons operating oil, natural gas or carbon dioxide leases and to all persons affiliated with such persons.

[3.18.3.2 NMAC - N, 12/29/00]

3.18.3.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.18.3.3 NMAC - N, 12/29/00]

3.18.3.4 DURATION:

Permanent.

[3.18.3.4 NMAC - N, 12/29/00]

3.18.3.5 EFFECTIVE DATE:

12/29/00, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.18.3.5 NMAC - N, 12/29/00]

3.18.3.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of Articles 29 through 32 of Chapter 7 NMSA 1978.

[3.18.3.6 NMAC - N, 12/29/00]

3.18.3.7 DEFINITIONS:

[Reserved.]

[3.18.3.7 NMAC - N, 12/29/00]

3.18.3.8 PRODUCTION RESTORATION TAX INCENTIVE EXEMPTION REQUIREMENTS:

To qualify a well for the production restoration incentive tax exemption, the oil conservation division of the energy, minerals and natural resources department must certify both the process used to restore the well to production and that the well produced for thirty or fewer days within a 24-month period beginning on or after January 1, 1993. To obtain the exemption, the person responsible for paying the oil and gas severance tax must apply on form RPD 41170, completed in accordance with instructions of the department. Application for the exemption must be made within 6 months after the date the oil conservation division certifies that production has been restored.

[3.18.3.8 NMAC - N, 12/29/00]

3.18.3.9 WELL WORKOVER INCENTIVE TAX RATE REQUIREMENTS:

A. Laws 1999, Chapter 256 amended the provisions of Sections 7-29B-2 and 7-29B-3 NMSA 1978, effective June 18, 1999. The first returns due after that date are the returns for May 1999. Consequently the changes made by Laws 1999, Chapter 256 apply only to the May 1999 and subsequent production months.

B. Any application, or an amendment to any application, for the well workover incentive tax rate for any production period prior to May 1999 must be filed in accordance with the provisions of the Oil and Gas Severance Tax Act and the Natural Gas and Crude Oil Production Incentive Act in effect on June 17, 1999. The information required by Paragraph 7-29B-3B(3) NMSA 1978, as that section was in effect on June 17, 1999, must accompany the application.

C. To obtain the well workover incentive tax rate, the person responsible for paying the oil and gas severance tax must apply for it on form RPD 41171, completed in accordance with instructions of the department. Application must be made within 6 months after the date the oil conservation division certifies that the project has been completed.

[3.18.3.9 NMAC - N, 12/29/00]

PART 4: TAXES IMPOSED AND LEVIED

3.18.4.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.18.4.1 NMAC - Rn, 3 NMAC 18.4.1, 12/29/00]

3.18.4.2 SCOPE:

This part applies to all persons severing or engaging in the business of severing oil, natural gas, liquid hydrocarbons other than oil and carbon dioxide, to all persons having an interest in the products severed, to all persons operating oil, natural gas or carbon dioxide leases and to all persons affiliated with such persons.

[11/15/96; 3.18.4.2 NMAC - Rn, 3 NMAC 18.4.2, 12/29/00]

3.18.4.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.18.4.3 NMAC - Rn, 3 NMAC 18.4.3, 12/29/00]

3.18.4.4 DURATION:

Permanent.

[11/15/96; 3.18.4.4 NMAC - Rn, 3 NMAC 18.4.4, 12/29/00]

3.18.4.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.18.4.5 NMAC - Rn & A, 3 NMAC 18.4.5, 12/29/00]

3.18.4.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act and the Oil and Gas Ad Valorem Production Tax Act.

[11/15/96; 3.18.4.6 NMAC - Rn, 3 NMAC 18.4.6, 12/29/00]

3.18.4.7 DEFINITIONS:

Definition of "sold": A product is sold when it is delivered, for a consideration, to another party.

[5/24/91, 11/15/96; 3.18.4.7 NMAC - Rn & A, 3 NMAC 18.4.7, 12/29/00]

3.18.4.8 TAX DUE FROM REDUCTION OF ROYALTIES:

A. When an agency of the United States of America, the state or New Mexico or any Indian nation, tribe or pueblo, a member of an Indian nation, tribe or pueblo who is a ward of the United States or any court approves a royalty reduction on products previously reported, the reduction in royalty shall be reported no later than the twenty-fifth day of the second month following the month in which approval was granted. The tax due New Mexico as a result of the reduction in royalty shall be computed by applying to the reduction the appropriate rates of the oil and gas severance, the oil and gas emergency school, the oil and gas conservation and the oil and gas ad valorem production taxes in effect for the month in which the product was severed. The tax due shall accompany or precede the return.

B. Section 3.18.4.9 NMAC is retroactively applicable to orders issued on or after July 1, 1997.

[6/15/98; 3.18.4.8 NMAC - Rn & A, 3 NMAC 18.4.8, 12/29/00]

PART 5: METHOD OF DETERMINING VALUE

3.18.5.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.18.5.1 NMAC - Rn, 3 NMAC 18.5.1, 12/29/00]

3.18.5.2 SCOPE:

This part applies to all persons severing or engaging in the business of severing oil, natural gas, liquid hydrocarbons other than oil and carbon dioxide, to all persons having an interest in the products severed, to all persons operating oil, natural gas or carbon dioxide leases and to all persons affiliated with such persons.

[11/15/96; 3.18.5.2 NMAC - Rn, 3 NMAC 18.5.2, 12/29/00]

3.18.5.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96] ; 3.18.5.3 NMAC - Rn, 3 NMAC 18.5.3, 12/29/00

3.18.5.4 DURATION:

Permanent.

[11/15/96; 3.18.5.4 NMAC - Rn, 3 NMAC 18.5.4, 12/29/00]

3.18.5.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.18.5.5 NMAC - Rn & A, 3 NMAC 18.5.5, 12/29/00]

3.18.5.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act and the Oil and Gas Ad Valorem Production Tax Act.

[11/15/96; 3.18.5.6 NMAC - Rn, 3 NMAC 18.5.6, 12/29/00]

3.18.5.7 DEFINITIONS:

[Reserved.]

[11/15/96; 3.18.5.7 NMAC - Rn, 3 NMAC 18.5.7, 12/29/00]

3.18.5.8 REASONABLE EXPENSE OF TRUCKING:

A. When the person trucking product is not affiliated with the interest owner or operator, the reasonable expense of trucking means the cost paid in an arm's-length transaction by the interest owner or operator for trucking services performed from a point within the production unit, as that term is defined in Paragraph 3.18.1.7E(1) NMAC, to the first point of market. This version of Subsection 3.18.5.8A NMAC is applicable to trucking performed on or after July 15, 1998.

B. When trucking is performed by the interest owner or operator or by a person affiliated with the interest owner or operator or when trucking is performed by a non-affiliated person in a non-arm's-length transaction, the reasonable expense of trucking from a point within the production unit, as that term is defined in Paragraph 3.18.1.7E(1) NMAC, to the first place of market shall be determined in accordance with the first

applicable benchmark. This version of Subsection 3.18.5.8B NMAC is applicable to trucking performed on or after July 15, 1998.

C. Benchmark 1: If trucking charges are subject to regulatory approval, the reasonable expense of trucking shall not exceed any applicable tariff set or approved by the federal energy regulatory commission or any other federal or state agency having jurisdiction.

D. Benchmark 2: If the amount of product trucked under arm's-length contracts during the reporting period is at least fifty percent of the total amount trucked during that reporting period by the person performing the trucking, the reasonable expense of trucking shall be not more than the highest charge nor less than the lowest charge made to non-affiliated persons by the person performing the trucking.

E. Benchmark 3: If the reasonable expense of trucking is not determined under the preceding benchmarks, then it shall not exceed the sum of actual allowable trucking costs. Allowable trucking costs are:

(1) operating expenses, which include operations supervision, operations labor, fuel, utilities, materials and supplies, property taxes, rent and any other directly attributable operating expense of the trucking operation;

(2) maintenance expenses, which include maintenance of the truck fleet and associated equipment, maintenance labor and any other directly attributable maintenance expense;

(3) overhead expenses, which include administrative and other overhead expenses directly attributable to the operation or maintenance of the trucking operation but excluding federal and state taxes (other than property taxes), payments for product, royalties and any expense which may be included in a processing or transportation adjustment; and

(4) either depreciation expense, which includes depreciation on the truck fleet and associated equipment determined on the straight-line method based on the class life of the truck fleet and equipment and appropriate salvage values; a successor in business or purchaser of assets shall base depreciation expense for the purposes of Section 3.18.5.8 NMAC upon the depreciation schedules of the previous owner; or

(5) in lieu of item 4), a reasonable rate of return on depreciable capital assets used in the trucking operation.

F. The reasonable expense of trucking is a deduction either from actual price received when actual price is established at the production unit under an arm's-length contract among non-affiliated persons or from the reasonable value established by the department in all other situations, but not both.

G. This version of Section 3.18.5.8 NMAC is retroactively applicable to production on or after September 1, 1991.

[5/24/91, 11/15/96, 10/31/98; 3.18.5.8 NMAC - Rn & A, 3 NMAC 18.5.8, 12/29/00]

3.18.5.9 DEDUCTIONS AND ADJUSTMENTS WHEN ACTUAL PRICE DETERMINED AT THE PRODUCTION UNIT:

When actual price is established in an arm's-length transaction among non-affiliated persons at the production unit, the only deductions allowed are those recognized by Sections 7-29-4.1, 7-30-5, 7-31-5 and 7-32-5 NMSA 1978. The transportation adjustment provided in Section 3.18.6.9 NMAC and the processing adjustment provided in Section 3.18.6.10 NMAC do not apply. Section 3.18.5.9 NMAC applies to transactions occurring on or after July 15, 1998.

[5/31/99; 3.18.5.9 NMAC - Rn & A, 3 NMAC 18.5.9, 12/29/00]

PART 6: VALUE MAY BE DETERMINED BY DEPARTMENT - STANDARD

3.18.6.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.18.6.1 NMAC - Rn, 3 NMAC 18.6.1, 12/29/00]

3.18.6.2 SCOPE:

This part applies to all persons severing or engaging in the business of severing oil, natural gas, liquid hydrocarbons other than oil and carbon dioxide, to all persons having an interest in the products severed, to all persons operating oil, natural gas or carbon dioxide leases and to all persons affiliated with such persons.

[11/15/96; 3.18.6.2 NMAC - Rn, 3 NMAC 18.6.2, 12/29/00]

3.18.6.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.18.6.3 NMAC - Rn, 3 NMAC 18.6.3, 12/29/00]

3.18.6.4 DURATION:

Permanent.

[11/15/96; 3.18.6.4 NMAC - Rn, 3 NMAC 18.6.4, 12/29/00]

3.18.6.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.18.6.5 NMAC - Rn & A, 3 NMAC 18.6.5, 12/29/00]

3.18.6.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act and the Oil and Gas Ad Valorem Production Tax Act.

[11/15/96; 3.18.6.6 NMAC - Rn, 3 NMAC 18.6.6, 12/29/00]

3.18.6.7 DEFINITIONS:

"Reasonable value" means the value established by the department under Sections 7-29-4.2, 7-30-6, 7-31-6 or 7-32-6 NMSA 1978.

[5/24/91, 11/15/96; 3.18.6.7 NMAC - Rn & A, 3 NMAC 18.6.7, 12/29/00]

3.18.6.8 REASONABLE VALUE WHEN ACTUAL PRICE NOT DETERMINED AT THE PRODUCTION UNIT:

A. Reasonable value shall be determined in accordance with Section 3.18.6.8 NMAC when actual price is established in a transaction among affiliated persons or established at a point other than at the production unit.

(1) Example 1: P sells natural gas to a California utility. Under the contract, P is paid for natural gas delivered to the California border; P is responsible for arranging and paying for the necessary transportation to California. In this situation, value is not established for the product at the production unit.

(2) Example 2: X, the owner of a refinery, posts a price at which X will purchase oil delivered to the refinery. P, a producer, sells X oil from wells located ten miles from the refinery. P pays for transporting the oil to the refinery. In this situation, value is not established for the product at the production unit.

B. Non-affiliated persons. When actual price is established in an arm's-length transaction among non-affiliated persons, reasonable value shall be determined by subtracting, in accordance with Sections 3.18.6.9 and 3.18.6.10 NMAC, from actual price received the value added by transportation from the production unit, processing in a natural gas processing plant or both.

(1) Example: P enters into an arm's-length contract with U, an out-of-state utility, for sale of natural gas at $2.00 per mcf delivered to U. P then enters arm's-length contracts with X (a gathering system operator), Y (a natural gas processing plant operator) and Z (a mainline pipeline) to transport and process P's gas. X charges 5 cents per mcf to transport P's gas from P's production unit to Y's processing plant. Y charges 20 cents per mcf to process the gas. Z charges 25 cents per mcf to transport P's gas from Y's plant to U. P is not affiliated with U, X, Y or Z. "Actual price" at the production unit, as that term is defined in Paragraph 3.18.1.7E(1) NMAC, then, is $1.50 per mcf; this is the base upon which tax is to be paid. It shall be reported as $2 gross, with 30 cents in transportation deductions and 20 cents in processing deductions.

(2) This version of Subsection 3.18.6.8B NMAC is applicable to production occurring on or after July 15, 1998.

C. Affiliated persons. When actual price is established in a transaction among affiliated persons or among non-affiliated persons in a non-arm's-length transaction, reasonable value shall be determined in accordance with the first applicable benchmark.

D. Benchmark 1: Reasonable value shall be the average actual price received, less applicable processing and transportation adjustments, provided that:

(1) at least fifty percent of sales or purchases from the same field are arm's-length transactions; and

(2) the price received or paid falls within the range of the prices received or paid for comparable products under arm's-length transactions of comparable terms.

E. Benchmark 2: Reasonable value shall be the actual price received, less applicable processing and transportation adjustments, from the first sale occurring between non-affiliated persons in an arm's-length transaction. However, this reasonable value can never be less than the price actually received, less applicable processing and transportation adjustments, in the first transaction with an affiliate.

F. Benchmark 3: If the reasonable value cannot be determined under preceding benchmarks, then the department may permit or require the taxpayer to use any other method which reasonably measures the value of product. This may include values determined under arm's-length contracts between non-affiliates for comparable product in nearby field, prices received in spot sales or other reliable sources of price or market information.

G. In determining comparability of product under Section 3.18.6.8 NMAC, the department will consider the following factors: time of execution, duration, market or markets served, terms, quality, volume and such other factors as may be appropriate.

[5/24/91, 11/15/96; 3.18.6.8 NMAC - Rn & A, 3 NMAC 18.6.8, 12/29/00]

3.18.6.9 TRANSPORTATION ADJUSTMENTS:

A. The adjustments to actual price provided by Section 3.18.6.9 NMAC apply only in cases where actual price is determined at a point other than at the production unit. The adjustment provided by Section 3.18.6.9 NMAC may be referred to as the "transportation adjustment". The transportation adjustment covers costs of transportation from a production unit to the point at which the product is sold. The transportation adjustment includes charges for gathering, mainline transportation and fuel gas and also includes charges or costs associated with compression incurred downstream of the production unit, as that term is defined in Paragraph 3.18.1.7E(1) NMAC. No transportation adjustment may be claimed or allowed unless the transportation with respect to which the adjustment is claimed actually occurs. This version of Subsection 3.18.6.9A NMAC is applicable to transportation occurring on or after July 15, 1998.

B. For the purposes of Section 3.18.6.9 NMAC:

(1) "producer" means the person or persons owning the product or the operator of the well; and

(2) "transportation company" means the pipeline, gathering company or other entity transporting product.

C. Nonmonetary payments. To secure uniform reporting, when payment of transportation charges is made with product rather than money, the value of the product shall be added to the amount reported as proceeds from the sale as well as reported as a transportation deduction. For purposes of determining the transportation deduction, the value of the product paid shall be the contract price without deduction. In all 3 following cases the volume of production to be reported is 12,500 mcf.

(1) Example: Producer A moves natural gas directly into P's pipeline from A's production unit. A contracts to deliver natural gas to an out-of-state utility for $2.50 per delivered mcf. A inputs 12,500 mcf to the pipeline.

(a) Case 1: P charges A $.50 per mcf to transport the gas from A's production unit to the utility; P uses P's own gas for fuel. A's transportation adjustment is $6,250. A's taxable value is $2.00 per mcf on 12,500 mcf severed and sold. ($31,250 received from the utility less $6,250 paid to the pipeline, divided by 12,500 mcf).

(b) Case 2: P charges A 10% of the gas put into the pipeline plus 27.77¢ per mcf of the remaining gas. A's transportation adjustment is $6,250 ($3,125 cash plus $3,125 in value of product). A's taxable value is $2.00 per mcf on 12,500 mcf severed and sold (although only 11,250 mcf delivered to the utility). ($28,125 received from the utility plus $3,125 for value of product transferred to the pipeline less a transportation deduction of $6,250, divided by 12,500 mcf).

(c) Case 3: P charges A 20% of the input gas as a delivery charge. A's transportation adjustment is $6,250 (value of product). A's taxable value is $2.00 per mcf on 12,500 mcf severed and sold (though only 10,000 delivered to the utility). ($25,000 from the utility plus $6,250 for value of product transferred to pipeline minus $6,250 transportation deduction, divided by 12,500 mcf.)

D. Non-affiliated persons. When the producer and the transportation company are not affiliated persons, actual price may be reduced by the actual monetary charges paid in an arm's-length transaction between the transportation company and the producer for transporting product, provided that the charges do not exceed any applicable tariff set or approved by any federal or state agency having jurisdiction.

E. Affiliated persons. When the producer and the transportation company are affiliated persons or when the transporting of product is not an arm's-length transaction, the transportation deduction shall be determined in accordance with the first applicable benchmark.

F. Benchmark 1: If the transportation charge is subject to regulatory approval, it may not exceed the tariff set or approved by any federal or state agency having jurisdiction.

G. Benchmark 2: If at least fifty percent of the product transported by the transportation company during the reporting period is transported for non-affiliated persons in arm's-length transactions, the transportation deduction for transporting products of an affiliate may be determined as a charge not more than the highest charge nor less than the lowest charge made in an arm's-length transaction by that transportation company to non-affiliated persons for transporting similar product.

H. Benchmark 3: If the transportation deduction is not determined under the preceding benchmarks, then it shall not exceed the sum of actual allowable transportation costs during the previous year on a per barrel or mcf basis, as appropriate. Allowable transportation costs are:

(1) operating expenses, which include operations supervision and engineering, operations labor, fuel, utilities, materials and supplies, property taxes, rent and any other directly attributable operating expense of the pipeline or gathering system;

(2) maintenance expenses, which include maintenance of the pipeline or gathering system and associated equipment, maintenance labor and any other directly attributable maintenance expense;

(3) overhead expenses, which include administrative and other overhead expenses directly attributable to the operation or maintenance of the pipeline or gathering system but excluding federal and state taxes (other than property taxes),

payments for product, royalties, trucking expenses and any expense which may be included in a processing adjustment;

(4) depreciation expense, which includes depreciation on the pipeline or gathering system and associated equipment determined on the straight-line method based on the class life of the pipeline or gathering system and equipment and an appropriate salvage value for equipment; a successor in business or purchaser of assets shall base depreciation expense for the purposes of Section 3.18.6.9 NMAC upon the depreciation schedules of the previous owner; and

(5) a reasonable rate of return on depreciable capital assets used in the transportation operation.

I. Trucking expenses. An expense of transporting product by truck may not be deducted from actual price both as a "trucking expense" and a "transportation adjustment".

J. This version of Section 3.18.6.9 NMAC is retroactively applicable to products severed on or after July 1, 1995.

[5/24/91, 7/31/95, 11/15/96, 10/31/98; 3.18.6.9 NMAC - Rn & A, 3 NMAC 18.6.9, 12/29/00]

3.18.6.10 PROCESSING ADJUSTMENTS - NATURAL GAS:

A. The adjustments to actual price provided by Section 3.18.6.10 NMAC apply only in cases where actual price is determined at a point other than at the production unit. The adjustment provided by Section 3.18.6.10 NMAC may be referred to as the "processing adjustment".

B. For the purposes of Section 3.18.6.10 NMAC, "producer" means the person or persons owning the natural gas or the operator of the well.

C. Processing costs are only those costs of removing dissolved liquid hydrocarbons and impurities from natural gas in a natural gas processing plant. Charges or costs associated with dehydration, purification, sweetening and the like are "processing costs" for the purpose of Sections 3.18.6.8 through 3.18.6.10 NMAC.

D. Nonmonetary payments. To the extent that payment of the processing charge is made with product (other than liquids separated from natural gas) rather than money, reported proceeds shall include the value of the product transferred. The value shall also be reported as a processing deduction. The value of liquids shall not be reported as either part of proceeds or as a transportation deduction when the entire value of the liquids is transferred to the natural gas plant operator as part of the plant operator's processing fee.

(1) Example 1: The operator of a natural gas processing plant charges $.05 per mcf of natural gas processed (as measured at the plant inlet) plus two-thirds of the receipts from sale of the separated liquids. G moves 10,000 mcf to the plant for processing; liquids worth $150 are separated by the processing. G reports the $150 from sale of the liquids to the proceeds from sale of the residual gas; G's processing adjustment is $600.

(2) Example 2: The operator of a natural gas processing plant charges 5% of the residual gas from processing plus two-thirds of the receipts from sale of the separated liquids. For this example, liquids worth $150 are separated from G's gas by the processing; the operator also takes 1,000 mcf of the residual gas as part of the fee. G sells the remaining gas at $1.50 per mcf. G adds $1,650 to proceeds from sale of the gas ($150 from liquids and $1,500 from residual gas) and deducts $1,600 ($100 in liquids and $1,500 residual gas).

E. Non-affiliated persons. When the producer and the operator or owner of the natural gas plant are not affiliated persons, the producer may reduce actual price by the actual monetary charges paid in an arm's-length transaction between the owner or operator of the natural gas processing plant and the producer for processing natural gas.

F. Affiliated persons. When the producer and the operator or owner of the natural gas processing plant are affiliated persons or when the product is processed in an non-arm's-length transaction among non-affiliated persons, calculation of the processing adjustment shall be in accordance with the first applicable benchmark.

G. Benchmark 1: If at least fifty percent of the natural gas processed is processed for non-affiliated persons in arm's-length transactions, the producer may reduce actual price by the actual monetary charges paid for the processing of the natural gas provided that the charges paid are not more than the highest charge nor less than the lowest charge made in an arm's-length transaction to non-affiliated persons for processing of similar natural gas.

H. Benchmark 2: If less than fifty percent of the natural gas processed during the reporting period is processed for non-affiliated persons in arm's-length transactions, the processing adjustment for processing products of an affiliate shall not exceed allowable processing costs of the natural gas processing plant during the previous calendar year on an mcf basis. Allowable processing costs are:

(1) operating expenses, which include operations supervision and engineering, operations labor, fuel, utilities, materials and supplies, property taxes, rent and any other directly attributable operating expense of the natural gas plant;

(2) maintenance expenses, which include maintenance of the processing plant and its equipment, maintenance labor and any other directly attributable maintenance expense;

(3) overhead expenses, which include administrative and other overhead expenses directly attributable to the operation or maintenance of the processing plant but excluding federal and state taxes (other than property taxes), payments for product, royalties, trucking expenses and any expense which may be included in a transportation adjustment;

(4) depreciation expense, which includes depreciation on the processing plant and its equipment determined on the straight-line method based on the class life of the processing plant and equipment and an appropriate salvage value for equipment. A successor in business or purchaser of assets shall base depreciation expense for the purposes of Section 3.18.6.10 NMAC upon the depreciation schedules of the previous owner; and

(5) a reasonable rate of return on depreciable capital assets used in the processing operation.

I. This version of Section 3.18.6.10 NMAC is retroactively applicable to products severed on or after July 1, 1995.

[5/24/91, 7/31/95, 11/15/96; 3.18.6.10 NMAC - Rn & A, 3 NMAC 18.6.10, 12/29/00]

PART 7: PRICE INCREASE SUBJECT TO APPROVAL OF AGENCY OF UNITED STATES, STATE OF NEW MEXICO OR COURT - REFUND

3.18.7.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[11/15/96; 3.18.7.1 NMAC - Rn, 3 NMAC 18.7.1, 12/29/00]

3.18.7.2 SCOPE:

This part applies to all persons severing or engaging in the business of severing oil, natural gas, liquid hydrocarbons other than oil and carbon dioxide, to all persons having an interest in the products severed, to all persons operating oil, natural gas or carbon dioxide leases and to all persons affiliated with such persons.

[11/15/96; 3.18.7.2 NMAC - Rn, 3 NMAC 18.7.2, 12/29/00]

3.18.7.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[11/15/96; 3.18.7.3 NMAC - Rn, 3 NMAC 18.7.3, 12/29/00]

3.18.7.4 DURATION:

Permanent.

[11/15/96; 3.18.7.4 NMAC - Rn, 3 NMAC 18.7.4, 12/29/00]

3.18.7.5 EFFECTIVE DATE:

11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[11/15/96; 3.18.7.5 NMAC - Rn & A, 3 NMAC 18.7.5, 12/29/00]

3.18.7.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act and the Oil and Gas Ad Valorem Production Tax Act.

[11/15/96; 3.18.7.6 NMAC - Rn, 3 NMAC 18.7.6, 12/29/00]

3.18.7.7 DEFINITIONS:

[RESERVED]

[11/15/96; 3.18.7.7 NMAC - Rn, 3 NMAC 18.7.7, 12/29/00]

3.18.7.8 SETTLEMENTS - WHEN TAX ON ADDITIONAL VALUE IS DUE:

A. When any agency of the United States of America or the state of New Mexico or any court issues an order and the effect of the order is to increase the taxable value of products previously reported, the increase in taxable value shall be reported no later than the twenty-fifth day of the second month following the month in which payment or credit for the increase is received by the taxpayer. The tax due on the increase in taxable value shall be computed by applying to the increase the appropriate rates of the oil and gas severance, the oil and gas emergency school, the oil and gas conservation and the oil and gas ad valorem production taxes in effect for the month in which the product was severed. The tax due shall accompany or precede the return.

B. In the event the increase in taxable value is not readily attributable to the months in which the products were severed, tax due may be determined based on an allocation of the increase if the method of allocation is approved by the department.

C. Section 3.18.7.8 NMAC is retroactively applicable to orders issued on or after September 1, 1991.

[3/31/94, 11/15/96; 3.18.7.8 NMAC - Rn & A, 3 NMAC 18.7.8, 12/29/00]

CHAPTER 19: SEVERANCE TAX

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: DEFINITIONS [RESERVED]

PART 3: [RESERVED]

PART 4: VALUE OF MINERALS

3.19.4.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[7/31/96; 3.19.4.1 NMAC - Rn, 3 NMAC 19.4.1, 1/15/01]

3.19.4.2 SCOPE:

This part applies to all severers, processors and owners of natural resources.

[7/31/96, 10/31/97; 3.19.4.2 NMAC - Rn, 3 NMAC 19.4.2, 1/15/01]

3.19.4.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[7/31/96; 3.19.4.3 NMAC - Rn, 3 NMAC 19.4.3, 1/15/01]

3.19.4.4 DURATION:

Permanent.

[7/31/96; 3.19.4.4 NMAC - Rn, 3 NMAC 19.4.4, 1/15/01]

3.19.4.5 EFFECTIVE DATE:

7/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[7/31/96; 3.19.4.5 NMAC - Rn & A, 3 NMAC 19.4.5, 1/15/01]

3.19.4.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Resources Excise Tax Act and the Severance Tax Act.

[7/31/96, 10/31/97; 3.19.4.6 NMAC - Rn, 3 NMAC 19.4.6, 1/15/01]

3.19.4.7 DEFINITIONS:

[Reserved.]

[7/31/96; 3.19.4.7 NMAC - Rn, 3 NMAC 19.4.7, 1/15/01]

3.19.4.8 GROSS VALUE OF SAND AND GRAVEL:

A. In the absence of substantial evidence of a different posted field or market price for sand and gravel, it is presumed that the gross value of sand and gravel for purposes of the Severance Tax Act is $1.75 per ton.

B. In the absence of evidence of lower deductible expenses the maximum 50% deduction will be allowed.

[7/7/78, 7/31/96; 3.19.4.8 NMAC - Rn, 3 NMAC 19.4.8, 1/15/01]

3.19.4.9 VALUE OF COPPER, LEAD, ZINC, GOLD AND SILVER:

The sales values for resources for which the gross value is determined by the provisions of Subsections E, F and G of Section 7-26-4 NMSA 1978 will be the following monthly average index prices as published in Metals Week:

A. Copper will be the Comex HG first position price.

B. Lead and zinc will be the London Metal Exchange cash price.

C. Gold will be London Metal Exchange Final.

D. Silver will be the London spot, U.S. equivalent.

[8/14/84, 7/31/96; 3.19.4.9 NMAC - Rn, 3 NMAC 19.4.9, 1/15/01]

3.19.4.10 WHICH SUBSTANCES ARE "NATURAL RESOURCES":

A. **GUANO IS NOT A NATURAL RESOURCE:** Guano is a substance composed chiefly of the dung of sea birds or bats, accumulated along certain costal areas or in caves, and used as a fertilizer. The definitions of "natural resource" in Sections 7-25-3 and 7-26-2 NMSA 1978 do not include guano and therefore guano is not a natural resource from the purposes of the Resources Excise Tax Act and the Severance Tax Act.

B. **CALICHE IS A NATURAL RESOURCE:** Caliche is a natural resource for purposes of the Resources Excise Tax Act and the Severance Tax Act.

C. **TREES:**

(1) Trees felled for timber are a natural resource. The word "timber" connotes trees that are cut down for use as poles, masts, lumber or wood products or derivatives. Trees gathered, transplanted or felled for other purposes are not a natural resource for purposes of the Resources Excise Tax Act and the Severance Tax Act.

(2) Examples: Trees cut for use as Christmas trees or firewood and trees transplanted for use as landscaping are not timber. The taxes imposed by the Resources Excise Tax Act and the Severance Tax Act do not apply to these uses of trees.

D. **BORROW MATERIALS ARE NOT NATURAL RESOURCES:** Borrow materials, such as soil type materials, used for fill or embankment in a construction operation are not a "natural resource" as that term is used in the Resources Excise Tax Act or the Severance Tax Act.

[10/31/97; 3.19.4.10 NMAC - Rn & A, 3 NMAC 19.4.10, 1/15/01]

3.19.4.11 ORE SEVERED BY PERSON NOT THE OWNER:

The owner of metal ores which are severed by another person, and not processed in the state, is liable for the resources tax at the appropriate rate specified in Section 7-25-4 NMSA 1978 times the taxable value of the severed ores, less the amount of the service charge paid to the person severing the ores. The person severing the metal ores is subject to the service tax on the amount of the service charge.

[10/31/97; 3.19.4.11 NMAC - Rn & A, 3 NMAC 19.4.11, 1/15/01]

3.19.4.12 U 3O8 SHIPPED FOR CONVERSION TO UF6:

When U_3O_8 is shipped from New Mexico to another state for conversion into UF_6 for delivery to the New Mexico taxpayer's customers, the New Mexico taxpayer may use for severance tax purposes the value of the U_3O_8 as determined at the time of the delivery of UF_6 to the customer as the value to be reported for the taxable event.

[10/31/97; 3.19.4.12 NMAC - Rn, 3 NMAC 19.4.12, 1/15/01]

3.19.4.13 PROCESSING OF TIMBER:

A. For purposes of the Resources Excise Tax Act, processing of timber ends when the timber has been sawn into rough green lumber. The processing tax due is measured by the value of the rough green lumber.

B. If rough green lumber is brought into this state, the processing tax is not due with respect to such lumber. If logs are sawed in New Mexico, the processing tax is due regardless of whether the logs were severed in New Mexico or elsewhere.

[10/31/97; 3.19.4.13 NMAC - Rn, 3 NMAC 19.4.13, 1/15/01]

CHAPTER 20: [RESERVED]

CHAPTER 21: TELECOMMUNICATIONS TAXES

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: [RESERVED]

PART 3: [RESERVED]

PART 4: HOTELS AND MOTELS PROVIDING INTERSTATE TELECOMMUNICATIONS SERVICE TO GUESTS [RESERVED]

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]

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]

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]

CHAPTER 22-24: [RESERVED]

CHAPTER 25: WORKERS' COMPENSATION FEE

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: EFFECTIVE DATE OF ASSESSMENT

3.25.2.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[4/15/97; 3.25.2.1 NMAC - Rn, 3 NMAC 25.2.1, 11/15/01]

3.25.2.2 SCOPE:

This part applies to each employee and each employer in New Mexico.

[4/15/97; 3.25.2.2 NMAC - Rn, 3 NMAC 25.2.2, 11/15/01]

3.25.2.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[4/15/97; 3.25.2.3 NMAC - Rn, 3 NMAC 25.2.3, 11/15/01]

3.25.2.4 DURATION:

Permanent.

[4/15/97; 3.25.2.4 NMAC - Rn, 3 NMAC 25.2.4, 11/15/01]

3.25.2.5 EFFECTIVE DATE:

4/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[4/15/97; 3.25.2.5 NMAC - Rn & A, 3 NMAC 25.2.5, 11/15/01]

3.25.2.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of Section 52-5-19 NMSA 1978.

[4/15/97; 3.25.2.6 NMAC - Rn, 3 NMAC 25.2.6, 11/15/01]

3.25.2.7 DEFINITIONS:

"**ASSESSMENT" AND FEE ARE ADMINISTERED AS TAXES:**

A. For the period July 1, 1987 through May 19, 1992, and for purposes of the application of the provisions of the Tax Administration Act to the administration and enforcement of the workers' compensation assessments required by Section 52-5-19 NMSA 1978, the noun "assessment" as used in Section 52-5-19 NMSA 1978 prior to May 20, 1992, means "tax", in accordance with Subsection C of Section 7-1-2 NMSA 1978.

B. On and after May 20, 1992, for the purposes of the application of the Tax Administration Act to the administration and enforcement of the workers' compensation fees required by Section 52-5-19 NMSA 1978, the fee shall be considered a tax.

C. This version of 3.25.2.7 NMAC is retroactively applicable on May 20, 1992.

[10/3/88, 10/19/92, 4/15/97; 3.25.2.7 NMAC - Rn & A, 3 NMAC 25.2.7, 11/15/01]

3.25.2.8 WHEN ASSESSMENT EFFECTIVE:

A. Pursuant to the provisions of Section 7-1-17 NMSA 1978, an assessment of the fee imposed by Section 52-5-19 NMSA 1978 shall be effective when the department receives a return from the taxpayer showing a liability for the workers' compensation fee, when the department issues a "notice of assessment of taxes" pursuant to Subsection B of Section 7-1-17 NMSA 1978 or when an effective jeopardy assessment is made as provided in Section 7-1-59 NMSA 1978.

B. This version of Section 3.25.2.8 NMAC is retroactively applicable on May 20, 1992.

[10/3/88, 10/19/92, 4/15/97; 3.25.2.8 NMAC - Rn & A, 3 NMAC 25.2.8, 11/15/01]

PART 3: PENALTIES

3.25.3.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[4/15/97; 3.25.3.1 NMAC - Rn, 3 NMAC 25.3.1, 11/15/01]

3.25.3.2 SCOPE:

This part applies to each employee and each employer in New Mexico.

[4/15/97; 3.25.3.2 NMAC - Rn, 3 NMAC 25.3.2, 11/15/01]

3.25.3.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[4/15/97; 3.25.3.3 NMAC - Rn, 3 NMAC 25.3.3, 11/15/01]

3.25.3.4 DURATION:

Permanent.

[4/15/97; 3.25.3.4 NMAC - Rn, 3 NMAC 25.3.4, 11/15/01]

3.25.3.5 EFFECTIVE DATE:

4/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[4/15/97; 3.25.3.5 NMAC - Rn & A, 3 NMAC 25.3.5, 11/15/01]

3.25.3.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of Section 52-5-19 NMSA 1978.

[4/15/97; 3.25.3.6 NMAC - Rn & A, 3 NMAC 25.3.6, 11/15/01]

3.25.3.7 DEFINITIONS:

[RESERVED]

[4/15/97; 3.25.3.7 NMAC - Rn, 3 NMAC 25.3.7, 11/15/01]

3.25.3.8 PENALTY:

A. If any employer who is required by Section 52-5-19 NMSA 1978 to collect the fee imposed by Section 52-5-19 NMSA 1978 on employees from an employee of that employer and pay over that amount to the department fails to do so, the department may assess against the employer the penalty provided by Section 7-1-71 NMSA 1978 in addition to other penalties provided by law. In this instance, the penalty under Section 7-1-71 NMSA 1978 will be assessed, with respect to each employee of the employer, in an amount equal to the fee imposed by Section 52-5-19 NMSA 1978 on employees that the employer failed to withhold and pay over from the employee's wages.

B. This version of Section 3.25.3.8 NMAC is retroactively applicable on May 20, 1992.

[10/3/88, 10/19/92, 4/15/97; 3.25.3.8 NMAC - Rn & A, 3 NMAC 25.3.8, 11/15/01]

CHAPTER 26-27: [RESERVED]

CHAPTER 28: TAX FRAUD ENFORCEMENT

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: STANDARD OF CONDUCT FOR COMMISSIONED PERSONNEL AND TFID EMPLOYEES ACTIVELY PURSUING COMMISSION

3.28.2.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.28.2.1 NMAC - N, 2/29/16]

3.28.2.2 SCOPE:

This part applies to all certified law enforcement officers commissioned as tax fraud enforcement officers by the New Mexico taxation and revenue department’s tax fraud investigations division and employees of the taxation and revenue department’s tax fraud investigations division who are actively pursuing their commissions pursuant to the requirements of Section 29-7-6 NMSA 1978.

[3.28.2.2 NMAC - N, 2/29/16]

3.28.2.3 STATUTORY AUTHORITY:

Section 9-11-14 NMSA 1978.

[3.28.2.3 NMAC - N, 2/29/16]

3.28.2.4 DURATION:

Permanent.

[3.28.2.4 NMAC - N, 2/29/16]

3.28.2.5 EFFECTIVE DATE:

February 29, 2016, unless a later date is cited at the end of a section.

[3.28.2.5 NMAC - N, 2/29/16]

3.28.2.6 OBJECTIVE:

The objective of this part is to provide standards of conduct for commissioned tax fraud enforcement officers of the New Mexico taxation and revenue department's tax fraud investigations division (TFID), as authorized by the provisions of Section 9-11-14 NMSA 1978 of the Taxation and Revenue Department Act and for non-commissioned employees of the TFID who are actively pursuing their commissions pursuant to the requirements of Section 29-7-6 NMSA 1978.

[3.28.2.6 NMAC - N, 2/29/16]

3.28.2.7 DEFINITIONS:

As used in Section 9-11-14 NMSA 1978 and in this part:

A. "Academy" means a law enforcement academy that offers accredited courses and curricula for law enforcement officer certification;

B. "Certified firearms instructor" is an individual who is certified by the New Mexico department of public safety to instruct and test individuals on the use of firearms;

C. "Certified law enforcement officer" is an individual who has received a certification from the New Mexico law enforcement academy board;

D. "Code of conduct" means the department's code of conduct for all employees;

E. "commissioned personnel" means any commissioned tax fraud enforcement officer with the TFID;

F. "Days" means, unless otherwise stated, that days will be considered to be working days, or days which are regularly scheduled to be worked. For suspension purposes, a holiday is considered to be a working day;

G. "Department" means the New Mexico taxation and revenue department;

H. "Employee" means certified and commissioned tax fraud enforcement officers within the TFID who are vested by law with a duty to maintain public order or make arrests for crimes, as limited herein to crimes associated with violations of the Tax Administration Act, and non-commissioned TFID employees while they are actively pursuing commission;

I. "Firearm" means one of the following:

(1) revolver or semi-automatic handgun, issued or personal; must be a glock .40 caliber or other caliber which is approved and authorized by the appropriate chain of command within TFID;

(2) shotgun, issue only, 12 gauge, which is approved and authorized by the appropriate chain of command within the TFID; or

(3) special team weapon identified, approved and authorized by the appropriate chain of command within the TFID;

J. "New Mexico law enforcement academy board" means the board created by Section 29-7-3 NMSA 1978;

K. "Non-commissioned employee" means TFID employees actively pursuing their commissions pursuant to the requirements of Section 29-7-6 NMSA 1978;

L. "Order" means a lawful authoritative command, either verbal or written;

M. "Policy" means a mandatory guide designated to meet a situation and circumstance;

N. "Procedures" means a written method which delineates the implementation of a policy;

O. "Qualification" means the process established by the department of public safety for a certified firearms instructor to test a candidate’s firearm skills;

P. "Secretary" means the cabinet secretary of the New Mexico taxation and revenue department;

Q. "Suspension" means an involuntary leave of absence without pay for disciplinary reasons for a period not to exceed 30 calendar days;

R. "Tax fraud enforcement officer" means a certified law enforcement officer who has been commissioned by the secretary to investigate fraud and other crimes that may affect the collection of taxes due to the state;

S. "Termination" means the act of permanently terminating the service of a commissioned tax fraud enforcement officer; a discharge or removal from position of hire, for cause, pursuant to provisions of the Personnel Act (Chapter 10, Article 9 NMSA 1978), as applicable to all employees of the department pursuant to Section 9-11-10 NMSA 1978; and

T. "TFID" means the tax fraud investigations division of the New Mexico taxation and revenue department.

[3.28.2.7 NMAC - N, 2/29/16]

3.28.2.8 STANDARD OF CONDUCT:

All employees are expected to adhere to the provisions of this rule and are subject to such disciplinary action for violation of any of these rules as deemed appropriate by their supervisors or the secretary of the department.

A. Employees shall obey all:

(1) laws of the United States, or any state and local jurisdiction in which the employees are present; and

(2) department and TFID code of conduct, rules and regulations, policies, procedures, directives and lawful orders issued by supervisors.

B. Employees shall satisfactorily perform their duties and assume the responsibilities of their positions. Unsatisfactory performance may be demonstrated by violating any one of the following provisions:

(1) a lack of knowledge of the application of laws required to be enforced;

(2) an unwillingness or inability to perform assigned tasks; or

(3) the failure to conform to work standards established to the employees' rank, grade or position as set forth in the job specifications.

C. Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the department. Conduct unbecoming an employee shall include that which brings the department into disrepute or reflects discredit upon the employee as a member of the department, or that which impairs the operation or efficiency of the department or employee. Employees are subject to all rules, policies, and the code of conduct of the department, and, in addition:

(1) employees shall carry out all proper, lawful orders given them by supervisors in the line of duty without hesitation or criticism. Employees will take up matters affecting themselves, their position and departmental business with their immediate supervisor, or through their chain of command or through other TFID designated and proper channels;

(2) employees shall promptly obey any lawful orders of any supervisor. This will include orders relayed from a supervisor by an employee of the same rank or a subordinate employee;

(3) employees who are given an otherwise lawful and proper order which is in conflict with a previous order, rule, regulation or directive shall respectfully inform the supervisor issuing the conflicting order. If the supervisor issuing the order does not alter or retract the conflicting order, the new order shall stand. Under these circumstances, the responsibility for the conflict shall be upon the supervisor. Employees shall obey the conflicting order and shall not be held responsible for disobedience of the order, rule, regulation or directive previously issued;

(4) employees shall not obey any order which they know or should know would require them to commit any illegal act. If in doubt as to the legality of an order, employees shall request the issuing supervisor to either clarify the order or to confer with higher authority;

(5) all employees shall be courteous to the public, supervisors and all other employees, as well as any person the employee has contact with during the performance of his/her duties and responsibilities. Employees shall be tactful in the performance of their duties, shall control their tempers, and exercise the utmost patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation. In the performance of their duties, employees shall not use coarse, violent, profane, or insolent language or gestures, and shall not express any prejudice concerning race, religion, politics, national origin, sex, lifestyle, or similar characteristics. When any person requests assistance or advice, all pertinent information will be obtained in an official and courteous manner and will be properly and judiciously acted upon; and

(6) employees shall maintain a level of good moral character in their personal and business affairs, which is in keeping with the highest standards of the law enforcement profession. Employees shall not participate in any incident which impairs their ability to perform their duties or impedes the operation of the department or causes the department to be brought into disrepute. An employee’s direct supervisor shall determine if an employee is fit for duty.

D. Employees will properly care for and maintain all state equipment issued to or used by the employee.

E. An employee will not represent themselves as speaking on behalf of the department in any court proceeding, civil or criminal, for purpose of being a character witness.

F. All employees shall follow all applicable rules and protocols established by the department as regards to confidentiality of taxpayer and motor vehicle division information.

G. Commissioned tax fraud enforcement officers shall carry their badges and commissions on their person at all times, while on duty or while carrying a loaded concealed firearm off duty as provided by the department's policy and procedures. Commissioned tax fraud enforcement officers shall furnish their name to any person requesting that information when they are on duty or while representing themselves in an official capacity, except when the withholding of such information is necessary for the performance of law enforcement officer or department duties.

H. Employees shall submit all necessary reports and official documents on time and in accordance with established documents and in accordance with established departmental or TFID procedures. Reports and documents submitted by employees shall be truthful and complete, and no employees shall knowingly enter or cause to be entered any inaccurate, false, or improper information. All departmental law enforcement reports, records and evidence are privileged and confidential and may be released only upon written authority of the secretary, and by verbal authority if written authority cannot reasonably be obtained except as required by court order.

I. All employees are expected to meet their financial obligations in a timely manner and live within their financial means. This does not preclude any employee from properly proceeding in bankruptcy.

J. The purpose of this subsection is to provide direction and guidance regarding supplemental employment.

(1) Supplemental employment includes any tasks performed for which the employee is compensated in any way.

(2) Employees who wish to obtain supplemental employment shall secure written permission from their direct supervisor.

(3) In addition to department policies regarding supplemental employment, TFID may impose specific additional conditions on TFID employees.

(4) This subsection applies to all TFID employees including those on any type of leave or suspension.

K. All employees will be physically and mentally fit for duty. The secretary or the employee's direct supervisor may order a physical or psychological examination to

assure compliance with this rule, and may mandate counseling or coursework to assist an employee to meet appropriate standards.

L. Employees will not accept anything, including, but not limited to loans, offered to them which is intended to influence the employee in the performance of their duties and responsibilities or for tasks performed as part of their duties.

M. The purpose of this subsection is to provide direction and guidance to all employees regarding political activity.

(1) While off duty and not representing the department, employees shall be permitted to:

(a) express opinion(s) as individuals on political issues and candidates;

(b) attend political conventions, rallies, fund raising functions and similar political gatherings in an unofficial capacity;

(c) actively engage in any non-partisan political function, partisan meaning an adherent to a party, faction, cause or person; actively engaging in activities of private, fraternal or social organizations which do not conflict with the mission of the department and associated responsibilities is permissible;

(d) sign political petitions as individuals;

(e) make financial contributions to political organizations;

(f) perform non-partisan duties as prescribed by state or local laws;

(g) hold membership in a political party and participate in its functions to the extent consistent with the law and consistent with this regulation; and

(h) otherwise participate fully in public affairs, except as provided by law, to the extent that such endeavors do not impair the neutral and efficient performance of official duties, or create real or apparent conflicts of interest.

(2) Employees are prohibited at all times from:

(a) using their official capacity to influence, interfere with, or affect the results of an election;

(b) assuming active roles in management, organization or financial activities of partisan political clubs, campaigns or parties;

(c) serving as officers of partisan political parties and clubs;

(d) becoming candidates for, seeking election to, or running for, or campaigning for, a partisan elective public or political office;

(e) soliciting votes in support of, or in opposition to, any partisan candidates;

(f) serving as delegates to a political party convention;

(g) endorsing or opposing a partisan candidate for public office in a political advertisement, broadcast or campaign literature;

(h) initiating or circulating a partisan nominating petition;

(i) organizing, selling tickets to, or actively participating in a fund-raising function for a partisan political party or candidate;

(j) addressing political gatherings in support of, or in opposition to, a partisan candidate; and

(k) otherwise engaging in prohibited partisan activities on the federal, state, county or municipal level.

N. In their capacity as department employees, employees will not seek self-publicity through the news media or any other media by furnishing information obtained or generated from their work for the department for the primary purpose of personal publicity.

O. Employees will not use their position or permit use of their position for personal or financial gain whether directly or indirectly for themselves or any other individual or group.

P. All commissioned tax fraud enforcement officers shall use the utmost care and caution in handling firearms at all times. The following regulate the authorized use of a firearm. An employee shall use their department issued firearm:

(1) as authorized by department use of force and carrying of firearms policies or any other department policy and procedure, drawing or displaying the firearm only for a legal use or for inspection (including cleaning, oiling and storing);

(2) for practice, preferably on an approved range under the auspices of an approved range master; however, should an approved range master not be available, the employee may, at his or her discretion, still utilize the approved range for target practice;

(3) to kill a critically wounded or dangerous animal, when other disposition is impractical; or

(4) to give an alarm or call for assistance for an important purpose when no other means can be used.

Q. In every instance in which a commissioned tax fraud enforcement officers discharges a firearm while on duty, with the exception of target practice, the employee will, without delay, make a written report as required by TFID protocols. The secretary will be apprised of all incidents of discharged firearms other than target practice. Any unauthorized discharge of a firearm could result in disciplinary action up to and including termination. Any unauthorized use or discharge of a firearm could result in disciplinary action up to and including termination.

R. Non-commissioned TFID employees who are actively pursuing commission are authorized to use department firearms only:

(1) with a certified firearms instructor for qualification; and

(2) when attending an academy and shall use department firearms only during academy directed exercises, classes and events.

S. Duty issued firearms and other department issued weapons shall not be used off-duty except for duty related matters.

T. Employees will maintain a neat appearance in groom and dress, as required for all department employees by department policy. Other practical requirements may be made so that the employee can properly use duty issued firearms and other department equipment. All additional requirements will be made by employee's supervisors and discussed with the employee prior to implementation.

U. Any and all disciplinary action shall be taken in accordance with the regulations of the state personnel board, department policies and code of conduct and this subsection.

(1) Administrative leave with pay shall not have any effect on a commissioned tax fraud enforcement officer's retention of their department commission;

(2) During all periods of suspension, an employee will be relieved of their commission card and any other TFID identity card; any TFID badge(s); their department issued firearm and firearm holster; and their department issued equipment, including but not limited to department purchased or otherwise owned body armor; insignia garments; investigative accessories; vehicles and computers. During all periods of or discipline based administrative leave taken in accordance with the regulations of the state personnel board, an employee shall not access or attempt to access department e-mail; data bases; or computers; and

(3) If disciplinary action includes termination, a commissioned tax fraud enforcement officer's commission shall be revoked at the time the termination is made

pursuant to department policies. In addition to any requirements imposed by department policies, the commissioned tax fraud enforcement officer's commission shall be immediately returned to the department. All terminated employees shall return to the department any TFID identity card; any TFID badge(s); any department issued firearm and firearm holster; and department issued equipment, including but not limited to department purchased or otherwise owned body armor; insignia garments; investigative accessories; vehicles and computers.

V. Any commissioned tax fraud enforcement officer who is relieved of their law enforcement certification will be relieved of their TFID commission.

[3.28.2.8 NMAC - N, 2/29/16]

PART 3-14: [RESERVED]

CHAPTER 29: MISCELLANEOUS STATE TAXES AND FEES

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2-12: [RESERVED]

PART 13: ENVIRONMENTAL IMPROVEMENT ACT

3.29.13.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[4/15/97; 3.29.13.1 NMAC - Rn, 3 NMAC 29.13.1, 11/15/01]

3.29.13.2 SCOPE:

This part applies to every person operating a public water supply system.

[4/15/97; 3.29.13.2 NMAC - Rn, 3 NMAC 29.13.2, 11/15/01]

3.29.13.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[4/15/97; 3.29.13.3 NMAC - Rn, 3 NMAC 29.13.3, 11/15/01]

3.29.13.4 DURATION:

Permanent.

[4/15/97; 3.29.13.4 NMAC - Rn, 3 NMAC 29.13.4, 11/15/01]

3.29.13.5 EFFECTIVE DATE:

4/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[4/15/97; 3.29.13.5 NMAC - Rn & A, 3 NMAC 29.13.5, 11/15/01]

3.29.13.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Environmental Improvement Act.

[4/15/97; 3.29.13.6 NMAC - Rn, 3 NMAC 29.13.6, 11/15/01]

3.29.13.7 DEFINITIONS:

"PUBLIC WATER SUPPLY SYSTEM":

A. For so long as the definition of "public water supply system" in Section 20.7.1.103 NMAC is consistent with the definition in Section 74-1-13 NMSA 1978, a person who is considered to be an operator of a "public water supply system" for purposes of Section 20.7.1.103 NMAC is an operator of a public water supply system for the purposes of the water conservation fee.

B. A public water supply system which temporarily has fewer than 15 service connections remains a public water supply system. If a system permanently reduces its service connections below 15 and the system does not serve 25 or more individuals for 60 days or more, it no longer is a public water supply system.

[10/15/93, 4/15/97; 3.29.13.7 NMAC - Rn & A, 3 NMAC 29.13.7, 11/15/01]

3.29.13.8 CERTAIN PUBLIC WATER SUPPLY SYSTEMS NEED NOT FILE:

A public water supply system which does not produce water and therefore owes no water conservation fee is not required to file returns for the water conservation fee.

[10/15/93, 4/15/97; 3.29.13.8 NMAC - Rn, 3 NMAC 29.13.8, 11/15/01]

3.29.13.9 WATER PRODUCED:

A. When water is extracted from any surface or subsurface source by or for a public water supply system, that water is produced for purposes of the water

conservation fee. A public water supply system produces water when another person, not a public water supply system, extracts water under contract with or as agent for the public water supply system. Water is produced only once.

B. Example 1: M, a New Mexico municipality, produces water from its own wells. M's sewerage system collects waste water and transports it to a treatment plant. After solid wastes have been removed, some of the water is withdrawn for use in watering a golf course. The water used to water the golf course is not produced for the purposes of Section 74-1-13 NMSA 1978.

C. Example 2: A, a New Mexico municipality, operates a public water supply system. The system's main reservoir is a lake. M also produces water from wells and produces water by diversion from streams in other watersheds. Some of the water produced from the wells and streams is pumped to the lake for storage. M does not produce water a second time when M withdraws from the lake the well and stream water stored in the lake.

D. Water used in the production of water, such as in priming pumps, and returned directly to the surface or subsurface source from which it was extracted is not produced for the purposes of the water conservation fee. Water used in the production of water but not returned directly to the source from which it was extracted is produced for the purposes of the water conservation fee.

E. Example 3: D, the water department of a municipality, extracts water from wells. Periodically D uses some of the water from the wells to flush the pipes and tanks of its well pumping plant. The flushed water and sediment is discharged into an arroyo. The water is not returned to the source from which it was extracted. It is produced for the purposes of the water conservation fee.

[10/15/93, 4/15/97; 3.29.13.9 NMAC - Rn, 3 NMAC 29.13.9, 11/15/01]

3.29.13.10 WATER CONSERVATION FEE - WHO MUST REPORT AND PAY:

A. A public water supply system must report and pay the water conservation fee due both on water which it produces and on water which it acquires if the water is acquired from a person not a public water supply system who has not reported and paid the fee with respect to that water.

B. Example 1: H and L are both public water supply systems. H is a New Mexico municipality which distributes water by pipe to businesses and residents within its boundaries. H acquires all of the water distributed from L, another New Mexico municipality, which extracted the water from wells and surface sources. L must report and pay the water conservation fee with respect to all water which it produces, including the water sold to H. H has not produced water, owes no water conservation fee and need not file water conservation fee returns.

C. Example 2: E is an agency of the United States. E maintains facilities in New Mexico. E produces water from wells associated with its New Mexico facilities. E uses half of the water for its own purposes and sells the remainder to L, a New Mexico county and a public water supply system. L distributes the water by pipe to residences and businesses in the county. E is immune from the application of the water conservation fee and does not report or pay the water conservation fee with respect to any of the water E produces. L must report and pay the water conservation fee with respect to the water acquired from E because the water has been produced but no fee has been paid.

[10/15/93, 4/15/97; 3.29.13.10 NMAC - Rn, 3 NMAC 29.13.10, 11/15/01]

3.29.13.11 APPLICATION OF FEE - USE OF WATER NOT DETERMINATIVE:

A. The water conservation fee applies solely to the production of water by a public water supply system.

B. Example 1: Z is an individual who owns and lives alone in a single family residence. Water for the residence is supplied by a well. The well is used by no one else. Although Z extracts water, Z is not a public water supply system, owes no water conservation fee and need not file a water conservation fee return.

C. The use to which water produced by a public water supply system is put has no bearing on the application of the water conservation fee. The fee applies to all water produced by the public water supply system. Section 74-1-13 NMSA 1978 provides no exemptions or deductions of water produced.

D. Example 2: P, a New Mexico municipality, operates a public water supply system, which includes a plant to render the water potable. P extracts water from ground and surface sources which is then piped to the plant. Prior to arrival at the plant, some of the water is diverted for watering vegetation, street cleaning and fire-fighting. P also uses untreated water to flush the system's pipes; the flushed water is discharged into the environment. The remaining water is made potable. Most of the potable water is distributed to businesses and residences for their consumption. Some is used to fill the municipal swimming pool.

(1) P argues that the water conservation fee is intended to provide funds for the testing of water for consumption by humans. Therefore the fee should apply only to water distributed to its businesses and residences for consumption. Water used for other purposes is not subject to the fee.

(2) Regardless of the intended use of the revenues generated by the water conservation fee, Section 74-1-13 NMSA 1978 clearly imposes the fee on the production of water by a public water supply system. Imposition is not conditioned on use of the water. The water conservation fee applies to the total amount of water extracted by P from the subsurface and surface sources.

[10/15/93, 4/15/97; 3.29.13.11 NMAC - Rn, 3 NMAC 29.13.11, 11/15/01]

3.29.13.12 EXEMPTION OF FEDERAL AND INDIAN GOVERNMENTS:

A. The water conservation fee does not apply to water produced by the federal government or any of its agencies or instrumentalities. The federal government is immune from such a fee under provisions of the United States Constitution. The immunity applies regardless of the use to which the water is put. The fact that the federal government is immune from paying the fee, however, does not preclude the state of New Mexico from entering into contracts with the federal government, under which contracts appropriate charges are made for services provided.

B. Example: F is a federal agency with facilities in New Mexico. F produces water, mainly for its own use. F also sells small amounts of water to two private businesses adjacent to its New Mexico facilities. Neither business is a public water supply system. F has no obligation to report or pay the water conservation fee on the water sold to the businesses. Neither business has an obligation to report or pay the fee.

C. The water conservation fee does not apply to water produced by any Indian nation, tribe or pueblo or any agency or instrumentality of the Indian nation, tribe or pueblo on the land of that Indian nation, tribe or pueblo. Indian governments are immune from the water conservation fee on water produced on their land by provision of federal law and treaties. The immunity applies regardless of the use to which the water is put. The fact that an Indian nation, tribe or pueblo is immune from paying the fee, however, does not preclude the state of New Mexico from entering into contracts with the Indian nation, tribe or pueblo, under which contracts appropriate charges are made for services provided.

D. The immunity of federal and Indian governments from application of the water conservation fee to water produced by those governments does not extend to water acquired by those governments from public water supply systems which are subject to the fee.

E. Example: B is a federal military reservation located near a New Mexico municipality. B produces water for its own use. B also acquires water produced by the municipality's water department, a public water supply system. The water conservation fee applies to water produced by the municipal water department and sold to B.

[10/15/93, 4/15/97; 3.29.13.12 NMAC - Rn, 3 NMAC 29.13.12, 11/15/01]

3.29.13.13 DEFAULT WATER USAGE LEVELS:

A. For the purposes of Section 3.29.13.13 NMAC:

(1) "community water system" means a public water supply system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents;

(2) "noncommunity water system" means any public water supply system that is not a "community water system" or a "nontransient noncommunity water system" and includes but is not limited to seasonal facilities, such as children's camps or recreational camping areas and year-round facilities which serve more than 25 persons who are not residents thereof, such as gasoline service stations, marinas, rest areas and restaurants which are not served by a community water system; and

(3) "nontransient noncommunity water system" means a public water supply system that is not a "community water system" and that regularly serves at least 25 of the same persons for more than 6 months per year, including but not limited to schools and factories.

B. Community and noncommunity water systems which do not meter water produced shall report and pay amounts of water conservation fee due based upon estimated water usage in accordance with Subsection C of Section 3.29.13.13 NMAC. The operator of the public water supply system will estimate annual usage by selecting the usage factor in the table below and multiplying the usage factor by the number of persons served. The result is then divided by 12 to convert the annual estimate to a monthly estimate for monthly reporting periods, divided by 4 for quarterly reporting periods or by 2 for semi-annual reporting periods. The water conservation fee applies to the estimated water usage for the reporting period.

C. Default Water Use Estimates

(1) For Noncommunity Water Systems - 18,250 gallons annually per person served.

(2) For Community Water Systems:

Public Water Supply System	Usage Factor:
Size by Population	Gallons Used Annually per Person
Less than 100	52,825
101 - 500	56,181

501 - 1,000	59,537
1,001 - 2,500	62,893
2,501 - 3,300	66,249

[10/15/93, 4/15/97; 3.29.13.13 NMAC - Rn & A, 3 NMAC 29.13.13, 11/15/01]

PART 14: GAMING TAXES

3.29.14.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.29.14.1 NMAC - N, 12/29/00]

3.29.14.2 SCOPE:

This part applies to all persons, their agents and representatives subject to the gaming tax.

[3.29.14.2 NMAC - N, 12/29/00]

3.29.14.3 STATUTORY AUTHORITY:

Section 9-11-6.2 NMSA 1978.

[3.29.14.3 NMAC - N, 12/29/00]

3.29.14.4 DURATION:

Permanent.

[3.29.14.4 NMAC - N, 12/29/00]

3.29.14.5 EFFECTIVE DATE:

12/29/00, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.29.14.5 NMAC - N, 12/29/00]

3.29.14.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the provisions of the gaming tax.

[3.29.14.6 NMAC - N, 12/29/00]

3.29.14.7 DEFINITIONS:

"Gross receipts" means the total amount of money or the value of other consideration received less cash discounts allowed and taken, refunds and allowances made to buyers or lessees and, for a person reporting gaming tax on an accrual basis, amounts written off the books as an uncollectible debt provided that, if any or all of the amounts are subsequently collected, such receipts shall be included in gross receipts in the month of collection. In an exchange in which the money or other consideration received does not represent the value of the property exchanged, "gross receipts" means the reasonable value of the property exchanged.

[3.29.14.7 NMAC - N, 12/29/00]

CHAPTER 30: MISCELLANEOUS LOCAL GOVERNMENT TAXES AND FEES [RESERVED]