# ARTICLE 9
# Gross Receipts and Compensating Tax

## 7-9-1. Short title.

Chapter 7, Article 9 NMSA 1978 may be cited as the "Gross Receipts and Compensating Tax Act".

**History:** 1953 Comp., § 72-16A-1, enacted by Laws 1966, ch. 47, § 1; 1979, ch. 90, § 1.

**ANNOTATIONS**

**Cross references.** — For the applicability of the Tax Administration Act, *see* 7-1-2 NMSA 1978.

For the duties with respect to taxation of successors in business, *see* 7-1-61 NMSA 1978 et seq.

For municipal local option gross receipts taxes generally, *see* 7-19D-1 NMSA 1978 et seq.

For restrictions on municipal taxing power, *see* 3-18-2 NMSA 1978.

**Contracts of sale or service subject to gross receipts tax.** — Taxable incidents are equally apparent and are ascertainable with equal ease whether they arise out of a contract of sale or out of a contract for services, and therefore, equally subject to the New Mexico gross receipts tax. *Evco v. Jones*, 1971-NMCA-123, 83 N.M. 110, 488 P.2d 1214, cert. denied, 83 N.M. 105, 488 P.2d 1209, *rev'd on other grounds*, 409 U.S. 91, 93 S. Ct. 349, 34 L. Ed. 2d 325 (1972) (decided under prior law).

**Purchasers of property for lease but not lessees subject to gross receipts tax.** — Neither the gross receipts tax nor the compensating tax is payable under the law applicable to this appeal by one who leased property for sublease in this state. Such tax, however, is payable by one who has purchased property for lease in this state, thus the legislature has made a distinction with respect to tax liability as between purchasers and lessees. *Rust Tractor Co. v. Bureau of Revenue*, 1970-NMCA-107, 82 N.M. 82, 475 P.2d 779, cert. denied, 82 N.M. 81, 475 P.2d 778.

**Gross receipts tax but not use tax applicable to Indians.** — The exemption in § 5 of the Indian Reorganization Act of 1934 (25 U.S.C. § 465) does not encompass or bar the collection of the state's nondiscriminatory gross receipts tax pursuant to 72-16-1, 1953 Comp. (since repealed). Therefore, a tribal ski enterprise conducted by the tribe with federal funds, on federal lands leased to them, was subject to that tax. However, a compensating or use tax, 72-17-1, 1953 Comp. (since repealed), imposed on personalty

installed in ski lift construction was improper under § 5. *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 93 S. Ct. 1267, 36 L. Ed. 2d 114 (1973) (decided under former Section 72-17-1, 1953 Comp.).

**Indian trader statutes.** — The Indian trader statutes (25 U.S.C. §§ 261 to 264) preempt the imposition of gross receipts tax of this Article on receipts for non-Indian services rendered to an Indian tribal entity on the reservation. *N.M. Taxation & Revenue Dep't v. Laguna Indus., Inc*., 1993-NMSC-025, 115 N.M. 553, 855 P.2d 127.

**Lessee's activity on tax-exempt Indian land subject to gross receipts tax.** *Norvell v. Sangre de Cristo Dev. Co*., 372 F. Supp. 348 (D.N.M. 1974), *rev'd on other grounds*, 519 F.2d 370 (10th Cir. 1975).

**Burden on taxpayer to show rate erroneous.** — When government contractor appeals the assessment of a gross receipts tax, penalty and interest, he has the burden of showing the assessment at a higher tax rate established by the 1969 Gross Receipts and Compensating Tax Act rather than a lower rate under a pre-1969 tax act was erroneous. *Martinez v. Jones*, 1972-NMCA-054, 83 N.M. 722, 497 P.2d 233, cert. denied, 83 N.M. 741, 497 P.2d 743.

**Regulation attacked only if taxpayer's contract properly subject thereunder.** — When party, in addition to appealing the assessment of a gross receipts tax, penalty and interest, is attacking validity of regulation governing registration of contracts for purpose of determining gross receipts and compensating tax rate, and party neither offers in evidence his contract with the state highway department, nor does he prove the essential provisions of the contract, the question of the validity of the system of registration is premature until it is shown that the contract could be properly registered under the regulation. *Martinez v. Jones*, 1972-NMCA-054, 83 N.M. 722, 497 P.2d 233, cert. denied, 83 N.M. 741, 497 P.2d 743.

**Electrical energy tax invalid.** — Because 7-9-80 NMSA 1978 (since repealed) insured that locally consumed electricity is subject to no tax burden from the electrical energy tax, while electricity generated in this state but sold outside the state is subject to a 2% tax, the tax itself indirectly but necessarily discriminates against electricity sold outside New Mexico; it thus violates a federal statute, 15 U.S.C. § 391, and is invalid under the supremacy clause of the United States constitution. *Arizona Pub. Serv. Co. v. Snead*, 441 U.S. 141, 99 S. Ct. 1629, 60 L. Ed. 2d 106 (1979).

**Federal statute invalidating energy tax constitutional.** — A federal statute, 15 U.S.C. § 391, which invalidates the New Mexico electric energy tax, does not exceed the permissible bounds of congressional action under the commerce clause of the United States constitution since congress had a rational basis for finding that the tax interfered with interstate commerce and selected a reasonable method to eliminate that interference. *Arizona Pub. Serv. Co. v. Snead*, 441 U.S. 141, 99 S. Ct. 1629, 60 L. Ed. 2d 106 (1979).

**Tax exemptions and deductions not unconstitutional donations unless retroactive.** — Gross receipts tax exemptions and deductions do not violate the antidonation clause of the N.M. Const., art. IX, § 14 unless they are applied retroactively to taxes due and payable. 1991 Op. Att'y Gen. No. 91-14.

**Law reviews.** — For article, "Ad Valorem Tax Status of a Private Lessee's Interest in Publicly Owned Property: Taxability of Possessory Interests in Industrial Projects under the New Mexico Industrial Revenue Bond Act," see 3 N.M.L. Rev. 136 (1973).

For article, "An Intergovernmental Approach to Tax Reform," see 4 N.M.L. Rev. 189 (1974).

For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

For article, "The Indian Tax Cases - A Territorial Analysis," see 9 N.M.L. Rev. 221 (1979).

For note, "Taxing of Electrical Energy: An Analysis of Arizona Public Service Company v. Snead," see 9 N.M.L. Rev. 349 (1979).

For article, "The Deductibility for Federal Income Tax Purposes of the New Mexico Gross Receipts Tax Paid on the Purchase of a Newly Constructed Home," see 13 N.M.L. Rev. 625 (1983).

For article, "Out of sight but not out of mind: New Mexico's tax on out-of-state services," see 20 N.M.L. Rev. 501 (1990).

For article, "New Mexico Taxes: Taking Another Look," see 32 N.M.L. Rev. 351 (2002).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State & Local Taxation §§ 28 to 30.

Income or receipts: constitutionality of tax on corporations in nature of, or purporting to be, excise or privilege tax measured by income or receipts, 71 A.L.R. 256.

Distinction from other tax: what is a property tax as distinguished from excise, license or other taxes, 103 A.L.R. 18.

Deductibility of other taxes or fees in computing excise or license taxes, 143 A.L.R. 263, 174 A.L.R. 1263.

Retroactive statute: constitutionality of retroactive statute imposing excise, license or privilege tax, 146 A.L.R. 1011.

Goods in stock: specific tax imposed on goods in stock of dealer, as excise, or property tax, 173 A.L.R. 1316.

Sales and use taxes on leased tangible personal property, 2 A.L.R.4th 859.

Transportation, freight, mailing, or handling charges billed separately to purchaser of goods as subject to sales or use taxes, 2 A.L.R.4th 1124.

Cable television equipment or services as subject to sales or use tax, 5 A.L.R.4th 754.

84 C.J.S. Taxation §§ 165 to 166.

## 7-9-2. Purpose.

The purpose of the Gross Receipts and Compensating Tax Act is to provide revenue for public purposes by levying a tax on the privilege of engaging in certain activities within New Mexico and to protect New Mexico businessmen from the unfair competition that would otherwise result from the importation into the state of property without payment of a similar tax.

**History:** 1953 Comp., § 72-16A-2, enacted by Laws 1966, ch. 47, § 2.

**ANNOTATIONS**

**Gross receipts tax is a tax upon seller.** *Mescalero Apache Tribe v. O'Cheskey*, 439 F. Supp. 1063 (D.N.M. 1977), *aff'd*, 625 F.2d 967 (10th Cir. 1980), cert. denied, 450 U.S. 959, 101 S. Ct. 1417, 67 L. Ed. 2d 383 (1981), *reh'g denied*, 455 U.S. 929, 102 S. Ct. 1296, 71 L. Ed. 2d 474 (1982).

**Tax is measured on gross rather than net proceeds.** This act taxes the privilege of conducting business in New Mexico, whether profitable or not. *United States v. New Mexico*, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Gross receipts and income taxes inapplicable to Indian activities within reservation.** — New Mexico may not tax income and gross receipts of Indians residing on a reservation when the income and gross receipts involved are derived solely from activities within the reservation. *Hunt v. O'Cheskey*, 1973-NMCA-026, 85 N.M. 381, 512 P.2d 954, cert. quashed, 85 N.M. 388, 512 P.2d 961.

**Gross Receipts and Compensating Tax Act is general** and contains no obvious legislative intent to repeal the special "in lieu of " provision of Section 60-1-15 NMSA 1978 concerning horse racing licenses. *Santa Fe Downs, Inc. v. Bureau of Revenue*, 1973-NMCA-064, 85 N.M. 115, 509 P.2d 882.

**Gross receipts tax and compensating tax not double taxation.** — Since the gross receipts tax and compensating tax were not imposed upon a single transaction, as appellant contended, but upon different taxable incidents; namely, (1) the use of property in this state, such use being leasing or renting it to others (compensating or use tax) and (2) the receipts derived from the payment of rental by those to whom the property was leased (gross receipts or sales tax), then imposition of both taxes did not constitute double taxation on an identical transaction and was not prohibited. *Rust Tractor Co. v. Bureau of Revenue*, 1970-NMCA-107, 82 N.M. 82, 475 P.2d 779, cert. denied, 82 N.M. 81, 475 P.2d 778.

**Exemption from gross receipts tax also exemption from compensating tax.** — The legislature intended to make the gross receipts tax and compensating tax correlate: an exemption from the gross receipts tax must also be treated as an exemption from the compensating tax. *Western Elec. Co. v. N.M. Bureau of Revenue*, 1976-NMCA-047, 90 N.M. 164, 561 P.2d 26.

**Receipts from horse races not exempt.** — The legislature, in enacting the Gross Receipts and Compensating Tax Act, did not intend to exempt receipts from horse races. There is neither ambiguity nor doubt that the language used in the Gross Receipts Tax Act applies to the receipts of a horse owner paid to him for a winning purse and the receipts of a horse trainer paid to him as his percentage of a winning purse. *Till v. Jones*, 1972-NMCA-046, 83 N.M. 743, 497 P.2d 745, cert. denied, 83 N.M. 740, 497 P.2d 742. *See* Section 7-9-40 NMSA 1978, which now exempts receipts from horse race purses.

**Deductions strictly construed against taxpayer.** — The avowed purpose of the Gross Receipts and Compensating Tax Act is to provide revenue, and any deductions must receive strict construction in favor of the taxing authority. *Reed v. Jones*, 1970-NMCA-050, 81 N.M. 481, 468 P.2d 882.

**Burden on taxpayer to establish deduction.** — The burden is on the taxpayer to establish clearly his right to the deduction, and the intention to authorize the deduction claimed by the taxpayer must be clearly and unambiguously expressed in the statute. *Reed v. Jones*, 1970-NMCA-050, 81 N.M. 481, 468 P.2d 882.

**Implied rational basis.** — Because regulations exempted broadcasting advertisement displayers in New Mexico from the tax imposed upon taxpayer (operator of a billboard service), there was discrimination in the treatment of these different media forms, but the burden was upon the taxpayer to negative every conceivable basis which might support the discriminatory classification, because of the implied rational basis underlying every tax statute, i.e., that the state has the right, power and duty to raise the necessary funds for its public purposes, and it was held that there was a rational basis for the state to discriminate between the broadcast industry and the outdoor advertising industry in the taxation of displays of national messages. *Markham Adver. Co. v. Bureau of Revenue*, 1975-NMCA-071, 88 N.M. 176, 538 P.2d 1198, cert. denied, 88 N.M. 318, 540 P.2d 248.

**Law reviews.** — For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

## 7-9-3. Definitions.

As used in the Gross Receipts and Compensating Tax Act:

A. "buying" or "selling" means a transfer of property for consideration or the performance of service for consideration;

B. "department" means the taxation and revenue department, the secretary of taxation and revenue or an employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "digital good" means a digital product delivered electronically, including software, music, photography, video, reading material, an application and a ringtone;

D. "disclosed agency" means a person receiving money from a third party on behalf of another if the person receiving the money, or the person on whose behalf the money is received, disclosed the relationship to the third party from whom the person receives money, or if the third party otherwise has actual knowledge that the person to whom the money is paid receives the money on behalf of another;

E. "financial corporation" means a savings and loan association or an incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;

F. "initial use" or "initially used" means the first employment for the intended purpose and does not include the following activities:

(1) observation of tests conducted by the performer of services;

(2) participation in progress reviews, briefings, consultations and conferences conducted by the performer of services;

(3) review of preliminary drafts, drawings and other materials prepared by the performer of services;

(4) inspection of preliminary prototypes developed by the performer of services; or

(5) similar activities;

G. "lease" or "leasing" means an arrangement whereby, for a consideration, the owner of property grants another person the exclusive right to possess and use the property for a definite term;

H. "licensing" or "license" means an arrangement whereby, for a consideration, the owner of property grants another person a revocable, non-exclusive right to use the property;

I. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon a taxpayer's gross receipts and required to be collected by the department at the same time and in the same manner as the gross receipts tax;

J. "manufactured home" means a movable or portable housing structure for human occupancy that exceeds either a width of eight feet or a length of forty feet constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation;

K. "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include construction services; farming; electric power generation; processing of natural resources, including hydrocarbons; or the processing or preparation of meals for immediate consumption;

L. "manufacturing service" means the service of combining or processing components or materials owned by another, but does not include construction services; farming; electric power generation; processing of natural resources, including hydrocarbons; or the processing or preparation of meals for immediate consumption;

M. "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, by:

(1) 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

(2) 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;

N. "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;

O. "person" means:

(1) an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other entity, including any gas, water or electric

utility owned or operated by a county, municipality or other political subdivision of the state; or

(2) a national, federal, state, Indian or other governmental unit or subdivision, or an agency, department or instrumentality of any of the foregoing;

P. "property" means:

(1) real property;

(2) tangible personal property, including electricity and manufactured homes;

(3) licenses, including licenses of digital goods, but not including the licenses of copyrights, trademarks or patents; and

(4) franchises;

Q. "research and development services" means an activity engaged in for other persons for consideration, for one or more of the following purposes:

(1) advancing basic knowledge in a recognized field of natural science;

(2) advancing technology in a field of technical endeavor;

(3) developing a new or improved product, process or system with new or improved function, performance, reliability or quality, whether or not the new or improved product, process or system is offered for sale, lease or other transfer;

(4) developing new uses or applications for an existing product, process or system, whether or not the new use or application is offered as the rationale for purchase, lease or other transfer of the product, process or system;

(5) developing analytical or survey activities incorporating technology review, application, trade-off study, modeling, simulation, conceptual design or similar activities, whether or not offered for sale, lease or other transfer; or

(6) designing and developing prototypes or integrating systems incorporating the advances, developments or improvements included in Paragraphs (1) through (5) of this subsection;

R. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

S. "service" means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property. "Service" includes activities performed by a person for

its members or shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. "Service" includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. That tangible personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. Sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property; and

T. "use" or "using" includes use, consumption or storage other than storage for subsequent sale in the ordinary course of business or for use solely outside this state.

**History:** Laws 1978, ch. 46, § 1; 1979, ch. 338, § 1; 1981, ch. 184, § 1; 1983, ch. 220, § 1; 1984, ch. 2, § 1; 1986, ch. 20, § 62; 1986, ch. 52, § 1; 1989, ch. 262, § 1; 1991, ch. 197, § 1; 1991, ch. 203, § 1; 1992, ch. 39, § 1; 1992, ch. 50, § 14; 1992, ch. 67, § 14; 1993, ch. 31, § 1; 1994, ch. 45, § 1; 1998, ch. 92, § 4; 1998, ch. 95, § 1; 1998, ch. 99, § 3; 1999, ch. 231, § 1; 2000, ch. 84, § 1; 2000, ch. 101, § 1; 2001, ch. 65, § 1; 2001, ch. 343, § 1; 2002, ch. 28, § 1; 2002, ch. 45, § 1; 2002, ch. 49, § 1; 2003, ch. 272, § 2 ; 2006, ch. 39, § 1; 2007, ch. 339, § 1; 2019, ch. 270, § 23; 2019, ch. 274, § 11; 2021, ch. 65, § 11; 2021, ch. 66, § 1; 2022, ch. 47, § 11; 2023, ch. 85, § 9.

## ANNOTATIONS

**The 2023 amendment,** effective July 1, 2023, rewrote the definition of "disclosed agency"; and in Subsection D, deleted "an agent receiving money on behalf of a principal if the agent or the agent's principal disclosed the agency relationship to a third party from which the agent receives money, or if the third party otherwise has actual knowledge that the agent receives money on behalf of the principal" and added the remainder of the subsection.

**The 2022 amendment,** effective July 1, 2022, defined "disclosed agency"; and added a new Subsection D and redesignated former Subsections D through S as Subsections E through T, respectively.

**2021 Amendments.** — Laws 2021, ch. 66, § 1, effective January 1, 2022, defined "manufacturing service" and revised the definition of "manufacturing", as used in the Gross Receipts and Compensating Tax Act; in Subsection I, after "include construction", added "services; farming; electric power generation; processing of natural resources, including hydrocarbons; or the processing or preparation of meals for immediate consumption"; and added a new Subsection J and redesignated former Subsections J through Q as Subsections K through R, respectively.

Laws 2021, ch. 65, § 11, effective July 1, 2021, revised the definition of "lease" and defined "licensing" or "license", as used in the Gross Receipts and Compensating Tax Act; in Subsection F, added "'lease or", after "consideration", deleted "property is

employed for or by any person other than the owner of the property, except that the granting of a license to use property is licensing and is not a lease" and added "the owner of property grants another person the exclusive right to possess and use the property for a definite term"; and added a new Subsection G and redesignated former Subsections G through Q as Subsections H through R, respectively.

**2019 Amendments.** — Laws 2019, ch. 270, § 23, effective July 1, 2019, defined "digital good", "marketplace provider" and "marketplace seller", and revised the definitions of certain terms, as used in the Gross Receipts and Compensating Tax Act; added a new Subsection C and redesignated former Subsections C through H as Subsections D through I, respectively; in Subsection G, deleted "'local option gross receipts tax' includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax Act, County Local Option Gross Receipts Taxes Act, Local Hospital Gross Receipts Tax Act, County Correctional Facility Gross Receipts Tax Act and such other acts as may be enacted authorizing counties or municipalities to imposes taxes on gross receipts, which taxes are to be collected by the department"; added new Subsections J and K and redesignated former Subsections I through N as Subsections L through Q, respectively; and in Subsection M, added new paragraph designations "(1)" through "(4)", in Paragraph M(2), after "property", added "including electricity and manufactured homes", in Paragraph M(3), after "licenses", deleted "other than" and added "including licenses of digital goods, but not including", in Paragraph M(4), after "franchises", deleted "Tangible personal property includes electricity and manufactured homes".

Laws 2019, ch. 274, § 11, effective July 1, 2019, revised the definition of "local option gross receipts tax" as used in the Gross Receipts and Compensating Tax Act; and in Subsection F, deleted "'local option gross receipts tax' includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax Act, County Local Option Gross Receipts Taxes Act, Local Hospital Gross Receipts Tax Act, County Correctional Facility Gross Receipts Tax Act and such other acts as may be enacted authorizing counties or municipalities to imposes taxes on gross receipts, which taxes are to be collected by the department".

**The 2007 amendment,** effective June 15, 2007, defined "leasing" to mean that a license to use property is a license and not a lease and defined "property" to include licenses other than the licenses of copyrights, trademarks or patents.

**The 2006 amendment,** effective July 1, 2006, deleted from the definition of leasing in Subsection E the provision that the sale of a license is a granting of a license to use property and in Subsection J deleted from the definition of property, patents, trademarks and copyrights.

**The 2003 amendment,** effective July 1, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

**The 2002 amendment,** effective July 1, 2002, inserted "or to provide services primarily to non-New Mexico customers" in Subsection E(2); and added Subsections F(1)(e) and F(2)(g).

**The 2001 amendment,** effective July 1, 2001, inserted Paragraph C(13) and redesignated the subsequent paragraphs; and added Subsection S.

**The 2000 amendment,** effective July 1, 2000, added Subsection E(2) and deleted "Special Municipal Gross Receipts Tax Act" preceding "County Local" in Subsection Q.

**The 1999 amendment,** effective July 1, 1999, in Subsection E, added "except that 'engaging in business' does not include having a world wide web site as a third-party content provider on a computer physically located in New Mexico but owned by another nonaffiliated person".

**The 1998 amendment,** effective January 1, 1999, added Subsection R and substituted "movable" for "moveable" in Subsection N.

**The 1994 amendment,** effective July 1, 1994, in Paragraph F(2), deleted "and" at the end of Subparagraph (d) and added Subparagraph (f); in Subsection N, inserted "for human occupancy" and deleted "for human occupancy" at the end; and substituted the list of gross receipt acts in Subsection Q for the former list.

**The 1993 amendment,** effective July 1, 1993, inserted "limited liability company, limited liability partnership," in Paragraph (1) of Subsection H; rewrote Paragraph (2) of Subsection H which read "the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof"; and substituted "modeling" for "modelling" in Paragraph (5) of Subsection P.

**The 1992 amendment,** effective March 9, 1992, rewrote Subsection F and in Subsection Q, inserted "Municipal Infrastructure Gross Receipts Tax Act" and "Local Hospital Gross Receipts Tax Act, County Health Care Gross Receipts Tax Act".

**The 1991 amendment,** effective July 1, 1991, deleted "or 'division'" following "'department'" in Subsection A; in Subsection F, substituted "any local option gross receipts tax that is" for "the County Fire Protection Excise Tax Act or any municipality or county sales or gross receipts tax which are" near the middle of the first paragraph and inserted "nation" following "Indian" in two places in the second sentence thereof; substituted "manufactured homes" for "mobile homes" at the end of Subsection I; added "except that the granting of a license to use property is the sale of a license and not a lease" at the end of Subsection J; deleted "'director' or" at the beginning of Subsection M; rewrote Subsection N, which read "'mobile home' means a house trailer that exceeds either a width of eight feet or a length of forty feet when equipped for the road"; added Subsection Q; and made a related stylistic change.

**The 1989 amendment,** effective July 1, 1989, in Subsection F inserted "from selling services performed outside New Mexico the product of which is initially used in New Mexico" near the beginning of the first sentence of the first paragraph and substituted "County Fire Protection Excise Tax Act or any municipality or county sales or gross receipts tax" for "County Sales Tax Act, the County Fire Protection Excise Tax Act, the County Gross Receipts Tax Act, the Municipal Gross Receipts Tax Act or the Supplemental Municipal Gross Receipts Tax Act" near the end of that sentence; and added Subsections O and P.

**Language of this section is definite and unambiguous.** *Miller v. Bureau of Revenue*, 1979-NMCA-005, 93 N.M. 252, 599 P.2d 1049, cert. denied, 92 N.M. 532, 591 P.2d 286.

**Taxpayer should be given fair, unbiased and reasonable construction,** without favor either to the taxpayer or the state, to the end that the legislative intent is effectuated and the public interests to be subserved thereby furthered. *Baskin-Robbins Ice Cream Co. v. Revenue Div*., 1979-NMCA-098, 93 N.M. 301, 599 P.2d 1098.

**Taxes assessed only on receipts or future receipts.** — A reading of the full act providing for gross receipts tax shows the legislative intent to be that taxes were to be assessed only on what was received or would be received. *Davis v. Commissioner of Revenue*, 1971-NMCA-129, 83 N.M. 152, 489 P.2d 660, cert. denied, 83 N.M. 151, 489 P.2d 659.

**Legal incidence of gross receipts tax on seller.** — The statutory language defining services places the legal incidence of the gross receipts tax on the seller. *United States v. New Mexico*, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Taxpayers must treat transactions uniformly for all purposes** within the tax scheme and not attempt to show, first, a lease for federal purposes and second, a nontaxable event for state purposes. *Co-Con, Inc. v. Bureau of Revenue*, 1974-NMCA-134, 87 N.M. 118, 529 P.2d 1239, cert. denied, 87 N.M. 111, 529 P.2d 1232.

**If purchase order not transfer for consideration, then not sale.** — The wording of taxpayer's purchase orders and contract, together with evidence that taxpayer invoiced only for chemicals and reagents delivered to a well and retained payment only for what was used, support the inference that a purchase order was not a transfer for consideration and therefore not a sale; therefore, since no single delivery or single day's delivery to a well ever amounted to 18 tons or more, of chemicals or reagents, although the amount specified in a purchase order might aggregate that much, taxpayer was not entitled to a deduction under Section 7-9-65 NMSA 1978. *Runco Acidizing & Fracturing Co. v. Bureau of Revenue*, 1974-NMCA-145, 87 N.M. 146, 530 P.2d 410.

**Corporations separate entities for taxation purposes.** — Taxpayers, a parent corporation and its 100%-owned subsidiary cannot escape corporate liability for joint

use of equipment merely because the shareholders of one of the corporations own all the equipment in question. The two corporations must be treated as separate entities for taxation purposes. *Co-Con, Inc. v. Bureau of Revenue*, 1974-NMCA-134, 87 N.M. 118, 529 P.2d 1239, cert. denied, 87 N.M. 111, 529 P.2d 1232.

**Renting or leasing is a "use" of property.** *Rust Tractor Co. v. Bureau of Revenue*, 1970-NMCA-107, 82 N.M. 82, 475 P.2d 779, cert. denied, 82 N.M. 81, 475 P.2d 778.

**Granting of license.** — The 1991 amendments to this section marked a significant change in the treatment of the granting of a license. *Kmart Corp. v. Taxation & Revenue Dep't.*, 2006-NMSC-006, 139 N.M. 172, 131 P.3d 22.

**Receipts to owner and trainer of horse subject to tax.** — The legislature, in enacting the Gross Receipts Tax Act, did not intend to exempt receipts from horse races. There is neither ambiguity nor doubt that the language used in the Gross Receipts Tax Act applies to the receipts of a horse owner paid to him for a winning purse and the receipts of a horse trainer paid to him as his percentage of a winning purse. *Till v. Jones*, 1972-NMCA-046, 83 N.M. 743, 497 P.2d 745, cert. denied, 83 N.M. 740, 497 P.2d 742. *See* Section 7-9-40 NMSA 1978 which now exempts receipts from horse race purses.

**Disbursement agents of federal funds immune from gross receipts tax.** — Agents for the disbursement of federal funds are constitutionally immune from application of the gross receipts tax to those funds. *United States v. New Mexico*, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Sales and Use Taxes §§ 63 to 67, 87 to 89, 173 to 176.

## 7-9-3.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1992, ch. 48, § 4 repealed 7-9-3.1 NMSA 1978, as enacted by Laws 1991, ch. 9, § 26, defining "livestock", effective July 1, 1992. For provisions of former section, *see* the 1991 NMSA 1978 on *NMOneSource.com.*

**Compiler's notes.** — Laws 2003, ch. 272, § 3 was to be codified as this section, but was instead codified as 7-9-3.5 NMSA 1978.

## 7-9-3.2. Additional definition.

A. As used in the Gross Receipts and Compensating Tax Act, "governmental gross receipts" means receipts of the state or an agency, institution, instrumentality or political subdivision from:

(1) the sale of tangible personal property other than water from facilities open to the general public;

(2) the performance of or admissions to recreational, athletic or entertainment services or events in facilities open to the general public;

(3) refuse collection or refuse disposal or both;

(4) sewage services;

(5) the sale of water by a utility owned or operated by a county, municipality or other political subdivision of the state;

(6) the renting of parking, docking or tie-down spaces or the granting of permission to park vehicles, tie down aircraft or dock boats;

(7) the sale of tangible personal property handled on consignment when sold from facilities open to the general public; and

(8) a hospital licensed by the department of health.

B. "Governmental gross receipts" excludes receipts of the state or an agency, institution, instrumentality or political subdivision from:

(1) cash discounts taken and allowed;

(2) governmental gross receipts tax payable on transactions reportable for the period; and

(3) any type of time-price differential.

C. As used in this section, "facilities open to the general public" does not include point of sale registers or electronic devices at a bookstore owned or operated by a public post-secondary educational institution when the registers or devices are utilized in the sale of textbooks or other materials required for courses at the institution to a student enrolled at the institution who displays a valid student identification card.

**History:** 1978 Comp., § 7-9-3.2, enacted by Laws 1991, ch. 8, § 1; 1992, ch. 100, § 1; 2003, ch. 125, § 1; 2004, ch. 69, § 1; 2019, ch. 270, § 24.

## ANNOTATIONS

**The 2019 amendment,** effective July 1, 2019, revised the definition of "Governmental gross receipts" as used in the Gross Receipts and Compensating Tax Act; in Subsection A, added Paragraph A(8); in the undesignated paragraph after Subsection A, deleted "'Governmental gross receipts' includes receipts from" and redesignated

former Subsection B as Subsection C; and in Subsection B, added "'Governmental gross receipts'", after "excludes", added "receipts of the state or an agency, institution, instrumentality or political subdivision from", and added new paragraphs designations "(1)" through "(3)".

**The 2004 amendments,** effective May 19, 2004, amended Subsection A to add new Paragraph (6).

**The 2003 amendment,** effective July 1, 2003, designated the first paragraph of this section to be Subsection A; redesignated former Subsections A through E to be present Paragraphs A(1) through A(5); and added present Subsection B.

**The 1992 amendment,** effective July 1, 1992, restructured the former introductory paragraph and former Subsection A as the present introductory paragraph and Subsections A through E; substituted "or" for "and" in the introductory paragraph; inserted "other than water" in Subsection A; added "refuse disposal or both" at the end of Subsection C; deleted former Subsection B, relating to receipts from the sale of tangible personal property; and added the undesignated last paragraph.

## 7-9-3.3. Definition; engaging in business.

As used in the Gross Receipts and Compensating Tax Act, "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit. For a person who lacks physical presence in this state, including a marketplace provider, "engaging in business" means having, in the previous calendar year, 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).

**History:** 1978 Comp., § 7-9-3.3, enacted by Laws 2003, ch. 272, § 4; 2019, ch. 270, § 25.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 2003, ch. 272, § 4 repealed former 7-9-3.3 NMSA 1978, as enacted by Laws 2002, ch. 18, § 1, and enacted a new section, effective July 1, 2003.

**Cross references.** — For the federal Mobile Telecommunications Sourcing Act, *see* 4 U.S.C.S. § 116 et seq.

**The 2019 amendment,** effective July 1, 2019, revised the definition of "engaging in business" as used in the Gross Receipts and Compensating Tax Act; in the introductory clause, after "indirect benefit", deleted "except that" and added "For a person who lacks physical presence in this state, including a marketplace provider"; deleted subsection

designation "A"; after the next occurrence of "engaging in business", deleted "does not include: having a worldwide web site as a third-party content provider on a computer physical located in New Mexico but owned by another nonaffiliated person; and"; and deleted former Subsection B and added the remainder of the section.

## I. BUSINESS.

**Meaning of "business".** — "Business" is that which occupies the time, attention and labor of a person for the purpose of livelihood, profit or improvement; that which is a person's concern or intent. It would be too narrow a view to hold that if appellant's intelligence, skill and labor is employed in New Mexico, he is not carrying on a business, trade or profession in this state. *Sterling Title Co. v. Comm'r of Revenue*, 1973-NMCA-086, 85 N.M. 279, 511 P.2d 765.

**"Engaging in business"** means carrying on or causing to be carried on any activity for the purpose of direct or indirect benefit to the taxpayer (American Automobile Association), not someone else (its members). *AAA v. Bureau of Revenue*, 1975-NMSC-012, 87 N.M. 330, 533 P.2d 103, *rev'd on other grounds*, 1975-NMSC-058, 88 N.M. 462, 541 P.2d 967.

**"Engaging in business".** — A taxpayer is "engaging in business" as defined by Subsection E (now Section 7-9-3.3 NMSA 1978) when it is doing what it was organized and authorized to do. *Baskin-Robbins Ice Cream Co. v. Revenue Div*., 1979-NMCA-098, 93 N.M. 301, 599 P.2d 1098.

**To decide whether one's activity constitutes "engaging in business"** in this state, the real question is whether the sale or lease is in line with the business for which the seller or lessor was organized and in which it engages. *AAMCO Transmissions v. Taxation & Revenue Dep't*, 1979-NMCA-092, 93 N.M. 389, 600 P.2d 841, cert. denied, 93 N.M. 205, 598 P.2d 1165.

**To engage in business, taxpayer must engage in services** "for other persons" with the purpose of direct or indirect benefit to itself, for which activity it receives money for the performance of its services. *Twining Coop. Domestic Water & Sewer Ass'n v. Bureau of Revenue*, 1976-NMCA-052, 89 N.M. 345, 552 P.2d 476, cert. denied, 90 N.M. 7, 558 P.2d 619.

**Bookkeeping and management corporation engaged in business.** — Corporation organized to centralize the bookkeeping and management functions for other corporations was engaged in business for purposes of this act. *Westland Corp. v. Commissioner of Revenue*, 1971-NMCA-083, 83 N.M. 29, 487 P.2d 1099, cert. denied, 83 N.M. 22, 487 P.2d 1092.

**Independent contractor subject to gross receipts taxes.** — Since carpenter did "fifty to one hundred and fifty" jobs for different people, on those jobs where the customer (employer) deducted F.I.C.A. taxes, carpenter was an employee and his compensation

was exempt as wages, and where no deductions were made, the commissioner determined that he was an independent contractor and liable for payment of gross receipt taxes. *Stohr v. N.M. Bureau of Revenue*, 1976-NMCA-118, 90 N.M. 43, 559 P.2d 420, cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

**Foreign franchisor deemed "engaging in business".** — A foreign corporation which enters into agreements as a franchisor with licensees in New Mexico for use of the franchisor's trade name and trademark is engaged in business in New Mexico. *American Dairy Queen Corp. v. Taxation & Revenue Dep't*, 1979-NMCA-160, 93 N.M. 743, 605 P.2d 251.

**Incidence of tax on contractors selling services to United States.** — The legal incidence of the gross receipts tax was on contractors as sellers of services to the United States, not on the federal government. *United States v. New Mexico*, 581 F.2d 803 (10th Cir. 1978).

## II. PROPERTY.

**Meaning of "license".** — As "license" is not defined in the statutes, it is accordingly to be given its ordinary meaning unless a different intent is clearly indicated and as "license" is defined in terms of "to accord permission or consent," "allow," "authorize," and as "permission to act," the essential element in the creation of a license is the permission or consent of the licensor and this permission need not come from some government authority. *N.M. Sheriffs & Police Ass'n v. Bureau of Revenue*, 1973-NMCA-130, 85 N.M. 565, 514 P.2d 616.

**Rental of space in department store held license.** — Agreements entered into between the taxpayer and several other companies which provided for the use of space in the taxpayer's department stores for the purpose of retailing certain items were license agreements and receipts from these arrangements were taxable under this section. *S.S. Kresge Co. v. Bureau of Revenue*, 1975-NMCA-015, 87 N.M. 259, 531 P.2d 1232.

**Franchises.** — For purposes of the gross receipts tax act, a franchise is to be treated as a compound or "bundled" form of property, which typically includes a license to use the franchiser's trademark and a commitment by the franchiser to perform various services to assist the franchisee in the operation of the franchised business. Services that are required by the franchise agreement and any services provided by the franchiser to police, promote, maintain, or enhance the value of its franchise system, are part of the franchise, and this is so regardless of whether those services are performed in New Mexico or out-of-state. *Sonic Indus., Inc. v. State*, 2000-NMCA-087, 129 N.M. 657, 11 P.3d 1219, *rev'd on other grounds*, 2006-NMSC-038, 140 N.M. 212, 141 P.3d 1266.

**Telephone communications not tangible personalty.** — The decision of the commission that a telephone company which provided a private telephone line to a

federal agency was not entitled to the deduction in Section 7-9-54 NMSA 1978 for the sale of tangible personal property was upheld by the appellate court which found a reasonable basis for differentiating between electricity (declared to be tangible personalty at Section 7-9-3J NMSA 1978) and telephone communications. *Leaco Rural Tel. Coop., Inc. v. Bureau of Revenue*, 1974-NMCA-076, 86 N.M. 629, 526 P.2d 426.

## III. SERVICES.

**Amendment to definition of service changed test from product's value to seller's activity.** — The 1976 amendment to the definition of service changed the test for taxation from one focusing on the end product's value to the purchaser to one focusing on the nature of seller's activity; on the seller's relative investment of skills and materials. *EG & G, Inc. v. Dir., Revenue Div. Taxation & Revenue Dep't*, 1979-NMCA-139, 94 N.M. 143, 607 P.2d 1161, cert. denied, 94 N.M. 628, 614 P.2d 545.

**Service to its members does not constitute "service to others"** as stated in the definition of "service" in this section. *Twining Coop. Domestic Water & Sewer Ass'n v. Bureau of Revenue*, 1976-NMCA-052, 89 N.M. 345, 552 P.2d 476, cert. denied, 90 N.M. 7, 558 P.2d 619.

**Meaning of "other persons" doubtful.** — The words "other persons" have many meanings which make the words doubtful as to meaning. When this occurs, "all doubts as to the meaning and intent of a tax statute must be construed in favor of the taxpayer." *Twining Coop. Domestic Water & Sewer Ass'n v. Bureau of Revenue*, 1976-NMCA-052, 89 N.M. 345, 552 P.2d 476, cert. denied, 90 N.M. 7, 558 P.2d 619.

**Intent of legislature to grant tax immunity to nonprofit corporation.** — The intent of the legislature was to grant immunity from the Gross Receipts and Compensating Tax Act to a nonprofit corporation which rendered services solely to its members for an assessment or a charge. *Twining Coop. Domestic Water & Sewer Ass'n v. Bureau of Revenue*, 1976-NMCA-052, 89 N.M. 345, 552 P.2d 476, cert. denied, 90 N.M. 7, 558 P.2d 619.

**Building contractor performs "service".** — A contractor in the business of constructing buildings is not a seller of construction materials but performs a service as defined in Subsection K. *Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue*, 1980-NMCA-094, 95 N.M. 708, 625 P.2d 1225, cert. quashed, 96 N.M. 17, 627 P.2d 412 (1981), *rev'd on other grounds*, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

**School board contracting to build school.** — When an Indian school board contracts with a federal agency to construct a school on reservation property and, in turn, contracts with a general contractor for actual construction of the building, the school board is the owner of the building and not an entity engaged in the construction business within the meaning of Subsection K. *Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue*, 1980-NMCA-094, 95 N.M. 708, 625 P.2d 1225, cert. quashed, 96 N.M. 17,

627 P.2d 412 (1981), *rev'd on other grounds*, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

**Horse trainer and owner performing for others are performing "service".** — When both a horse trainer and a horse owner are engaged in activities for other persons for a consideration, receipts in question were receipts from performing a service within the meaning of the Gross Receipts and Compensating Tax Act. *Till v. Jones*, 1972-NMCA-046, 83 N.M. 743, 497 P.2d 745, cert. denied, 83 N.M. 740, 497 P.2d 742. *See* Section 7-9-40 NMSA 1978 which now exempts receipts from horse race purses.

**That part of attorney's inheritance designated attorney fees taxable.** — Since attorney who was sole heir to his father's estate listed part of the inheritance received as attorney fees, that portion so designated was taxable under the gross receipts tax. *Mears v. Bureau of Revenue*, 1975-NMCA-006, 87 N.M. 240, 531 P.2d 1213.

**Director's fees for services to corporation.** — A member of the board of directors of a corporation was performing a service for the corporation and his fees therefrom are taxable as gross receipts. *Mears v. Bureau of Revenue*, 1975-NMCA-006, 87 N.M. 240, 531 P.2d 1213.

**Municipal franchise fee and telephone carriers.** — The total amount of money received by a local carrier for selling its telephone services includes the amount identified on its bills as the customer's share of the municipal franchise fee, so a telephone carrier is subject to the gross receipts tax. *GTE Sw. Inc. v. Taxation & Revenue Dep't*, 1992-NMCA-024, 113 N.M. 610, 830 P.2d 162, cert. denied, 113 N.M. 605, 830 P.2d 157.

**Billboard displays intrastate in character.** — Taxpayer's service is simply to post messages on billboards located in this state. It is being taxed for displaying, not for advertising. This service is intrastate in character, and thus is subject to the gross receipts tax. *Mountain States Adver., Inc. v. Bureau of Revenue*, 1976-NMCA-058, 89 N.M. 331, 552 P.2d 233, cert. denied, 90 N.M. 8, 558 P.2d 620.

## 7-9-3.4. Definitions; construction, construction materials and construction-related services.

As used in the Gross Receipts and Compensating Tax Act:

A. "construction" means:

(1) the building, altering, repairing or demolishing in the ordinary course of business any:

(a) road, highway, bridge, parking area or related project;

(b) building, stadium or other structure;

(c) airport, subway or similar facility;

(d) park, trail, athletic field, golf course or similar facility;

(e) dam, reservoir, canal, ditch or similar facility;

(f) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;

(g) sewerage, water, gas or other pipeline;

(h) transmission line;

(i) radio, television or other tower;

(j) water, oil or other storage tank;

(k) shaft, tunnel or other mining appurtenance;

(l) microwave station or similar facility;

(m)retaining wall, wall, fence, gate or similar structure; or

(n) similar work;

(2) the leveling or clearing of land;

(3) the excavating of earth;

(4) the drilling of wells of any type, including seismograph shot holes or core drilling; or

(5) similar work;

B. "construction material" means tangible personal property that becomes or is intended to become an ingredient or component part of a construction project, but "construction material" does not include a replacement fixture when the replacement is not construction or a replacement part for a fixture; and

C. "construction-related service" means a service directly contracted for or billed to a specific construction project, including design, architecture, drafting, surveying, engineering, environmental and structural testing, security, sanitation and services required to comply with governmental construction-related rules. "Construction-related service" does not include general business services, such as legal or accounting services, equipment maintenance or real estate sales commissions.

**History:** 1978 Comp., § 7-9-3.4, enacted by Laws 2003, ch. 272, § 5; 2020, ch. 80, § 4.

## ANNOTATIONS

**The 2020 amendment,** effective July 1, 2021, defined "construction-related service" as used in the Gross Receipts and Compensating Tax Act; in the section heading, added "and construction-related services"; and added Subsection C.

**Construction work incidental to "severing" exempt from gross receipts tax.** — The exemption provided by Section 7-9-35 NMSA 1978 applied, since "severing" was taking place as the development work was performed and none of taxpayer's work was preliminary to or preparatory for "severing"; therefore, receipts from development work, which includes construction, were exempted from the gross receipts tax and taxable under the service tax (resources excise tax) when such construction work was incidental to the "severing." *Patten v. Bureau of Revenue*, 1974-NMCA-051, 86 N.M. 355, 524 P.2d 527.

**"Fence" not a "structure".** — The word "structure", which follows "building" and "stadium," is limited in its meaning to things or classes of the same general character as buildings and stadia and this does not include fences. *Cardinal Fence Co. v. Commissioner of Bureau of Revenue*, 1972-NMCA-136, 84 N.M. 314, 502 P.2d 1004 (decided under prior law).

**Fence not within definition of "construction".** — Construction of fences does not come within the definition of "construction"in that the fencing material sold is not a component part of a construction project. *Cardinal Fence Co. v. Commissioner of Bureau of Revenue*, 1972-NMCA-136, 84 N.M. 314, 502 P.2d 1004 (decided under prior law).

**Erection of fences not construction.** — Since the construction of fences does not come within the definition of "construction", fencing material sold with or without setting of the posts did not become a component part of a construction project and receipts from such sales were deductible. *Cardinal Fence Co. v. Commissioner of Bureau of Revenue*, 1972-NMCA-136, 84 N.M. 314, 502 P.2d 1004 (decided under prior law).

**Non-Indians performing construction services for tribe subject to tax.** — Under the gross receipts tax act, non-Indian contractors involved in the construction of an Indian resort complex are subject to a tax on the gross receipts they received for performing construction services. The legal incidence of the tax falls upon them and not upon the tribe or tribal property. The state is imposing the tax solely on non-Indians who have performed services for the tribe. *Mescalero Apache Tribe v. O'Cheskey*, 439 F. Supp. 1063 (D.N.M. 1977), *aff'd*, 625 F.2d 967 (10th Cir. 1980), cert. denied, 450 U.S. 959, 101 S. Ct. 1417, 67 L. Ed. 2d 383 (1981), *reh'g denied*, 455 U.S. 929, 102 S. Ct. 1296, 71 L. Ed. 2d 474 (1982).

**Imposition of tax on tribal organization impermissible.** — If the economic burden of the gross receipts tax ultimately falls on a tribal organization, even though the legal incidence of the tax falls on the non-Indian contractor with whom the organization contracted to build an Indian school, the imposition of the tax impermissibly impedes the clearly expressed federal interest in promoting the quality and quantity of educational opportunities for Indians by depleting the funds available for the construction of Indian schools. *Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue*, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

**Federal regulatory scheme and policy.** — The comprehensive federal regulatory scheme and the express federal policy of encouraging tribal self-sufficiency in the area of education preclude the imposition of the state gross receipts tax on the construction of school facilities on tribal lands pursuant to a contract between a tribal organization and a non-Indian contracting firm. *Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue*, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

**Construction project includes wide variety of activities.** — This section was intended to make sales of construction materials to governmental entities taxable when the materials were to be incorporated into construction projects. Contrary to taxpayer's argument that Regulation GR 51:16 (now 3.2.1.11) establishes a definite test for determining whether an endeavor is a "construction project," this regulation merely states nonexclusive guidelines for determining whether materials constitute a component part of a construction project. Thus, construction projects include the wide variety of activities listed in Subsection C. *Arco Materials, Inc. v. State Taxation & Revenue Dep't*, 1994-NMCA-062, 118 N.M. 12, 878 P.2d 330, *rev'd on other grounds sub nom. Blaze Constr. Co. v. Taxation & Revenue Dep't*, 1994-NMSC-110, 118 N.M. 647, 884 P.2d 803, cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

**"Construction" deemed question of fact.** — Whether activities of a party constitute "construction" is a question of fact for a jury. *United States v. New Mexico*, 642 F.2d 397 (10th Cir. 1981).

## 7-9-3.5. Definition; gross receipts.

A. As used in the Gross Receipts and Compensating Tax Act:

(1) "gross receipts" means the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing or licensing property employed in New Mexico, from granting a right to use a franchise employed in New Mexico, from selling services performed outside New Mexico, the product of which is initially used in New Mexico, or from performing services in New Mexico. In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, "gross receipts" means the reasonable value of the property or service exchanged;

(2) "gross receipts" includes:

(a) any receipts from sales of tangible personal property handled on consignment;

(b) the total commissions or fees derived from the business of buying, selling or promoting the purchase, sale or lease, as an agent or broker on a commission or fee basis, of any property, service, stock, bond or security;

(c) amounts paid by members of any cooperative association or similar organization for sales or leases of personal property or performance of services by such organization;

(d) amounts received from transmitting messages or conversations by persons providing telephone or telegraph services;

(e) amounts received by a New Mexico florist from the sale of flowers, plants or other products that are customarily sold by florists where the sale is made pursuant to orders placed with the New Mexico florist that are filled and delivered outside New Mexico by an out-of-state florist;

(f) the receipts of a home service provider from providing mobile telecommunications services to customers whose place of primary use is in New Mexico if: 1) the mobile telecommunications services originate and terminate in the same state, regardless of where the services originate, terminate or pass through; and 2) the charges for mobile telecommunications services are billed by or for a customer's home service provider and are deemed provided by the home service provider. For the purposes of this section, "home service provider", "mobile telecommunications services", "customer" and "place of primary use" have the meanings given in the federal Mobile Telecommunications Sourcing Act; and

(g) 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; and

(3) "gross receipts" excludes:

(a) cash discounts allowed and taken;

(b) New Mexico gross receipts tax, governmental gross receipts tax, leased vehicle gross receipts tax, and cannabis excise tax payable on transactions for the reporting period;

(c) taxes imposed pursuant to the provisions of any local option gross receipts tax that is payable on transactions for the reporting period;

(d) any gross receipts or sales taxes imposed by an Indian nation, tribe or pueblo; provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions;

(e) any type of time-price differential;

(f) amounts received solely on behalf of another in a disclosed agency capacity; and

(g) amounts received by a New Mexico florist from the sale of flowers, plants or other products that are customarily sold by florists where the sale is made pursuant to orders placed with an out-of-state florist for filling and delivery in New Mexico by a New Mexico florist.

B. When the sale of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts, excluding any type of time-price differential, under such contracts as gross receipts as and when the payments are actually received. If the seller or lessor transfers the seller's or lessor's interest in any such contract to a third person, the seller or lessor shall pay the gross receipts tax upon the full sale or leasing contract amount, excluding any type of time-price differential.

**History:** 1978 Comp., § 7-9-3.5, enacted by Laws 2003, ch. 272, § 3; 2006, ch. 39, § 2; 2007, ch. 339, § 2; 2019, ch. 270, § 26; 2023, ch. 85, § 10.

## ANNOTATIONS

**Cross references.** — For the federal Mobile Telecommunications Sourcing Act, *see* 4 U.S.C.S. § 116 et seq.

**Compiler's notes.** — Laws 2003, ch. 272, § 3 originally enacted this section as 7-9-3.1 NMSA 1978. The section was renumbered by the compiler as 7-9-3.5 NMSA 1978.

**The 2023 amendment,** effective July 1, 2023, excluded cannabis excise taxes from the definition of "gross receipts"; and in Subsection A, Subparagraph A(3)(b), after "leased vehicle gross receipts tax", added "and cannabis excise tax".

**The 2019 amendment,** effective July 1, 2019, revised the definition of "gross receipts" as used in the Gross Receipts and Compensating Tax Act; and in Subsection A, added Subparagraph A(2)(g).

**The 2007 amendment,** effective June 15, 2007, defined "gross receipts" to mean receipts from granting a right to use a franchise employed in New Mexico.

**The 2006 amendment,** effective July 1, 2006, provided in Paragraph (1) of Subsection A that gross receipts includes consideration received from licensing property employed in New Mexico.

**Entities may take medical services tax deduction on behalf of health care practitioner employees.** — Where taxpayer, a medical staffing company that had commercial contracts with the department of veterans affairs and the Indian health service, claimed a gross receipts tax deduction for the provision of medical services on behalf of its nurse employees, and where the department of taxation and revenue claimed that the deduction was limited to individual health care practitioners, the administrative hearing officer did not err in concluding that taxpayer satisfied the basic criteria for the deduction, because the regulation implementing NMSA 1978, § 7-9-93 permits an employer entity to take the deduction on behalf of an employee, provided that the entity is not otherwise excluded and the remaining requirements under the statute are satisfied, and in this case, the parties stipulated that taxpayer is not an excluded health care facility under the regulation, and the stipulated facts establish that all the conditions of § 7-9-93 were met. *Robison v. N.M. Tax'n & Revenue Dep't*, 2023-NMCA-065.

## I. IN GENERAL.

**"Gross receipts"** means the total amount of money or the value of other considerations received from selling property or from performing services. *N.M. Enters., Inc. v. Bureau of Revenue*, 1974-NMCA-125, 86 N.M. 799, 528 P.2d 212.

**Selling property in New Mexico.** — The gross receipts tax only applies when the selling of property takes place within the borders of New Mexico. *Kmart Corp. v. Taxation & Revenue Dep't*., 2006-NMSC-006, 139 N.M. 172, 131 P.3d 22.

**Royalties received from trademark licenses granted as part of a franchise are subject to gross receipts tax.** — Where petitioner entered into a number of franchise agreements with New Mexico businesses which contained a provision to grant to franchisees a limited license to use specific trademarks, and where the New Mexico taxation and revenue department (department) determined that the royalty fees for the limited trademark licenses were subject to gross receipts tax, the district court did not err in granting the department's motion for summary judgment, because the definition of "gross receipts" includes the total amount of money or the value of other consideration received from granting a right to use a franchise employed in New Mexico, and the trademark licensing provision at issue was central to the overall franchise and should be treated as part of the franchise for purposes of gross receipts, regardless of whether it was separately stated and itemized in the franchise agreement. *A&W Rests. v. N.M. Taxation & Revenue Dep't*, 2018-NMCA-069, cert. denied.

**Salaries and overhead of federal contractors not tax immune.** — As long as federal contractors are separate entities solely responsible for their own employees and internal management, salaries and overhead of those contractors are not obligations of the government, for purposes of tax immunity. *United States v. New Mexico*, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Collection agencies gross receipts.** — A collection agency does not include the creditor's portion of the proceeds, nor the taxes it collects on behalf of the creditor, in calculating its commission proceeds, i.e., its gross receipts. Rather, a collection agency pays gross receipts tax only on the commission portion of the debt. The total tax imposed on the debt and charged to the debtor is simply the sum of the creditor's tax and the agency's tax. *Martinez v. Albuquerque Collection Servs., Inc*., 867 F. Supp. 1495 (D.N.M. 1994).

**Temporary staffing agencies' gross receipts.** — Temporary employee company was not excluded from paying tax on its gross receipts from clients to which it provided temporary staffing services; the receipts were taxable as reimbursements of payroll-related expenditure. *MPC Ltd. v. N.M. Taxation & Revenue Dep't*, 2003-NMCA-021, 133 N.M. 217, 62 P.3d 308.

## II. OUT-OF-STATE.

**Only activities within state taxable.** — The validity of the application of the gross receipts tax to general and administrative expense reimbursements depended on whether the tax was laid upon gross receipts derived from the contractors' activities within the borders of the state. *United States v. New Mexico*, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Work performed outside the state.** — If when they received reimbursements for general and administrative expenses contractors were being reimbursed for work (whether called "services" or by any other name) performed outside the state, New Mexico taxing authorities lack authority to tax those transactions. *United States v. New Mexico*, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Income accrues on an out-of-state transaction.** — Income which arises from a contract performed within the state but accrues upon a separable out-of-state transaction should be excluded from taxation as not being income arising from contracting within the state. *United States v. New Mexico*, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Mere accounting device will not avoid tax.** — Since all receipts resulted solely from the contractor's activities in the state and the general and administrative expense category appeared merely to be a cost accounting device, the entire amount of the receipts may be taxed by the state. *United States v. New Mexico*, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Apportionment between in-state and out-of-state activity does not arise** if the tax is levied only upon receipts resulting from the taxpayer's activities in New Mexico. *Mountain States Adver., Inc. v. Bureau of Revenue*, 1976-NMCA-058, 89 N.M. 331, 552 P.2d 233, cert. denied, 90 N.M. 8, 558 P.2d 620.

**Tax on foreign corporation's local business does not offend commerce clause.** — Gross receipts tax imposed on foreign corporation was conditioned on the local business of renting equipment located in the state. Therefore, the tax does not constitute an undue burden on interstate commerce but, on the contrary, was a tax on the taxpayers' local and intrastate business of leasing machinery. *Besser Co. v. Bureau of Revenue*, 1964-NMSC-169, 74 N.M. 377, 394 P.2d 141 (decided under prior gross receipts law).

**Taxing out-of-state sales impermissible.** — Tax levied on gross receipts from out-of-state sales of tangible personal property, in the nature of reproducible educational material, is an impermissible burden on commerce. *Evco v. Jones*, 409 U.S. 91, 93 S. Ct. 349, 34 L. Ed. 2d 325 (1972).

**Entire revenue from nonresident's display of signs in state taxable.** — Colorado corporation which displayed billboards made in Colorado by Colorado employees and whose only contact with New Mexico was the displaying of signs and using 10% of its cost in maintenance was held subject to this section for its entire revenue and not just its 10% cost of maintenance. *Mountain States Adver., Inc. v. Bureau of Revenue*, 1976-NMCA-058, 89 N.M. 331, 552 P.2d 233, cert. denied, 90 N.M. 8, 558 P.2d 620.

**Only value of property entering state taxed.** — Where tuition paid by New Mexico residents to a correspondence school based in Illinois covered materials valued at an average cost of $50 per student, and the remainder of the tuition covered the costs of grading, counseling and other services connected with the educational programs, virtually all of which services were performed in Illinois, it was held that only the value of the property entering New Mexico could be taxed as gross receipts of the school. *Advance Schs., Inc. v. Bureau of Revenue*, 1976-NMSC-007, 89 N.M. 79, 547 P.2d 562.

**Affirmative evidence needed to support use within state.** — When the corporation contracted with an out-of-state buyer provided for the corporation to destroy munitions, it was entitled to the gross receipts deduction, and the hearing officer could not properly determine that use or delivery took place within the state without some affirmative evidence in the record to support that conclusion. *TPL, Inc. v. N.M. Taxation & Revenue Dep't*, 2003-NMSC-007, 133 N.M. 447, 64 P.3d 474.

**Tax applicable to foreign franchisor.** — Although franchisor has no payroll, real property, personnel or offices located in this state, it does furnish signs which must be leased or purchased by its dealers, and its sales of tangible property and its granting of exclusive franchises constitute engaging in intrastate business in this state and the franchise fees received therefrom are subject to the gross receipts tax. *AAMCO*

*Transmissions v. Taxation & Revenue Dep't*, 1979-NMCA-092, 93 N.M. 389, 600 P.2d 841, cert. denied, 93 N.M. 205, 598 P.2d 1165. (Superceded by statute, *Sonic Indus., Inc. v. State*, 2000-NMCA-087, 129 N.M. 657, 11 P.3d 1219.)

**Application of tax to franchise fees.** — The imposition of gross receipts tax on franchise fees received from this state's dealers does not violate the due process clause or commerce clause and is proper where the franchisor is in the business of selling franchises, developing and marketing parts, receiving its primary source of income from the sale of franchises, collecting a percentage of franchisee's gross receipts as a lease payment for use of the trademark and trade name and where its leased trademarks and trade names and their businesses are protected by the laws of this state; thus, franchisor is engaged in business in this state. *AAMCO Transmissions v. Taxation & Revenue Dep't*, 1979-NMCA-092, 93 N.M. 389, 600 P.2d 841, cert. denied, 93 N.M. 205, 598 P.2d 1165. (Superceded by statute, *Sonic Indus., Inc. v. State*, 2000-NMCA-087, 129 N.M. 657, 11 P.3d 1219.)

The 1991 amendment of Subsection J reclassifying licensing as selling did not alter whatever economic nexus existing between a foreign corporation and commercial activity carried on within New Mexico by its franchisees; therefore, fees paid to the corporation by New Mexico franchisees for the right to operate its restaurants located in New Mexico constituted receipts from selling property in New Mexico and were gross receipts within the meaning of Subsection F. *Sonic Indus., Inc. v. State*, 2000-NMCA-087, 129 N.M. 657, 11 P.3d 1219, *rev'd*, 2006-NMSC-038, 140 N.M. 212, 141 P.3d 1266.

**Tax applicable to foreign corporation.** — Although the taxpayer, a Delaware corporation, has no employees or offices located in this state, the taxpayer's most valuable assets, its trade name, trademark and related intangibles, are used in this state, taxpayer's secret formulas and techniques are utilized in this state and its method of business exploits the New Mexico market for taxpayer's benefit, taxpayer is engaged in business in New Mexico for purposes of gross receipts tax. *Baskin-Robbins Ice Cream Co. v. Revenue Div.*, 1979-NMCA-098, 93 N.M. 301, 599 P.2d 1098 (decided under prior law).

## III. LEASES.

**Receipt of money from leasing of property is the incident** which gave rise to the imposition of the gross receipts and sales tax. *Rust Tractor Co. v. Bureau of Revenue*, 1970-NMCA-107, 82 N.M. 82, 475 P.2d 779, cert. denied, 82 N.M. 81, 475 P.2d 778.

**Property lease royalties are "gross receipts."** — When a taxpayer is leasing property in this state for which it receives royalties, the royalties are "gross receipts." *Baskin-Robbins Ice Cream Co. v. Revenue Div.*, 1979-NMCA-098, 93 N.M. 301, 599 P.2d 1098 (decided under prior law).

**Gross receipts tax levied upon lessor of equipment, not user.** *Co-Con, Inc. v. Bureau of Revenue*, 1974-NMCA-134, 87 N.M. 118, 529 P.2d 1239, cert. denied, 87 N.M. 111, 529 P.2d 1232.

**Treating transactions as rentals for federal tax implies leasing arrangements.** — When a parent corporation and its 100%-owned subsidiary utilized certain items of equipment without regard to which held the legal title thereto, made accounting entries showing the machinery as either "receivable" or "liability," as appropriate, and treated the transactions as gross rentals for federal corporate income tax purposes, the intent of the taxpayers was to treat the arrangements as rentals or leases which were subject to gross receipts taxes. *Co-Con, Inc. v. Bureau of Revenue*, 1974-NMCA-134, 87 N.M. 118, 529 P.2d 1239, cert. denied, 87 N.M. 111, 529 P.2d 1232.

**Effect of Bingo and Raffle Act [repealed] on lease.** — An arrangement between the owner of several properties used as bingo halls and the non-profit organizations who operated the bingo games was a lease and not a license where the organizations were required to pay rent, they were granted exclusive possession of certain facilities on the premises and the use of the facilities at certain times, and the owner could not revoke the agreement at will; although the arrangement was not a typical lease, restrictions in the Bingo and Raffle Act [repealed] accounted for the type of arrangement created and to deny that this was a lease would have made it impossible for bingo operators to enter arrangements that would qualify as leases. *Quantum Corp. v. State Taxation & Revenue Dep't*, 1998-NMCA-050, 125 N.M. 49, 956 P.2d 848 (decided under Bingo and Raffle Act, since repealed).

**Laundry transactions are leasings.** — Since the taxpayer's coin-operated laundry business is used for a consideration by persons other than the owner, the transactions are "leasings" as defined in Subsection J and the taxpayer is entitled to a deduction from compensating tax liability for the value of the washers and dryers. *Strebeck Props., Inc. v. N.M. Bureau of Revenue*, 1979-NMCA-035, 93 N.M. 262, 599 P.2d 1059.

**Franchisor's arrangements with its licensees** fall within definition of "leasing." *American Dairy Queen Corp. v. Taxation & Revenue Dep't*, 1979-NMCA-160, 93 N.M. 743, 605 P.2d 251 (decided under prior law).

**Granting of license.** — The 1991 amendments to this section clearly mandate a departure from treating the granting of a license as a lease to treating the granting of a license as a sale of a license. *Kmart Corp. v. Taxation & Revenue Dep't.*, 2006-NMSC-006, 139 N.M. 172, 131 P.3d 22.

**Shelf-display contract receipts.** — Taxpayer's appeal of the hearing officer's decision and order upholding the department's assessments of a gross receipts tax and penalty was improper where she failed to overcome the statutory presumption that all receipts were taxable; the buy-down contract payments were reimbursements to the taxpayer for her sales loss incurred as a result of engaging in the discount promotions and the shelf-display contract receipts were taxable because those contracts bore a much greater

resemblance to a license than to the creation and conveyance of an interest in real property that would have constituted a lease. *Grogan v. N.M. Taxation & Revenue Dep't*, 2003-NMCA-033, 133 N.M. 354, 62 P.3d 1236, cert. denied, 133 N.M. 413, 63 P.3d 516.

## IV. TIME-PRICE DIFFERENTIAL.

**To be taxable must be bargained for before work finished.** — In order to be taxable as a "time-price differential sale," the money in question must have been bargained for before the contract work was rendered and the final invoice delivered, and when taxpayer accepted a promissory note secured by a mortgage after it had completed its work, the additional money paid on the note was in the nature of interest and could not be characterized as "time-price" for the purposes of this section and therefore the tax as imposed by the bureau was inapplicable. *Co-Con, Inc. v. Bureau of Revenue*, 1974-NMCA-134, 87 N.M. 118, 529 P.2d 1239, cert. denied, 87 N.M. 111, 529 P.2d 1232 (decided under prior law).

**Time-price differential sale not taxed if no part of which was gross receipt.** — Taxpayer was not liable for state and municipal gross receipts taxes on time-price differential of installment sales contract sold to financial institution since no part of time-price differential was a "gross receipt" under the statute chargeable to taxpayer. *Davis v. Comm'r of Revenue*, 1971-NMCA-129, 83 N.M. 152, 489 P.2d 660, cert. denied, 83 N.M. 151, 489 P.2d 659 (decided prior to the 1972 amendment which changed Subsection F's treatment of time-price differential arrangements).

**Fees taxable even if not approved by court.** — Taxpayer was liable for the gross receipts tax assessed against fees actually received and used by the taxpayer, although the fees had not been approved by the bankruptcy court. *Lopez v. N.M. Dep't of Taxation & Revenue*, 1997-NMCA-115, 124 N.M. 270, 949 P.2d 284, cert. denied, 124 N.M. 311, 950 P.2d 284.

## V. AGENTS.

**"Dealer concessions"** retained from mutual fund transactions fall within the terms "commissions or fees" as used in this section. *Rauscher, Pierce, Refsnes, Inc. v. Taxation & Revenue Dep't*, 2002-NMSC-013, 132 N.M. 226, 46 P.3d 687.

**No agency when purchases for others merely incidental to work.** — Carpenter was not liable for assessment of gross receipts tax on purchases of materials since he did not receive any commissions or fees, but acted merely as an agent for his customers, and the purchases were merely incidental to his work as a carpenter. *Stohr v. N.M. Bureau of Revenue*, 1976-NMCA-118, 90 N.M. 43, 559 P.2d 420, cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

**No agency when purchaser consultant to client-buyers.** — When taxpayer, engaged in the business of management consultation, supervision and administration

for motels, bought large quantities of tangible personal property at wholesale and sold them to its clients without additional cost or profit, the taxpayer was not a factor, agent or broker for its motel clients and was taxable for the total amount of money received from its sale to the motel clients of the tangible personal property under the Gross Receipts and Compensating Tax Act. *N.M. Enters., Inc. v. Bureau of Revenue*, 1974-NMCA-125, 86 N.M. 799, 528 P.2d 212.

**Term "broker"** as used in this section includes a person selling securities on behalf of others. *Rauscher, Pierce, Refsnes, Inc. v. Taxation & Revenue Dep't*, 2002-NMSC-013, 132 N.M. 226, 46 P.3d 687.

## 7-9-4. Imposition and rate of tax; denomination as "gross receipts tax".

A. For the privilege of engaging in business, an excise tax equal to the following percentages of gross receipts is imposed on any person engaging in business in New Mexico:

(1) prior to July 1, 2023, five percent; and

(2) beginning July 1, 2023, four and seven-eighths percent, except as provided in Subsection C of this section.

B. The tax imposed by this section shall be referred to as the "gross receipts tax".

C. If, for any single fiscal year occurring after fiscal year 2025 and prior to fiscal year 2030, gross receipts tax revenues are less than ninety-five percent of the gross receipts tax revenues for the previous fiscal year, as determined by the secretary of finance and administration, the rate of the gross receipts tax shall be five and one-eighth percent beginning on the July 1 following the determination made by the secretary of finance and administration.

D. On or before February 1 of each year, until the rate of the gross receipts tax is adjusted to five and one-eighth percent pursuant to Subsection C of this section, the secretary of finance and administration shall make a determination for the purposes of Subsection C of this section. If the rate of tax is adjusted pursuant to that subsection, the secretary shall certify to the secretary of taxation and revenue that the rate of the gross receipts tax shall be five and one-eighth percent, effective on the following July 1.

E. As used in this section, "gross receipts tax revenues" means the net receipts attributable to the gross receipts tax and distributed to the general fund.

**History:** 1953 Comp., § 72-16A-4, enacted by Laws 1966, ch. 47, § 4; 1969, ch. 144, § 2; 1978, ch. 151, § 2; 1981, ch. 37, § 9; 1983, ch. 213, § 15; 1986, ch. 20, § 63; 1990 (1st S.S.), ch. 1, § 2; 2010 (2nd S.S.), ch. 7, § 9; 2022, ch. 47, § 12.

## ANNOTATIONS

**Cross references.** — For exemptions from the gross receipts tax, *see* 7-9-12 NMSA 1978.

For deductions from the gross receipts tax, *see* 7-9-45 NMSA 1978.

**The 2022 amendment,** effective July 1, 2022, reduced the rates of the gross receipts tax, provided for an increase in the gross receipts tax if gross receipts tax revenues decrease, and defined "gross receipts tax revenues"; in Subsection A, after "tax equal to", deleted "five and one-eighth percent" and added "the following percentages", and added Paragraphs A(1) and A(2); and added Subsections C through E.

**Temporary provisions.** — Laws 2020 (1st S.S.), ch. 4, § 4, effective June 29, 2020, provided:

A. Notwithstanding Sections 7-1-67 and 7-1-69 NMSA 1978, no interest shall accrue and no penalty shall be assessed to a taxpayer for:

(1) tax liabilities pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act for failure to pay the tax that became due April 15, 2020 through July 15, 2020; provided that the failure to pay the tax was made without intent to evade or defeat the tax; and provided further that payment for the unpaid payments is made in full on or before April 15, 2021;

(2) tax liabilities pursuant to the Withholding Tax Act for failure to pay the tax that became due March 25, 2020 through July 25, 2020; provided that the failure to pay the tax was made without intent to evade or defeat the tax; and provided further that payment for the unpaid taxes is made in full on or before April 25, 2021;

(3) gross receipts tax, local option gross receipts tax or compensating tax liabilities for failure to pay any of those taxes that became due March 25, 2020 through July 25, 2020; provided that the failure to pay the tax was made without intent to evade or defeat the tax; and provided further that payment for the unpaid taxes is made in full on or before April 25, 2021; and

(4) tax liabilities assessed between September 3, 2019 and January 3, 2020 as the result of a managed audit performed in accordance with a managed audit agreement pursuant to Section 7-1-11.1 NMSA 1978; provided that payment for those liabilities is made pursuant to terms of the managed audit agreement on or before December 31, 2020.

B. Notwithstanding Sections 7-38-49 and 7-38-50 NMSA 1978, no interest shall accrue and no penalty shall be assessed to a property owner for unpaid property taxes that became due April 10, 2020 pursuant to Section 7-38-38 NMSA 1978; provided that:

(1) the unpaid property taxes did not become delinquent because of an intent to defraud by the property owner;

(2) payment for the unpaid property taxes is made in full on or before May 10, 2021; and

(3) the subject property does not have property taxes that became delinquent pursuant to Section 7-38-46 NMSA 1978 prior to May 10, 2020.

**The 2010 (2nd S.S.) amendment,** effective July 1, 2010, in Subsection A, after "excise tax equal to five", added "and one-eighth".

**The 1990 amendment,** effective July 1, 1990, substituted "five percent" for "four and three-fourths percent" in Subsection A.

## I. GENERAL CONSIDERATION.

**Reasonable tax classifications not unconstitutional.** — It is for the legislature to adopt classifications for the imposition of excise taxes as it may deem proper and any reasonable classification cannot be held to deny equal protection or due process. *Edmunds v. Bureau of Revenue*, 1958-NMSC-112, 64 N.M. 454, 330 P.2d 131.

**Legislature's method of imposing gross receipts and compensating tax reasonable.** — The legislature's selection of the vendor for imposition of the school tax (gross receipts tax since repealed) and of the purchaser for imposition of the former compensating tax was reasonable in view of the impossibility of subjecting a nonresident vendor - one who was out of the territorial jurisdiction of the legislature - to the school tax. *Edmunds v. Bureau of Revenue*, 1958-NMSC-112, 64 N.M. 454, 330 P.2d 131.

**Legislative failure to protect resident-vendor not unconstitutional.** — The failure of the legislature to protect resident-vendor against the unfair competition of importations into New Mexico, without the payment of a sales tax, of chemical reagents did not offend the constitutions of either the United States or of New Mexico so as to invalidate the school tax against him. *Edmunds v. Bureau of Revenue*, 1958-NMSC-112, 64 N.M. 454, 330 P.2d 131 (decided under former law).

**Standard of review on appeal.** — Department's gross receipts tax assessment can only be reversed by the court of appeals if arbitrary or capricious, or there is an abuse of discretion, such that the assessment is not supported by substantial evidence or it is otherwise not in accordance with law. *ITT Educ. Serv. v. Taxation & Revenue Dep't*, 1998-NMCA-078, 125 N.M. 244, 959 P.2d 969.

**Department not precluded from assessing taxes where taxpayers failed to establish the elements of collateral estoppel, corporation by estoppel, or judicial estoppel.** — Where taxpayers appealed a 2018 assessment of taxes for the 2011 tax

year, arising from the operation of an automotive technician business, and where defendant argued that the taxation and revenue department (Department) was precluded on estoppel grounds from personally assessing unpaid 2011 gross receipts tax against taxpayers, the Department was not precluded from assessing unpaid gross receipts tax against taxpayers personally, because taxpayers failed to establish the elements of collateral estoppel, failed to demonstrate that corporation by estoppel applied to the facts of the case, and failed to establish any evidence that warranted applying judicial estoppel. *Vigil v. N.M. Tax'n and Revenue Dep't*, 2022-NMCA-032.

**The evidence supports the department's personal assessment against taxpayer for business's tax liability.** — Where taxpayer appealed a 2018 assessment of taxes for the 2011 tax year, arising from the operation of an automotive technician business, and where defendant argued that taxpayer was not personally liable for gross receipts taxes owed by the business, contending that he did not participate in the operations of the business, the hearing officer did not err in determining that taxpayer held himself out as a corporation, and was therefore personally liable for the business's tax debt, because taxpayer contributed money to the business, was an initial director and incorporator, remained a director and incorporator until 2011, when the business filed articles of incorporation for the second time, signed financing statements and purchased and registered vehicles for the business, taxpayer's credit was used by the business, and taxpayer made payments for property and equipment and guaranteed loans. Taxpayer's course of conduct in relation to the business reasonably demonstrated that he assumed to act as a corporation, and § 53-18-9 NMSA 1978, provides that all persons who assume to act as a corporation without authority to do so are jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. *Vigil v. N.M. Tax'n and Revenue Dep't*, 2022-NMCA-032.

## II. APPLICABILITY.

**Only a person engaging in business may be liable for gross receipts tax.** — Under the plain language of this section, the taxation and revenue department may only impose gross receipts tax upon persons who were engaging in business when the tax liability was incurred. *New Mexico Depo v. N.M. Tax'n & Revenue Dep't*, 2021-NMCA-011.

**Department lacked authority to impose tax liability against taxpayer who was not engaged in business at the time the tax liability was incurred.** — Where in 2009, taxpayer established a business that provided court reporting services, registered with the taxation and revenue department (department), was assigned a Combined Reporting System (CRS) number for tax reporting purposes, and operated the business as a sole proprietorship from 2009 to 2012, at which time taxpayer converted the business to a limited liability company (LLC), and where taxpayer failed to update the business's registration with the department and continued to operate under the original CRS number assigned to the sole proprietorship, and where the department's computerized auditing system detected a mismatch between the information taxpayer reported to the IRS and the information taxpayer reported to the department, resulting in

the department updating the computerized records to reflect that taxpayer's business was operating as an LLC, but failing to issue taxpayer a new CRS number, and where, in 2017, the department issued a notice of assessment of taxes and demand for payment for gross receipts tax from taxpayer as the sole proprietor of the business for the 2012 tax year, and where the hearing officer denied taxpayer's protest finding that the sole proprietorship was obligated for the assessment because at the time the tax liability was incurred, the CRS number on file with the department was assigned to taxpayer, as the sole proprietor of the business, rather than as an LLC, the hearing officer erred in denying taxpayer's protest because to the extent the hearing officer's decision imposed liability against taxpayer for failing to register with the department, it is not in accordance with this section, which permits only the person engaging in business to be taxed, and the overwhelming evidence demonstrated that the business was operating as an LLC during the taxable period. Moreover, neither the registration statute, NMSA 1978 § 7-1-12, nor the department's regulations permit the department to impose liability against a taxpayer based solely on its failure to update its registrations. *New Mexico Depo v. N.M. Tax'n & Revenue Dep't,* 2021-NMCA-011.

**Legal incidence of gross receipts tax on seller.** — The statutory language of 7-9-3F NMSA 1978 and this section places the legal incidence of the gross receipts tax on the seller. *United States v. New Mexico*, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Incidence of tax on contractors selling services to United States.** — The legal incidence of the gross receipts tax was on contractors as sellers of services to the United States, not on the federal government. *United States v. New Mexico*, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Tax valid since contractors not agents of United States.** — Since contracts did not authorize contractors to act as agents of the United States in purchasing supplies and materials, application of the gross receipts tax to the contractual transactions for materials and supplies was not unconstitutional. *United States v. New Mexico*, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Tax valid even though increases government's contract costs.** — That the gross receipts tax may increase cost on a contract to the government does not invalidate the tax on the grounds that a state may not directly tax the federal government since its legal incidence falls elsewhere. *United States v. New Mexico*, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Agency exemption.** — Money received by the taxpayer, a property management company, from the property owner as reimbursement for on-site employee expenses was not taxable as gross receipts, because the taxpayer was an agent for the property owner for the purpose of employing and paying the on-site employees employed at the owners property. *Carlsberg Mgt. Co. v. State Taxation & Revenue Dep't*, 1993-NMCA-121, 116 N.M. 247, 861 P.2d 288, but *see* 7-9-3.5 NMSA 1978, which now excludes from tax receipts received solely on behalf of another in a disclosed agency capacity.

**If bank can pass tax on, it is not real taxpayer.** — Since services of maintaining and processing other banks' accounts were not reasonably necessary or incidental to business or functions of national banking association, New Mexico was not prevented by federal law from levying gross receipts tax on association's receipts collected for said services and association could pass tax on to banks for which it performed services and was therefore not the real taxpayer. *First Nat'l Bank v. Commissioner of Revenue*, 1969-NMCA-090, 80 N.M. 699, 460 P.2d 64, cert. denied, 80 N.M. 707, 460 P.2d 72, appeal dismissed, 397 U.S. 661, 90 S. Ct. 1407, 25 L. Ed. 2d 643 (1970).

**Gross receipts tax may be constitutionally imposed on contractor doing work on Indian reservation** in the state if there is no imposition on the sovereignty of the United States or infringement of the Indian tribe's right to self-government. *Tiffany Constr. Co. v. Bureau of Revenue*, 1981-NMSC-057, 96 N.M. 296, 629 P.2d 1225.

**Gross receipts tax upon non-Indians working on reservations valid.** — When the gross receipts tax levied upon non-Indians working on state reservations is nondiscriminatory and does not preclude a possible similar tax by a tribe on activities conducted on its reservation, the Indian right to self-government is not impaired and the tax is valid. *Mescalero Apache Tribe v. O'Cheskey*, 625 F.2d 967 (10th Cir. 1980), cert. denied, 450 U.S. 959, 101 S. Ct. 1417, 67 L. Ed. 2d 383 (1981), *reh'g denied*, 455 U.S. 929, 102 S. Ct. 1296, 71 L. Ed. 2d 474; 459 U.S. 1025, 103 S. Ct. 393, 74 L. Ed. 2d 522 (1982).

**If tax ultimately falls on tribal organization.** — If the economic burden of the gross receipts tax ultimately falls on a tribal organization, even though the legal incidence of the tax falls on the non-Indian contractor with whom the organization contracted to build an Indian school, the imposition of the tax impermissibly impedes the clearly expressed federal interest in promoting the quality and quantity of educational opportunities for Indians by depleting the funds available for the construction of Indian schools. *Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue*, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

**Federal regulatory scheme and policy.** — The comprehensive federal regulatory scheme and the express federal policy of encouraging tribal self-sufficiency in the area of education preclude the imposition of the state gross receipts tax on the construction of school facilities on tribal lands pursuant to a contract between a tribal organization and a non-Indian contracting firm. *Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue*, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

**Sale of cigarettes to non-Indians on Indian reservation.** — Non-Indian did not have a valid agency relationship with an Indian, so as to bar the imposition of gross receipts taxes on the sale of cigarettes to non-Indians on an Indian reservation, since the Indian made no financial contribution to the commencement or operation of the business and all decision-making was in the hands of the taxpayer. *Bien Mur Indian Mkt. Ctr., Inc. v. Taxation & Revenue Dep't*, 1988-NMCA-104, 108 N.M. 355, 772 P.2d 885, *rev'd on other grounds*, 108 N.M. 228, 770 P.2d 873 (1989).

**Federal preemption for services rendered Indians.** — District court properly ordered state tax agency to refund gross receipts taxes paid by a private contractor on services performed on an Indian reservation for a corporation owned by an Indian tribe, in light of the fact that the Indian trader statutes, 25 U.S.C. §§ 261-264 preempted the agency's authority to impose such a tax since the federal trader statutes included services under the scope of "trade". *Laguna Indus., Inc. v. N.M. Taxation & Revenue Dep't*, 1992-NMCA-109, 114 N.M. 644, 845 P.2d 167, *aff'd sum nom. N.M. Taxation & Revenue Dep't v. Laguna Indus., Inc*., 1993-NMSC-025, 115 N.M. 553, 855 P.2d 127.

**Receipts from horse races not exempt.** — The legislature, in enacting the Gross Receipts Tax Act, did not intend to exempt receipts from horse races. There is neither ambiguity nor doubt that the language used in the Gross Receipts Tax Act applies to the receipts of a horse owner paid to him for a winning purse and the receipts of a horse trainer paid to him as his percentage of a winning purse. *Till v. Jones*, 1972-NMCA-046, 83 N.M. 743, 497 P.2d 745, cert. denied, 83 N.M. 740, 497 P.2d 742. *See* Section 7-9-40 NMSA 1978 which now exempts receipts from horse race purses.

**Construction work incidental to "severing" not subject to receipts tax.** — The exemption provided by 7-9-35 NMSA 1978 applied since "severing" was taking place as the development work was performed and none of taxpayer's work was preliminary to or preparatory for "severing"; therefore, receipts from development work, which includes construction, were exempted from the gross receipts tax and taxable under the service tax (resources excise tax) when such construction work was incidental to the "severing." *Patten v. Bureau of Revenue*, 1974-NMCA-051, 86 N.M. 355, 524 P.2d 527.

**Pawnbroker's receipts from sales of pawned chattel** were not exempt or deductible from gross receipts tax as the recoupment of principal, interest, and handling charges attendant to the initial loan transaction. *Wing Pawn Shop v. Taxation & Revenue Dep't*, 1991-NMCA-024, 111 N.M. 735, 809 P.2d 649 (decided on facts existing prior to enactment of Pawnbrokers Act, 56-12-1 NMSA 1978 et seq.)

**Collection agencies gross receipts.** — A collection agency does not include the creditor's portion of the proceeds, nor the taxes it collects on behalf of the creditor, in calculating its commission proceeds, *i.e.*, its gross receipts. Rather, a collection agency pays gross receipts tax only on the commission portion of the debt. The total tax imposed on the debt and charged to the debtor is simply the sum of the creditor's tax and the agency's tax. *Martinez v. Albuquerque Collection Servs., Inc*., 867 F. Supp. 1495 (D.N.M. 1994).

**Nationwide school operating location in state.** — Nationwide technical-vocational school operating a location in New Mexico is subject to the gross receipts tax; the taxable base includes tuition receipts from students in New Mexico for curriculum development, financial aid services, and job placement services. *ITT Educ. Serv. v. Taxation & Revenue Dep't*, 1998-NMCA-078, 125 N.M. 244, 959 P.2d 969.

**Fees of management service company.** — Fees paid to a hospital management services company as reimbursement for salaries and expenses of management personnel provided by the company were subject to the gross receipts tax. *Brim Healthcare, Inc. v. State Taxation & Revenue Dep't*, 1995-NMCA-055, 119 N.M. 818, 896 P.2d 498 (decided under prior law).

## III. OUT-OF-STATE.

**A substantial nexus was created through activities of a sister corporation.** — Where taxpayer had no physical presence in New Mexico other than through stores in New Mexico owned by a sister corporation; and the sister corporation promoted taxpayer through sales of gift cards that were redeemable at taxpayer and that displayed taxpayer's web address, shared customer's email addresses with taxpayer, sold memberships in a shared loyalty program that gave customers a discount on purchases from taxpayer, accepted returns from taxpayer's customers in exchange for store credit which policy taxpayer advertised to its customers, and used the parent corporation's trademark which taxpayer also used, the sister corporation's activities in New Mexico on behalf of taxpayer were significantly associated with taxpayer's ability to establish and maintain a market for its sales in New Mexico and were sufficient to create a substantial nexus between taxpayer and New Mexico which permitted New Mexico to impose the gross receipts tax on taxpayer's sales to customers in New Mexico without offending the federal Commerce Clause. *N.M. Taxation & Revenue Dep't v. Barnesandnoble.com, L.L.C*., 2013-NMSC-023, *aff'g* 2012-NMCA-063, 283 P.3d 298.

**Use of a trademark to establish a market in New Mexico creates a substantial nexus.** — Where taxpayer was engaged in the business of selling books online; taxpayer did not own or lease property in New Mexico and did not have retail stores or sales agents or employees in New Mexico; taxpayer's parent corporation had three bookstores in New Mexico that used the parent corporation's trademark; taxpayer used the trademark on its website; and the stores sold gift cards that could be redeemed at the stores or through the taxpayer's website and loyalty program memberships that entitled customers to discounts at the stores or through taxpayer's website, taxpayer's use of shared marketing, name recognition and trademarks established a market for taxpayer in New Mexico which created a substantial nexus between taxpayer and New Mexico sufficient to support the imposition of the gross receipts tax on taxpayer. *N.M. Taxation & Revenue Dep't v. Barnesandnoble.com, LLC*, 2012-NMCA-063, 283 P.3d 298, cert. granted, 2012-NMCERT-006.

**Destination principle.** — The destination principle, which taxes the sale or use of goods that cross state lines at their destination, applies to determine whether an interstate transaction is a taxable sale under the New Mexico gross receipts tax laws. *Dell Catalog Sales, L.P. v. Taxation and Revenue Dept*., 2009-NMCA-001, 145 N.M. 419, 199 P.3d 863, cert. denied, 2008-NMCERT-007, cert. denied, 129 S. Ct. 1616, 173 L.Ed.2d 1030.

**Where the taxpayer sold computers by mail, telephone and internet orders from its facilities in Texas to New Mexico customers;** the taxpayer did not own or lease property in New Mexico; the taxpayer did not have retail stores, sales agents or employees in New Mexico; title to the computers transferred from the taxpayer to the customer upon shipment from the taxpayer's facility in Texas; and the taxpayer retained the risk of loss until delivery; and the computers were shipped by common carrier selected by the taxpayer, the taxpayer's activities constituted taxable sales in New Mexico because the actual consumption and use of the computers occurred in New Mexico. *Dell Catalog Sales, L.P. v. Taxation and Revenue Dept*., 2009-NMCA-001, 145 N.M. 419, 199 P.3d 863, cert. denied, 2008-NMCERT-007, cert. denied, 129 S. Ct. 1616, 173 L.Ed.2d 1030.

**Substantial nexus.** — Where the taxpayer sold computers by mail, telephone, and internet orders from its facilities in Texas to New Mexico customers; the taxpayer did not own or lease property in New Mexico; the taxpayer did not have retail stores, sales agents or employees in New Mexico; the taxpayer contracted with a third party to provide in-home service repairs on the computers in New Mexico; and the non-sales activities of the third party in New Mexico were an important factor in establishing and maintaining a market for the taxpayer's computers, the taxpayer had a substantial nexus with New Mexico and the imposition of gross receipts tax on the taxpayer did not violate the Commerce Clause. *Dell Catalog Sales, L.P. v. Taxation and Revenue Dept*., 2009-NMCA-001, 145 N.M. 419, 199 P.3d 863, cert. denied, 2008-NMCERT-007, cert. denied, 129 S. Ct. 1616, 173 L.Ed.2d 1030.

**Mere contracts are not commerce** at all, neither intrastate nor interstate. *Baskin-Robbins Ice Cream Co. v. Revenue Div*., 1979-NMCA-098, 93 N.M. 301, 599 P.2d 1098.

**Tax on items in interstate commerce to be fair and nondiscriminatory.** — To be sustained against a claim that a state-imposed tax runs afoul of the commerce clause of the federal constitution, a tax upon items connected with interstate commerce must: (1) be applied to an activity with a substantial nexus with the taxing state; (2) be fairly apportioned; (3) not discriminate against interstate commerce; and (4) be fairly related to the services provided by the state. *Pittsburgh & Midway Coal Mining Co. v. Revenue Div*., 1983-NMCA-019, 99 N.M. 545, 660 P.2d 1027, appeal dismissed, 464 U.S. 923, 104 S. Ct. 323, 78 L. Ed. 2d 296 (1983).

**New Mexico may not tax income and gross receipts of Indians** residing on a reservation when the income and gross receipts involved are derived solely from activities within the reservation. *Hunt v. O'Cheskey*, 1973-NMSC-068, 85 N.M. 388, 512 P.2d 961.

**Tax on gross receipts from sales in other states unconstitutional.** — Tax levied on the gross receipts from the sales of tangible personal property in another state is an impermissible burden on commerce. *Evco v. Jones*, 409 U.S. 91, 93 S. Ct. 349, 34 L. Ed. 2d 325 (1972).

**Place services rendered.** — To determine whether receipts from services are subject to gross receipts tax, the focus must be on what services the customers are contracting for and where those services are taking place. Simply because activity necessary to complete the services takes place out-of-state does not mean that the services provided are immune from New Mexico's gross receipts tax. *Rauscher, Pierce, Refsnes, Inc. v. Taxation & Revenue Dep't*, 2000-NMCA-065, 129 N.M. 404, 9 P.3d 648, *aff'd* 2002-NMSC-013, 132 N.M. 226, 46 P.3d 687.

**Tax incurred at point of retail sale.** — Where utilities retail their electrical energy through interstate lines only to consumers in Arizona, for that reason they incur no liability to New Mexico for its gross receipts tax, which is incurred at the point of retail sale. *Arizona v. New Mexico*, 425 U.S. 794, 96 S. Ct. 1845, 48 L. Ed. 2d 376 (1976).

**Discrimination between broadcast and outdoor advertising held rational.** — When regulations exempted broadcasting advertisement displayers in New Mexico from the tax imposed upon taxpayer (operator of a billboard service), there was discrimination in the treatment of these different media forms, but the burden was upon the taxpayer to negative every conceivable basis which might support the discriminatory classification, because of the implied rational basis underlying every tax statute, *i.e.*, that the state has the right, power and duty to raise the necessary funds for its public purposes, and it was held that there was a rational basis for the state to discriminate between the broadcast industry and the outdoor advertising industry in the taxation of displays of national messages. *Markham Adver. Co. v. Bureau of Revenue*, 1975-NMCA-071, 88 N.M. 176, 538 P.2d 1198, cert. denied, 88 N.M. 318, 540 P.2d 248.

**Since broadcasters generally engage in interstate transmission of their messages,** and even if broadcasts by smaller stations might not always cross interstate lines, yet the potential exists for radio and television waves to deliver transitory, interstate communications, for this reason, national advertising by local broadcasting stations has long been held exempt from state taxation. *Markham Adver. Co. v. Bureau of Revenue*, 1975-NMCA-071, 88 N.M. 176, 538 P.2d 1198, cert. denied, 88 N.M. 318, 540 P.2d 248.

**While billboard advertising takes place only in state.** — Taxpayer's service of posting messages for national companies on billboards located in New Mexico was being taxed for displaying an activity taking place only in this state and not for advertising; thus it was intrastate in character, and the gross receipts tax imposed on it did not constitute an undue burden on interstate commerce in violation of the federal constitution. *Markham Adver. Co. v. Bureau of Revenue*, 1975-NMCA-071, 88 N.M. 176, 538 P.2d 1198, cert. denied, 88 N.M. 318, 540 P.2d 248.

**If multiple taxation shown, tax would likely be unconstitutional.** — The activities of taxpayer, situated and performing services (posting billboards) in New Mexico, were not within the taxing authority of any other state, and therefore no multiple taxation was possible; the instant tax could be declared invalid upon a showing by the taxpayer that multiple taxation would be likely to result and would be likely to unduly burden interstate

commerce, but neither showing was made, and therefore, no basis was demonstrated upon which a claim of potential multiple taxation as to this taxpayer could be found. *Markham Adver. Co. v. Bureau of Revenue*, 1975-NMCA-071, 88 N.M. 176, 538 P.2d 1198, cert. denied, 88 N.M. 318, 540 P.2d 248.

**Traffic between states absent in franchise agreement.** — If none of the "activities" of the franchise agreement are serviced by mail, telephone correspondence or by any employees of taxpayer, no intercourse or traffic between this state and another is found. *Baskin-Robbins Ice Cream Co. v. Revenue Div*., 1979-NMCA-098, 93 N.M. 301, 599 P.2d 1098.

**Tax constitutional on coal sales to out-of-state buyers.** — The imposition of gross receipt taxes on proceeds from the sales of coal to out-of-state buyers does not impermissibly interfere with the commerce clause of the federal constitution. *Pittsburgh & Midway Coal Mining Co. v. Revenue Div*., 1983-NMCA-019, 99 N.M. 545, 660 P.2d 1027, appeal dismissed, 464 U.S. 923, 104 S. Ct. 323, 78 L. Ed. 2d 296.

**Tax applicable to foreign franchisor.** — Because franchisor has no payroll, real property, personnel or offices located in this state, but it does furnish signs which must be leased or purchased by its dealers, its sales of tangible property and its granting of exclusive franchises constitute engaging in intrastate business in this state, and the franchise fees received therefrom are subject to the gross receipts tax. *AAMCO Transmissions v. Taxation & Revenue Dep't*, 1979-NMCA-092, 93 N.M. 389, 600 P.2d 841, cert. denied, 93 N.M. 205, 598 P.2d 1165 (superceded by statute, *Sonic Indus., Inc. v. State*, 2000-NMCA-087, 129 N.M. 657, 11 P.3d 1219).

**Tax applicable to franchise fees.** — The imposition of gross receipts tax on franchise fees received from this state's dealers does not violate the due process clause or commerce clause and is proper since the franchisor is in the business of selling franchises, developing and marketing parts, receiving its primary source of income from the sale of franchises, collecting a percentage of franchisee's gross receipts as a lease payment for use of the trademark and trade name and where its leased trademarks and trade names and their businesses are protected by the laws of this state; thus, franchisor is engaged in business in this state. *AAMCO Transmissions v. Taxation & Revenue Dep't*, 1979-NMCA-092, 93 N.M. 389, 600 P.2d 841, cert. denied, 93 N.M. 205, 598 P.2d 1165 (superceded by statute, *Sonic Indus., Inc. v. State*, 2000-NMCA-087, 129 N.M. 657, 11 P.3d 1219).

**Foreign corporation's opinions sent to foreign clients not taxable.** — Opinions by an Oklahoma corporation concerning subsurface geological formations of the earth's crust beneath New Mexico delivered to clients in Oklahoma and other states were not in intrastate commerce in New Mexico and the income from such opinions was not taxable in New Mexico. *Seismograph Serv. Corp. v. Bureau of Revenue*, 1956-NMSC-028, 61 N.M. 16, 293 P.2d 977.

**Law reviews.** — For comment, "Taxation of National Banks: A Novel Approach in the New Mexico Courts," see 10 Nat. Resources J. 615 (1970).

For article, "The Deductibility for Federal Income Tax Purposes of the New Mexico Gross Receipts Tax Paid on the Purchase of a Newly Constructed Home," see 13 N.M.L. Rev. 625 (1983).

## 7-9-4.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 41, § 10 repealed 7-9-4.1 NMSA 1978, as enacted by Laws 1986, ch. 20, § 67, relating to a credit to be deducted from the gross receipts tax, effective July 1, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

## 7-9-4.2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1994, ch. 45, § 8A repealed 7-9-4.2 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 1, § 3, relating to a temporary credit for the gross receipts tax, effective July 1, 1994. For provisions of former section, *see* the 1993 NMSA 1978 on *NMOneSource.com.*

## 7-9-4.3. Imposition and rate of tax; denomination as "governmental gross receipts tax".

For the privilege of engaging in certain activities by governments, there is imposed on every agency, institution, instrumentality or political subdivision of the state, except any school district and an entity licensed by the department of health, other than a hospital, that is principally engaged in providing health care services, an excise tax of five percent of governmental gross receipts. The tax imposed by this section shall be referred to as the "governmental gross receipts tax".

**History:** 1978 Comps., § 7-9-4.1, enacted by Laws 1991, ch. 8, § 2; 1992, ch. 49, § 1; 1992, ch. 100, § 2; 1993, ch. 332, § 1; 1993, ch. 352, § 1; 2019, ch. 270, § 27.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1991, ch. 8, § 2 enacted this section as 7-9-4.1 NMSA 1978, but, since a section with that code number had already been enacted, this section was compiled as 7-9-4.3 NMSA 1978.

**The 2019 amendment,** effective July 1, 2019, excluded hospitals from "entities licensed by the department of health" that are exempt from paying governmental gross receipts tax; and after "department of health", added "other than a hospital".

**The 1993 amendment,** effective July 1, 1993, inserted "school district and any" in the first sentence.

Laws 1993, ch. 332, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 1993, ch. 352, § 1. *See* 12-1-8 NMSA 1978.

**The 1992 amendment,** effective July 1, 1992, substituted all of the present language of the first sentence beginning with "every agency" for "the state of New Mexico and any agency, institution, instrumentality, or political subdivision thereof an excise tax of five percent of governmental gross receipts".

## 7-9-5. Presumption of taxability.

A. To prevent evasion of the gross receipts tax and to aid in its administration, it is presumed that all receipts of a person engaging in business are subject to the gross receipts tax. A person engaged solely in transactions specifically exempt under the provisions of the Gross Receipts and Compensating Tax Act shall not be required to register or file a return under that act.

B. If receipts from nontaxable charges for mobile telecommunications services are aggregated with and not separately stated from taxable charges for mobile telecommunications services, the charges for nontaxable mobile telecommunications services shall be subject to gross receipts tax unless the home service provider can reasonably identify nontaxable charges in its books and records that are kept in the regular course of business. For the purposes of this subsection, "charges for mobile telecommunications services", "home service provider" and "mobile telecommunications services" have the meanings given in the federal Mobile Telecommunications Sourcing Act.

C. A marketplace provider engaging in business in this state is not liable for amounts of gross receipts tax collected incorrectly due to the marketplace provider reasonably relying on erroneous information provided by the seller.

**History:** 1953 Comp., § 72-16A-5, enacted by Laws 1966, ch. 47, § 5; 2002, ch. 18, § 3; 2019, ch. 270, § 28.

**ANNOTATIONS**

**Cross references.** — For the federal Mobile Telecommunications Sourcing Act, *see* 4 U.S.C.S. § 116 et seq.

**The 2019 amendment,** effective July 1, 2019, provided that a marketplace provider engaging in business in this state is not liable for gross receipts tax collected incorrectly due to the marketplace provider reasonably relying on erroneous information provided by the seller; and added Subsection C.

**The 2002 amendment,** effective August 1, 2002, added the Subsection A designation; made a minor stylistic change in Subsection A; and added Subsection B.

**Taxpayer must prove deduction proper.** — Any assessment of taxes by the taxation and revenue department is presumed to be correct and, in protesting the assessment of taxes, taxpayer has the burden of proving the deductions were proper. In reviewing, courts will reverse the department's decision only if it is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, or not supported by substantial evidence. *Arco Materials, Inc. v. State Taxation & Revenue Dep't*, 1994-NMCA-062, 118 N.M. 12, 878 P.2d 330, *rev'd on other grounds sub nom. Blaze Constr. Co. v. Taxation & Revenue Dep't*, 1994-NMSC-110, 118 N.M. 647, 884 P.2d 803, cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

**Gross receipts to owner and trainer from horse races taxable.** — The legislature, in enacting the Gross Receipts Tax Act, did not intend to exempt receipts from horse races. There is neither ambiguity nor doubt that the language used in the Gross Receipts Tax Act applies to the receipts of a horse owner paid to him for a winning purse and the receipts of a horse trainer paid to him as his percentage of a winning purse. *Till v. Jones*, 1972-NMCA-046, 83 N.M. 743, 497 P.2d 745, cert. denied, 83 N.M. 740, 497 P.2d 742. *See* Section 7-9-40 NMSA 1978 which now exempts receipts from horse race purses.

**Application of presumption.** — A hearing officer's interpretation of the term "broker" and the court of appeals' affirmance of that interpretation is viewed in light of the presumption that "all receipts of a person engaging in business are subject to the gross receipts tax" under the provisions of this section. *Rauscher, Pierce, Refsnes, Inc. v. Taxation & Revenue Dep't*, 2002-NMSC-013, 132 N.M. 226, 46 P.3d 687.

**Evidence required.** — When the corporation contracted with an out-of-state buyer for the corporation to destroy munitions, it was entitled to the gross receipts deduction, and the hearing officer could not properly determine that use or delivery took place within the state without some affirmative evidence in the record to support that conclusion. *TPL, Inc. v. N.M. Taxation & Revenue Dep't*, 2003-NMSC-007, 133 N.M. 447, 64 P.3d 474.

**Nationwide school operating location in state.** — Nationwide technical-vocational school operating a location in New Mexico is subject to the gross receipts tax; the taxable base includes tuition receipts from students in New Mexico for curriculum development, financial aid services, and job placement services. *ITT Educ. Serv. v. Taxation & Revenue Dep't*, 1998-NMCA-078, 125 N.M. 244, 959 P.2d 969.

**Standard of review on appeal.** — Department's gross receipts tax assessment can only be reversed by the court of appeals if arbitrary or capricious or there is an abuse of discretion, such that it is not supported by substantial evidence or it is otherwise not in accordance with law. *ITT Educ. Serv. v. Taxation & Revenue Dep't*, 1998-NMCA-078, 125 N.M. 244, 959 P.2d 969.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Reusable soft drink bottles as subject to sales or use taxes, 97 A.L.R.3d 1205.

## 7-9-6. Separately stating the gross receipts tax.

A. Taxpayers subject to the Gross Receipts and Compensating Tax Act, when billing a customer, shall separately state the amount of tax associated with the transaction or provide a statement affirmatively indicating that the gross receipts tax is included in the amount billed.

B. When the gross receipts tax is stated separately on the books of the seller or lessor, and if the total amount of tax that is stated separately on transactions reportable within one reporting period is in excess of the amount of gross receipts tax otherwise payable on the transactions on which the tax was stated separately, the excess amount of tax stated on the transactions within that reporting period shall be included in gross receipts.

**History:** 1953 Comp., § 72-16A-6, enacted by Laws 1966, ch. 47, § 6; 1970, ch. 28, § 1; 2019, ch. 270, § 29.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, required taxpayers subject to the gross receipts and compensating tax, when billing a customer, to separately state the amount of the tax associated with the transaction; and added a new Subsection A and subsection designation "B".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Reusable soft drink bottles as subject to sales or use taxes, 97 A.L.R.3d 1205.

## 7-9-7. Imposition and rate of tax; denomination as "compensating tax".

A. For the privilege of making taxable use of tangible personal property in New Mexico, there is imposed on the person using the property an excise tax equal to five percent prior to July 1, 2023 and four and seven-eighths percent beginning July 1, 2023, except as provided in Subsection G of this section, of the value of tangible property that was:

(1) manufactured by the person using the property in the state; or

(2) acquired in a transaction for which the seller's receipts were not subject to the gross receipts tax.

B. For the purpose of Subsection A of this section, value of tangible personal property shall be the adjusted basis of the property for federal income tax purposes determined as of the time of acquisition or introduction into this state or of conversion of the property to taxable use, whichever is later. If no adjusted basis for federal income tax purposes is established for the property, a reasonable value of the property shall be used.

C. For the privilege of making taxable use of a license or franchise in New Mexico, there is imposed on the person using the license or franchise an excise tax equal to the rate provided in Subsection A or G of this section, as applicable, against the value of the license or franchise in its use in this state. The department by rule, ruling or instruction shall fairly apportion, where appropriate, the value of a license or franchise to its value in use in New Mexico. The tax shall apply only to the value of a license or franchise used in New Mexico where the license or franchise was acquired in a transaction the receipts from which were not subject to the gross receipts tax.

D. For the privilege of making taxable use of services in New Mexico, there is imposed on the person using the services an excise tax equal to the rate provided in Subsection A or G of this section, as applicable, against the value of the services at the time the services were performed or the product of the service was acquired. For use of services to be a taxable use pursuant to this subsection, the services shall have been acquired in a transaction the receipts from which were not subject to the gross receipts tax.

E. For purposes of this section, receipts are not subject to the gross receipts tax if the person responsible for the gross receipts tax on those receipts lacked nexus in New Mexico or the receipts were exempt or allowed to be deducted pursuant to the Gross Receipts and Compensating Tax Act.

F. The tax imposed by this section shall be referred to as the "compensating tax".

G. If the gross receipts tax is increased to five and one-eighth percent pursuant to Subsection C of Section 7-9-4 NMSA 1978, the rate of the compensating tax shall be five and one-eighth percent.

H. As used in this section, "taxable use" means use by a person who acquires tangible personal property, a license, a franchise or a service, and the use of which would not have qualified for an exemption or deduction pursuant to the Gross Receipts and Compensating Tax Act.

**History:** 1953 Comp., § 72-16A-7, enacted by Laws 1966, ch. 47, § 7; 1969, ch. 144, § 3; 1978, ch. 151, § 3; 1981, ch. 37, § 10; 1983, ch. 213, § 16; 1986, ch. 20, § 64; 1990

(1st S.S.), ch. 1, § 4; 1993, ch. 31, § 2; 1995, ch. 50, § 1; 2010 (2nd S.S.), ch. 7, § 10; 2011, ch. 175, § 1; 2019, ch. 270, § 30; 2021, ch. 65, § 12; 2022, ch. 47, § 13.

## ANNOTATIONS

**The 2022 amendment,** effective July 1, 2022, reduced the rates of the compensating tax, provided for an increase in the compensating tax if gross receipts tax revenues decrease; in Subsection A, after "tax equal to five", deleted "and one-eighth", and added "prior to July 1, 2023 and four and seven-eighths percent beginning July 1, 2023, except as provided in Subsection G of this section"; in Subsections C and D, after "provided in Subsection A", added "or G"; and added a new Subsection G and redesignated former Subsection G as Subsection H.

**The 2021 amendment,** effective July 1, 2021, clarified language related to excise taxes on the use of personal property, on the use of a license or franchise, and on the use of certain services; in Subsection A, after "privilege of", deleted "using" and added "making a taxable use of", and after "tangible", added "personal", in Paragraph A(2), after "acquired", deleted "inside or outside of this state as the result of a transaction with a person located outside this state that would have been subject to the gross receipts tax had the tangible personal property been acquired from a person with nexus with New Mexico" and added "in a transaction for which the seller's receipts were not subject to the gross receipts tax"; in Subsection B, after "tangible", added "personal", after "conversion", added "of the property", and after "to", added "taxable"; in Subsection C, after "privilege of", deleted "using" and added "making taxable use of", after "in use in New Mexico", deleted "For use of a license or franchise to be taxable under this subsection, the value of the license or franchise shall be acquired inside or outside this state as the result of a transaction with a person located outside this state that would have been subject to the gross receipts tax had the license or franchise been acquired from a person with nexus with this state" and added the remainder of the subsection; in Subsection D, after "privilege of", deleted "using" and added "making taxable use of", after "at the time", added "the services were performed", after "services to be", deleted "taxable under" and added "a taxable use pursuant to", and after "shall have been", deleted "performed by a person outside this state and the product of the service was acquired inside or outside this state as the result of a transaction with a person located outside this state that would have been subject to the gross receipts tax had the service or product of the service been acquired from a person with nexus with this state" and added "acquired in a transaction the receipts from which were not subject to the gross receipts tax"; added new Subsection E and redesignated former Subsection E as Subsection F; and added Subsection G.

**The 2019 amendment,** effective July 1, 2021, provided an excise tax for the privilege of using a license or franchise in New Mexico, and increased the excise tax rate for the privilege of using services in New Mexico; in Subsection A, deleted Paragraph A(3); added a new Subsection C and redesignated former Subsections C and D as Subsections D and E, respectively; and in Subsection D after "tax equal to", deleted "five percent of" and added "the rate provided in Subsection A of this section against",

and after "services shall have been", deleted "rendered as a result of a transaction that was not initially subject to the gross receipts tax but which transaction, because of the buyer's subsequent use of the services, should have been subject to the gross receipts tax", and added the remainder of the subsection.

**The 2011 amendment,** effective June 17, 2011, imposed the compensating tax on property acquired inside or outside New Mexico.

**The 2010 (2nd S.S.) amendment,** effective July 1, 2010, in Subsection A, in the introductory sentence, added "and one-eighth"; and in Subsection A(2), after "acquired", added "as a result of a transaction with a person located"; after "outside this state", deleted "as the result of a transaction"; and after "gross receipts tax had", deleted "it occurred within this state" and added the remainder of the sentence.

**The 1995 amendment,** effective July 1, 1995, designated the former second paragraph of Subsection A as Subsection B and rewrote the provision which read "For the purpose of this subsection Value of tangible property shall be determined as of the time of acquisition or introduction into this state or of conversion to use, whichever is later", and redesignated former Subsections B and C as Subsections C and D.

**The 1993 amendment,** effective July 1, 1993, in Subsection A, inserted "tangible" preceding "property" in three places and substituted "using the property" for "using property" in the introductory paragraph.

**The 1990 amendment,** effective July 1, 1990, substituted "five percent" for "four and three-fourths percent" in the introductory paragraph of Subsection A and in the first sentence of Subsection B.

**Distribution of sales catalogues.** — Where the taxpayer sold computers by mail, telephone, and internet orders from its facilities in Texas to New Mexico customers; the taxpayer created, printed and prepared catalogues outside New Mexico and mailed the catalogues from outside New Mexico to potential New Mexico customers; and the taxpayer retained the right to determine where and how the catalogues were distributed in New Mexico, the taxpayer's distribution of sales catalogues in New Mexico constituted a use of the catalogues in New Mexico and was subject to the compensating tax. *Dell Catalog Sales, L.P. v. Taxation and Revenue Dept*., 2009-NMCA-001, 145 N.M. 419, 199 P.3d 863, cert. denied, 2008-NMCERT-007, cert. denied, 129 S. Ct. 1616, 173 L.Ed.2d 1030.

**The use or compensating tax is an excise tax** and not an ad valorem tax. *Robert E. McKee, Gen. Contractor Inc. v. Bureau of Revenue*, 1957-NMSC-082, 63 N.M. 185, 315 P.2d 832 (decided under former law).

**Any reasonable tax classification constitutional.** — It is for the legislature to adopt classifications for the imposition of excise taxes as it may deem proper and any reasonable classification cannot be held to deny equal protection or due process.

*Edmunds v. Bureau of Revenue*, 1958-NMSC-112, 64 N.M. 454, 330 P.2d 131 (decided under former law).

**"Compensating tax" and nontaxable transaction certificates.** — This section is designed to impose a compensating tax on transactions such as one which initially would have been subject to the gross receipts tax were it not for the delivery of the nontaxable transaction certificates by the buyer of the materials or services pursuant to Sections 7-9-51 or 7-9-52 NMSA 1978. *Continental Inn of Albuquerque, Inc. v. N.M. Taxation & Revenue Dep't*, 1992-NMCA-030, 113 N.M. 588, 829 P.2d 946.

**Use of nontaxable transaction certificates.** — The use of nontaxable transaction certificates, not the taking of the deduction, subjects a taxpayer to the compensating tax. *Continental Inn of Albuquerque, Inc. v. N.M. Taxation & Revenue Dep't*, 1992-NMCA-030, 113 N.M. 588, 829 P.2d 946.

**Intangible property not subject to tax.** — Laws 1993, Chapter 31, § 2 amended the definition of property in compensating tax provisions so that it does not include intangible property. *Kmart Corp. v. N.M. Taxation & Revenue Dep't*., 2006-NMSC-006, 139 N.M. 172, 131 P.3d 22

**Foreign transaction subject to tax if receipts tax would apply to domestic.** — Supreme court, although finding no need to interpret this section in the disposition of the case before it, indicated that this section appeared to impose a compensating or use tax on property acquired out-of-state in an isolated transaction and used in New Mexico only where the transaction would have been subject to a gross receipts tax if the transaction had taken place in New Mexico. *Union Cnty. Feedlot, Inc. v. Vigil*, 1968-NMCA-088, 79 N.M. 684, 448 P.2d 485.

**Tax applicable to reimbursements for property used under government contracts.** — Application of the compensating tax to reimbursements for property purchased out-of-state and brought into New Mexico for use under government contracts was valid. *United States v. New Mexico*, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Transportation costs excluded from sales price when paid by buyer.** — Under a regulation promulgated by the bureau (now department), in computing the compensating tax, transportation costs should be excluded from the sales price of the property when paid to the carrier by the buyer. Thus, when, under the sales contract between the taxpayer (manufacturer) and the buyer, an agency relationship existed whereby the taxpayer was authorized to pay transportation charges both on materials sold to the buyer and on materials returned by it for credit or repair, the regulation specifically excluded from the sales price of the property the transportation costs, which were paid to the carrier by the buyer, since the buyer reimbursed the manufacturer for transportation costs. *Western Elec. Co. v. N.M. Bureau of Revenue*, 1976-NMCA-047, 90 N.M. 164, 561 P.2d 26.

**Effect of buyer's voluntary payment of tax.** — A corporation engaged in the business of selling property in New Mexico was liable for payment of the state's gross receipts tax on the receipts of sales. The voluntary payment of compensating tax by the buyer did not relieve the seller of liability for the gross receipts tax otherwise collectible. *Proficient Food Co. v. N.M. Taxation & Revenue Dep't*, 1988-NMCA-042, 107 N.M. 392, 758 P.2d 806, cert. denied, 107 N.M. 308, 756 P.2d 1203.

**Contractor furnishing purchased materials to federal government liable for tax.** — Since general contractor was required by contracts with federal government to furnish materials to be used on federal reservation in New Mexico, the contractor purchased the materials, became the owner thereof, and was liable for the use or compensating tax under § 72-17-1, 1953 Comp. et seq. (now repealed); and this was not taxation of government land or other government property. *Robert E. McKee, Gen. Contractor, Inc. v. Bureau of Revenue*, 1957-NMSC-082, 63 N.M. 185, 315 P.2d 832.

**Existence of promissory note does not make sale executory.** — When purchase agreement was entered into out-of-state whereby purchaser would pay a deposit and make a promissory note for the balance, the agreement was not an executory document and failure to make any of the subsequent payments after the deposit did not render it executory. Therefore, the use of the article purchased was taxable pursuant to Subsection A(2). *Garfield Mines, Ltd. v. O'Cheskey*, 1973-NMCA-128, 85 N.M. 547, 514 P.2d 304.

**Distribution of advertising materials.** — New Mexico retailer who contracted with out-of-state advertising coordinators, but exercised control over its distribution contractors in New Mexico, "used" advertising materials distributed in the state within the meaning of this section. *Phillips Mercantile Co. v. N.M. Taxation & Revenue Dep't*, 1990-NMCA-006, 109 N.M. 487, 786 P.2d 1221.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Sales or use tax upon containers or packaging materials purchased by manufacturer or processor for use with goods he distributes, 4 A.L.R.4th 581.

Sales and use taxes on sale or lease of mailing or customer list, 80 A.L.R.4th 1126.

## 7-9-7.1. Department barred from taking collection actions with respect to certain tax liabilities.

The department shall take no action to enforce collection of gross receipts tax for a tax period prior to July 1, 2019 on persons engaging in business if that person:

A. lacked physical presence in the state; and

B. did not report taxable gross receipts prior to July 1, 2019.

**History:** 1978 Comp., § 7-9-7.1, enacted by Laws 1993, ch. 45, § 1; 1994, ch. 34, § 1; 1995, ch. 50, § 2; 2019, ch. 270, § 31.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, prohibited the department from taking action to enforce collection of gross receipts tax with respect to certain tax liabilities, and removed provisions related to the prohibition of taking action to enforce the collection of compensating tax with respect to certain tax liabilities; in the section heading, deleted "compensating"; and deleted former Subsections A and B and added the introductory clause and new Subsections A and B.

## 7-9-7.2. Authority to establish standards for certified service providers.

A. The secretary is authorized to provide information, upon which taxpayers may rely, as to the taxability of gross receipts from particular transactions, including taxability matrices, and is further authorized to establish standards for the certification of certified service providers that offer software-based systems to enable taxpayers to properly determine the taxability of gross receipts from particular transactions.

B. As used in this section, "certified service provider" means "certified service provider" as defined in the Streamlined Sales and Use Tax Administration Act [7-5A-1 to 7-5A-9 NMSA 1978].

**History:** Laws 2019, ch. 270, § 37

**ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 270, § 60 made Laws 2019, ch. 270, § 37 effective July 1, 2019.

## 7-9-8. Presumption of taxability and value.

A. To prevent evasion of the compensating tax and the duty to collect it, it is presumed that property bought or sold by any person for delivery into this state is bought or sold for a taxable use in this state.

B. In determining the amount of compensating tax due on the use of property, it is presumed, in the absence of preponderant evidence of another value, that the value means the total amount of money or the reasonable value of other consideration paid for property exclusive of any type of time-price differential. However, in an exchange in which the amount of money paid does not represent the value of the property or property and service purchased, the compensating tax shall be imposed on the reasonable value of the property or property and service purchased.

C. In determining the amount of compensating tax due on the use of a service, it is presumed, in the absence of preponderant evidence of another value, that the value means the total amount of money or the reasonable value of other consideration paid for the service exclusive of any type of time-price differential. However, in an exchange in which the amount paid does not represent the value of the service purchased, the compensating tax shall be imposed on the reasonable value of the service purchased.

**History:** 1953 Comp., § 72-16A-8, enacted by Laws 1966, ch. 47, § 8; 1969, ch. 144, § 4; 1972, ch. 85, § 2.

## 7-9-9. Liability of user for payment of compensating tax.

Any person in New Mexico using property on the value of which compensating tax is payable but has not been paid is liable to the state for payment of the compensating tax, but this liability is discharged if the buyer has paid the compensating tax to the seller for payment over to the department.

**History:** 1953 Comp., § 72-16A-9, enacted by Laws 1966, ch. 47, § 9; 1983, ch. 220, § 2; 1990, ch. 41, § 1.

**ANNOTATIONS**

**The 1990 amendment,** effective July 1, 1990, substituted "department" for "division" at the end of the section and made a minor stylistic change.

**Due process not violated by actions of tax officials.** — Department did not violate taxpayer's right to due process by: (1) making an assessment before the taxpayer provided pertinent records; (2) targeting the taxpayer because it had no history of reporting compensating taxes; and (3) delaying 18 months from the time of an audit notice to the time of the field audit. *Vivigen, Inc. v. Minzner*, 1994-NMCA-027, 117 N.M. 224, 870 P.2d 1382.

**No offset for prior years investment credits.** — A taxpayer was not entitled to an offset in the amount it owed for compensating taxes for investment credits it had made in previous years, because it had not claimed the credits within the one-year statute of limitations period. Although the taxpayer argued that it was entitled to an offset under the doctrine of equitable recoupment, a taxpayer is not entitled to seek a credit after the statute-of-limitations period has expired unless the state is imposing a tax on the same taxable event on a ground that is inconsistent with the original payment by the taxpayer. *Vivigen, Inc. v. Minzner*, 1994-NMCA-027, 117 N.M. 224, 870 P.2d 1382.

## 7-9-10. Agents for collection of compensating tax; duties.

A. Every person carrying on or causing to be carried on any activity within this state attempting to exploit New Mexico's markets who sells property or sells property and service for use in this state and who is not subject to the gross receipts tax on receipts

from these sales shall collect the compensating tax from the buyer and pay the tax collected to the department. "Activity", for the purposes of this section, includes but is not limited to engaging in any of the following in New Mexico: maintaining an office or other place of business; soliciting orders through employees or independent contractors; soliciting orders through advertisements placed in newspapers or magazines published in New Mexico or advertisements broadcast by New Mexico radio or television stations, soliciting orders through programs broadcast by New Mexico radio or television stations or transmitted by cable systems in New Mexico; canvassing, demonstrating, collecting money, warehousing or storing merchandise or delivering or distributing products as a consequence of an advertising or other sales program directed at potential customers. "Activity", for the purposes of this section, does not include having a world wide web site as a third-party provider on a computer physically located in New Mexico but owned by another nonaffiliated person, and "activity" does not include using a nonaffiliated third-party call center to accept and process telephone or electronic orders of tangible personal property or licenses primarily from non-New Mexico buyers, which orders are forwarded to a location outside New Mexico for filling, or to provide services primarily to non-New Mexico customers.

B. To ensure orderly and efficient collection of the public revenue, if any application of this section is held invalid, the section's application to other situations or persons shall not be affected.

**History:** 1953 Comp., § 72-16A-10, enacted by Laws 1966, ch. 47, § 10; 1983, ch. 220, § 3; 1990, ch. 41, § 2; 1998, ch. 92, § 5; 2000, ch. 101, § 2; 2001, ch. 65, § 2.

**ANNOTATIONS**

**The 2001 amendment,** effective March 16, 2001, inserted "or to provide services primarily to non-New Mexico customers" at the end of Subsection A.

**The 2000 amendment,** effective July 1, 2000, added the phrase beginning "and 'activity' does not include using a nonaffiliated third-party call center" at the end of Subsection A.

**The 1998 amendment,** effective July 1, 1998, added the language beginning "but 'activity' does not include" to the end of Subsection A.

**The 1990 amendment,** effective July 1, 1990, in Subsection A, substituted "department" for "division" at the end of the first sentence and inserted "soliciting orders through advertisements placed in newspapers or magazines published in New Mexico or advertisements broadcast by New Mexico radio or television stations, soliciting orders through programs broadcast by New Mexico radio or television stations or transmitted by cable systems in New Mexico" in the second sentence.

## 7-9-11. Date payment due.

The taxes imposed by the Gross Receipts and Compensating Tax Act are to be paid on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

**History:** 1953 Comp., § 72-16A-11, enacted by Laws 1966, ch. 47, § 11; 1969, ch. 25, § 2.

## 7-9-12. Exemptions.

Exemptions from either the gross receipts tax or the compensating tax are not exemptions from both taxes unless explicitly stated otherwise by law.

**History:** 1978 Comp., § 7-9-12, enacted by Laws 1969, ch. 144, § 5; 1970, ch. 60, § 1; 1972, ch. 61, § 1; 1973, ch. 67, § 1; 1984, ch. 2, § 2; 2017 (1st S.S.), ch. 3, § 14.

**ANNOTATIONS**

**The 2017 (1st S.S.) amendment,** effective July 1, 2017, removed language to clarify that certain exemptions from either the gross receipts or compensating tax are not exemptions from both taxes; and deleted "Exempted from the gross receipts or compensating tax are those receipts or uses exempted in Sections 7-9-13 through 7-9-42 NMSA 1978.".

**Inequalities which result from singling out of one particular class** for taxation or exemption, infringe no constitutional limitation. *Dikewood Corp. v. Bureau of Revenue*, 1964-NMSC-057, 74 N.M. 75, 390 P.2d 661.

**Statute of exemption from taxation must receive a strict construction,** and no claim of exemption should be sustained unless within the express letter or the necessary scope of the exempting clause. *Robert E. McKee, Gen. Contractor, Inc. v. Bureau of Revenue*, 1957-NMSC-082, 63 N.M. 185, 315 P.2d 832 (decided under former law).

**Legal services performed for Indian tribe.** — The gross receipts tax may properly be imposed on a non-Indian law firm for legal services performed off the reservation on behalf of an Indian tribe; federal law cannot preempt by implication the tax under such circumstances, since, when reviewing state taxation of activities of non-Indians off the reservation, an actual conflict with an express federal provision is required for preemption. *Rodey, Dickason, Sloan, Akin & Robb, P.A. v. Revenue Div., Dep't of Taxation & Revenue*, 1988-NMSC-063, 107 N.M. 399, 759 P.2d 186.

**Uncontemplated regulatory exception invalid.** — If a regulation adopted by the bureau of revenue (now taxation and revenue department) creates an exception from exempt transactions which is not contemplated by the legislative act, even though such administrative interpretations are entitled to great weight in ascertaining the meaning of the statute, the courts may not give legal sanction to the agency's incorrect construction

of unambiguous statutory language. *Strebeck Props., Inc. v. N.M. Bureau of Revenue*, 1979-NMCA-035, 93 N.M. 262, 599 P.2d 1059.

**Burden rests squarely on taxpayer to prove entitlement to exemption.** *Al Zuni Traders v. Bureau of Revenue*, 1977-NMCA-025, 90 N.M. 258, 561 P.2d 1351.

**Notice of type of proof necessary to avoid taxation unnecessary.** — Under the Gross Receipts and Compensating Tax Act, the contention that prior to the first audit of its books the commissioner had not sent any notice to taxpayer, or other taxpayers in the same industry, of the type of proof necessary to avoid taxation was pure nonsense. *Al Zuni Traders v. Bureau of Revenue*, 1977-NMCA-025, 90 N.M. 258, 561 P.2d 1351.

**Legislature intended to make gross receipts and compensating taxes correlate:** an exemption from the gross receipts tax must also be treated as an exemption from the compensating tax. *Western Elec. Co. v. N.M. Bureau of Revenue*, 1976-NMCA-047, 90 N.M. 164, 561 P.2d 26.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Sales and Use Taxes § 200.

Sales or use tax upon containers of packaging materials purchased by manufacturer or processor for use with goods he distributes, 4 A.L.R.4th 581.

Eyeglasses or other optical accessories as subject to sales or use tax, 14 A.L.R.4th 1370.

What constitutes newspapers, magazines, periodicals, or the like, under sales or use tax law exemption, 25 A.L.R.4th 750.

Architectural drawings or illustrations as exempt from sales or use tax, 27 A.L.R.5th 794.

Sales and use tax exemption for medical supplies, 30 A.L.R.5th 494.

Exemption of charitable or educational organization from sales or use tax, 69 A.L.R.5th 477.

## 7-9-12.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 41, § 10 repealed 7-9-12.1 NMSA 1978, as enacted by Laws 1984, ch. 2, § 10, relating to findings and intent, effective July 1, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

## 7-9-13. Exemption; gross receipts tax; governmental agencies.

A. Except as otherwise provided in this section, exempted from the gross receipts tax are receipts of:

(1) the United States or any agency, department or instrumentality thereof;

(2) the state of New Mexico or any political subdivision thereof;

(3) any Indian nation, tribe or pueblo from activities or transactions occurring on its sovereign territory; or

(4) any foreign nation or agency, instrumentality or political subdivision thereof, but only when required by a treaty in force to which the United States is a party.

B. Receipts from the sale of gas or electricity by a utility owned or operated by a county, municipality or other political subdivision of a state are not exempted from the gross receipts tax.

C. Receipts from the operation of a cable television system owned or operated by a municipality are not exempted from the gross receipts tax.

**History:** 1953 Comp., § 72-16A-12.1, enacted by Laws 1969, ch. 144, § 6; 1991, ch. 8, § 4; 1993, ch. 31, § 3; 1993, ch. 208, § 7; 1994, ch. 45, § 2; 1998, ch. 89, § 1.

## ANNOTATIONS

**The 1998 amendment,** effective July 1, 1998, added Paragraph A(4) and made minor stylistic changes.

**The 1994 amendment,** effective July 1, 1994, rewrote Subsection A, which read: "Exempted from the gross receipts tax are the receipts of the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof"; and substituted "a state" for "the state" in Subsection B.

**The 1993 amendment,** effective June 18, 1993, designated the former provisions as Subsections A and B and added Subsection C.

**The 1991 amendment,** effective July 1, 1991, deleted "water" following "gas" in the second sentence and made a related stylistic change.

**Disbursement agents of federal funds immune from gross receipts tax.** — Agents for the disbursement of federal funds are constitutionally immune from application of the gross receipts tax to those funds. *United States v. New Mexico*, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**United States not excluded from state tax proceedings involving its contractors.** — The United States may not properly be excluded, under all circumstances, from state

tax proceedings involving its contractors, since the contracts obligate the United States to provide funds necessary to defray all costs incurred in the performance of contracts, including taxes. *United States v. New Mexico*, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

## 7-9-13.1. Exemption; gross receipts tax; certain services.

A. Exempted from the gross receipts tax are the receipts from selling research and development services performed outside New Mexico the product of which is initially used in New Mexico and that are sold:

(1) between affiliated corporations;

(2) to the United States by persons, other than organizations described in Subsection A of Section 7-9-29 NMSA 1978, who are prime contractors operating facilities in New Mexico designated as national laboratories by act of congress; or

(3) to persons, other than organizations described in Subsection A of Section 7-9-29 NMSA 1978, who are prime contractors operating facilities in New Mexico designated as national laboratories by act of congress.

B. An "affiliated corporation" means a corporation that directly or indirectly, through one or more intermediaries controls, is controlled by or is under common control with the subject corporation. "Control" means ownership of stock in a corporation that represents at least eighty percent of the total voting power of that corporation and has a stated or par value equal to at least eighty percent of the total stated or par value of the stock of that corporation.

**History:** 1978 Comp., § 7-9-13.1, enacted by Laws 1989, ch. 262, § 4; 2019, ch. 270, § 32.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2021, provided an exemption from the gross receipts tax for receipts from selling certain research and development services; in the section heading, added "certain", and deleted "performed outside the state the product of which is initially used in New Mexico; exceptions"; in Subsection A, deleted "Except as provided otherwise in Subsection B, of this section", and after "selling", added "research and development"; redesignated former Subsection C as Subsection B, and after "used in New Mexico", deleted "The exemption provided by this section does not apply to research and development services other than research and development services" and added "and that are sold".

## 7-9-13.2. Exemption; governmental gross receipts tax; receipts subject to certain other taxes.

Exempted from the governmental gross receipts tax are receipts from transactions involving tangible personal property or services on which receipts or transactions the gross receipts tax, compensating tax, motor vehicle excise tax, gasoline tax, special fuel tax, special fuel excise tax, oil and gas emergency school tax, resources tax, processors tax, service tax or the excise tax imposed under Section 66-12-6.1 NMSA 1978 is imposed.

**History:** Laws 1992, ch. 100, § 3; 1993, ch. 31, § 4.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, inserted "special fuel excise tax," near the end of this section.

## 7-9-13.3. Exemption; gross receipts tax and governmental gross receipts tax; stadium surcharge.

Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts from selling tickets, parking, souvenirs, concessions, programs, advertising, merchandise, corporate suites or boxes, broadcast revenues and all other products, services or activities sold at, related to or occurring at a minor league baseball stadium on which a stadium surcharge is imposed pursuant to the Minor League Baseball Stadium Funding Act [3-65-1 to 3-65-10 NMSA 1978].

**History:** Laws 2001, ch. 231, § 12.

**ANNOTATIONS**

**Emergency clause.** — Laws 2001, ch. 231, § 13 contained an emergency clause and was approved April 3, 2001.

## 7-9-13.4. Exemption; gross receipts tax; sale of textbooks from certain bookstores to enrolled students.

Exempted from the gross receipts tax are the receipts from the sale of textbooks and other materials that are required for courses at a public post-secondary educational institution if the sale is by a bookstore located on the campus of the institution and operated pursuant to a contractual agreement with that institution and the sale is to a student enrolled at the institution who displays a valid student identification card.

**History:** Laws 2002, ch. 20, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2002, ch. 20, § 2 made Laws 2002, ch. 20, § 1 effective July 1, 2002.

## 7-9-13.5. Exemption; gross receipts tax and governmental gross receipts tax; event center surcharge.

Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts from selling tickets, parking, souvenirs, concessions, programs, advertising, merchandise, corporate suites or boxes, broadcast revenues and all other products or services sold at or related to a municipal event center or related to activities occurring at the event center on which an event center surcharge is imposed pursuant to the Municipal Event Center Funding Act [3-66-1 to 3-66-11 NMSA 1978].

**History:** Laws 2005, ch. 351, § 2.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2005, ch. 351 was not enacted as part of the Municipal Code but is included in that code as a convenience to the user.

**Emergency clause.** — Laws 2005, ch. 351, § 14 contained an emergency clause and was approved April 8, 2005.

## 7-9-14. Exemption; compensating tax; governmental agencies; Indians.

A. Except as otherwise provided in this subsection, there is exempted from the compensating tax the use of property and services by the United States or the state of New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof. The exemption provided by this subsection does not apply to:

(1) the use of property that is or will be incorporated into a metropolitan redevelopment project under the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978]; or

(2) the use of construction material.

B. Exempted from the compensating tax is the use of property by any Indian nation, tribe or pueblo or any governmental unit, subdivision, agency, department or instrumentality thereof on Indian reservations or pueblo grants.

**History:** 1953 Comp., § 72-16A-12.2, enacted by Laws 1969, ch. 144, § 7; 1985, ch. 225, § 3; 1990, ch. 41, § 3; 1993, ch. 31, § 5; 2001, ch. 343, § 2; 2023, ch. 85, § 11.

**ANNOTATIONS**

**Cross references.** — For Community Development Incentive Act, *see* 3-64-1 NMSA 1978 et seq.

**The 2023 amendment,** effective July 1, 2023, exempted from the compensating tax the use of services by governmental agencies; and in Subsection A, in the introductory paragraph, after "use of property", added "and services".

**The 2001 amendment,** effective July 1, 2001, substituted former Paragraph A(2), listing tangible personal property that becomes an ingredient or component part of a construction project, for the current Paragraph A(2).

**The 1993 amendment,** effective July 1, 1993, deleted "or any agency or instrumentality thereof" following "United States" and substituted "any governmental unit or subdivision, agency, department or instrumentality" for "any political subdivision" in the first sentence of Subsection A and, in Subsection B, deleted "the governing body of" preceding "any Indian nation" and inserted "or any governmental unit, subdivision, agency, department or instrumentality thereof".

**The 1990 amendment,** effective July 1, 1990, designated the former first and second sentences of the section as present Subsections A and B, substituted "Except as otherwise provided in this subsection" for "Except for the use of property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code" in the first sentence in Subsection A, added the second sentence of Subsection A, and in Subsection B, substituted "Indian nation, tribe or pueblo" for "Indian tribe or Indian pueblo".

**Taxing contractor furnishing materials to federal government not taxing government.** — When general contractor was required by contracts with federal government to furnish materials to be used on federal reservation in New Mexico, the contractor purchased the materials, became the owner thereof, and was liable for the use or compensating tax under § 72-17-1, 1953 Comp., et seq. (now repealed); and this was not taxation of government land or other government property. *Robert E. McKee, Gen. Contractor, Inc. v. Bureau of Revenue*, 1957-NMSC-082, 63 N.M. 185, 315 P.2d 832.

**Tax ultimately falling on tribal organization impermissible.** — If the economic burden of the gross receipts tax ultimately falls on a tribal organization, even though the legal incidence of the tax falls on the non-Indian contractor with whom the tribal organization contracted to build an Indian school, the imposition of the tax impermissibly impedes the clearly expressed federal interest in promoting the quality and quantity of educational opportunities for Indians by depleting the funds available for the construction of Indian schools. *Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue*, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

**Federal regulatory scheme and policy.** — The comprehensive federal regulatory scheme and the express federal policy of encouraging tribal self-sufficiency in the area

of education preclude the imposition of the state gross receipts tax on the construction of school facilities on tribal lands pursuant to a contract between a tribal organization and a non-Indian contracting firm. *Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue*, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

## 7-9-15. Exemption; compensating tax; certain organizations.

Exempted from the compensating tax is the use of property by organizations that demonstrate to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended or renumbered, in the conduct of functions described in Section 501(c)(3). The use of property as an ingredient or component part of a construction project is not a use in the conduct of functions described in Section 501(c)(3). This section does not apply to the use of property in an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered.

**History:** 1953 Comp., § 72-16A-12.3, enacted by Laws 1969, ch. 144, § 8; reenacted by Laws 1970, ch. 12, § 1; 1983, ch. 220, § 4; 1990, ch. 41, § 4.

**ANNOTATIONS**

**Cross references.** — For the exemption of certain organizations from the gross receipts tax, *see* 7-9-29 NMSA 1978.

For Sections 501(c)(3) and 513 of the Internal Revenue Code of 1954, *see* 26 U.S.C. §§ 501(c)(3) and 513, respectively.

**The 1990 amendment,** effective July 1, 1990, substituted "department" for "division" in the first sentence.

**Use of nontaxable transaction certificates.** — The use of nontaxable transaction certificates, not the taking of the deduction, subjects a taxpayer to the compensating tax. *Continental Inn of Albuquerque, Inc. v. N.M. Taxation & Revenue Dep't*, 1992-NMCA-030, 113 N.M. 588, 829 P.2d 946.

## 7-9-16. Repealed.

**History:** 1953 Comp., § 72-16A-12.4, enacted by Laws 1969, ch. 144, § 9; 1970, ch. 12, § 2; 1975, ch. 54, § 1; repealed by Laws 2023, ch. 85, § 28.

**ANNOTATIONS**

**Repeals.** — Laws 2023, ch. 85, § 28 repealed 7-9-16 NMSA 1978, as enacted by Laws 1969, ch. 144, § 9, relating to exemption, gross receipts tax, certain nonprofit facilities,

effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

## 7-9-17. Exemption; gross receipts tax; wages.

Exempted from the gross receipts tax are the receipts of employees from wages, salaries, commissions or from any other form of remuneration for personal services.

**History:** 1953 Comp., § 72-16A-12.5, enacted by Laws 1969, ch. 144, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 1969, ch. 144, § 68 made Laws 1969, ch. 144, § 10 effective July 1, 1969.

**Wages, salaries, commissions and other forms of payment** for personal services received by an employee are specifically exempted from gross receipts tax by this section. *Eaton v. Bureau of Revenue*, 1972-NMCA-114, 84 N.M. 226, 501 P.2d 670, cert. denied, 84 N.M. 219, 501 P.2d 663.

**All of taxpayer's receipts, including employee's wages, taxable.** — Wages paid directly to truck drivers employed by taxpayer, pursuant to hauling agreement, which were paid out of taxpayer's gross receipts and on behalf of taxpayer, a self-employed hauler, were subject to gross receipts tax, regardless of the fact that taxpayer never received such wages to distribute to his drivers. *Duke v. Bureau of Revenue*, 1975-NMCA-025, 87 N.M. 360, 533 P.2d 593.

**Same taxation scheme used for both state and federal purposes.** — When carpenter filed self-employment returns with the internal revenue service for social security purposes when customers did not withhold F.I.C.A. taxes, and filed federal income tax returns which reported income from a business or profession, the taxpayer must not attempt to show one scheme for federal tax purposes and a nontaxable event for purposes of state gross receipts tax. *Stohr v. N.M. Bureau of Revenue*, 1976-NMCA-118, 90 N.M. 43, 559 P.2d 420, cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

**Percentages paid jockeys not exempt.** — Since by established custom in the state of New Mexico the horse owner pays the jockey on his winning mount 10% of the purse, and a jockey, during the course of a racing day, may ride in several races, riding various different horses, each of which may have a different owner and a horse owner is not required to withhold income tax from the jockey's share of the purse, pay F.I.C.A. tax, or make unemployment insurance contributions for the jockey, then commissioner of revenue (now secretary of taxation and revenue department) was within his authority in denying employee exemption to defendant. *Rock v. Comm'r of Revenue*, 1972-NMCA-012, 83 N.M. 478, 493 P.2d 963 (case decided before the exemption granted jockeys by 7-9-40 NMSA 1978).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Tips: applicability of sales tax to "tips" or service charges added in lieu of tips, 73 A.L.R.3d 1226.

## 7-9-18. Exemption; gross receipts tax and governmental gross receipts tax; agricultural products.

A. Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts from selling livestock and receipts of growers, producers, trappers or nonprofit marketing associations from selling livestock, live poultry, unprocessed agricultural products, hides or pelts. Persons engaged in the business of buying and selling wool or mohair or of buying and selling livestock on their own account are producers for the purposes of this section.

B. Receipts from selling dairy products at retail are not exempted from the gross receipts tax.

C. As used in this section, "livestock" means all domestic or domesticated animals that are used or raised on a farm or ranch, including the carcasses thereof, and also includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae upon any land in New Mexico; provided that for the purposes of Chapter 77, Article 9 NMSA 1978, "animals" or "livestock" have the meaning defined in that article. "Animals" or "livestock" does not include canine or feline animals. For the purpose of the rules governing meat inspection, wild animals, poultry and birds used for human consumption shall also be included within the meaning of "animals" or "livestock".

**History:** 1953 Comp., § 72-16A-12.6, enacted by Laws 1969, ch. 144, § 11; 1991, ch. 9, § 27; 1992, ch. 48, § 1; 1993, ch. 31, § 6; 2011, ch. 81, § 1.

**ANNOTATIONS**

**The 2011 amendment,** effective June 17, 2011, added a definition of "livestock".

**The 1993 amendment,** effective July 1, 1993, inserted "and governmental gross receipts tax" in the catchline and inserted "and from the governmental gross receipts tax" in the first sentence.

**The 1992 amendment,** effective July 1, 1992, deleted "or horses" following "livestock" near the beginning of the first sentence, and inserted "or of buying and selling livestock" in the second sentence.

**The 1991 amendment,** effective July 1, 1991, inserted "from selling livestock or horses and receipts" and deleted "livestock" preceding "live poultry" in the first sentence and, in the second sentence, deleted "or of buying and selling livestock" following "mohair".

## 7-9-18.1. Exemption; gross receipts tax; food stamps.

Exempted from the gross receipts tax are the receipts of a taxpayer who is approved for participation in the food stamp program authorized by U.S.C. Title 7, Chapter 51, as that chapter may be amended or renumbered, from the lawful acceptance and deposit with a financial institution of food stamps issued by the United States department of agriculture pursuant to the food stamp program.

**History:** 1978 Comp., § 7-9-18.1, enacted by Laws 1987, ch. 264, § 13 and Laws 1987, ch. 304, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 1987, ch. 304, § 2 made Laws 1987, ch. 304, § 1 effective October 1, 1987.

**Compiler's notes.** — Laws 1987, ch. 264, § 13 and Laws 1987, ch. 304, § 1 enacted identical versions of this section.

**Cross references.** — For Chapter 51 of Title 7 of the United States Code, *see* 7 U.S.C. § 2011 et seq.

## 7-9-19. Exemption; gross receipts tax; livestock feeding.

A. Exempted from the gross receipts tax are the receipts of any person derived from feeding or pasturing livestock.

B. Receipts derived from penning or handling livestock prior to sale are receipts derived from feeding livestock for the purposes of this section.

C. Receipts derived from training livestock are receipts derived from feeding livestock for the purposes of this section.

**History:** 1953 Comp., § 72-16A-12.7, enacted by Laws 1969, ch. 144, § 12; 1974, ch. 19, § 1; 1991, ch. 9, § 28; 1992, ch. 48, § 2.

**ANNOTATIONS**

**The 1992 amendment,** effective July 1, 1992, substituted "are not" for "are" in Subsection C.

**The 1991 amendment,** effective July 1, 1991, designated the formerly undesignated provisions as Subsections A to C and, in Subsection C, inserted "not" preceding "receipts".

## 7-9-20. Exemption; gross receipts tax; certain receipts of homeowners associations.

Exempted from the gross receipts tax are those receipts of homeowners associations defined in Section 528(c)(1) (A thru D), (2), (3) and (4) (A, B and D) of the Internal Revenue Code, as amended, which are received as membership fees, dues or assessments from members who are owners of residential units, residences or residential lots except for owners of time-share interests, for payment of taxes, insurance, utility expenses, management and improvement, maintenance or rehabilitation of those common areas, elements or facilities appurtenant thereto which are for the sole use of the owners and their guests.

**History:** 1978 Comp., § 7-9-20, enacted by Laws 1988, ch. 82, § 1.

**ANNOTATIONS**

**Repeals.** — Laws 1981, ch. 37, § 97 repealed former 7-9-20 NMSA 1978, as enacted by Laws 1969, ch. 144, § 13, relating to exemption of banks and financial institutions from the Gross Receipts Act, effective January 1, 1982.

**Cross references.** — For Section 528 of the Internal Revenue Code, *see* 26 U.S.C. § 528.

## 7-9-21. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1981, ch. 37, § 97 repealed former 7-9-21 NMSA 1978, as enacted by Laws 1969, ch. 144, § 14, relating to exemption of banks and financial institutions from the Compensating Tax Act, effective January 1, 1982.

## 7-9-22. Exemption; gross receipts tax; vehicles.

Exempted from the gross receipts tax are the receipts from selling vehicles on which a tax is imposed by the Motor Vehicle Excise Tax Act [Chapter 7, Article 14 NMSA 1978], vehicles subject to registration under Section 66-3-16 NMSA 1978 and vehicles exempt from the motor vehicle excise tax pursuant to Subsection F of Section 7-14-6 NMSA 1978.

**History:** 1953 Comp., § 72-16A-12.10, enacted by Laws 1969, ch. 144, § 15; 1976 (S.S.), ch. 36, § 2; 1981, ch. 184, § 2; 1988, ch. 73, § 8; 2004, ch. 66, § 1.

**ANNOTATIONS**

**The 2004 amendments,** effective July 1, 2004, added "and vehicles exempt from the motor vehicle excise tax pursuant to Subsection F of Section 7-14-6 NMSA 1978" after "1978".

**There is legislative policy treating taxation of motor vehicles sales** differently from the taxation of most other business activities. *City of Alamogordo v. Walker Motor Co., Inc*., 1980-NMSC-038, 94 N.M. 690, 616 P.2d 403.

**Mobile homes as inventory not exempt.** — The gross receipts from the sale of mobile homes held as inventory are not exempt from the gross receipts tax. *S & S Sales, Inc. v. Bureau of Revenue*, 1976-NMCA-009, 88 N.M. 649, 545 P.2d 1027.

## 7-9-22.1. Exemption; gross receipts tax; boats.

Exempted from the gross receipts tax are the receipts from selling boats on which a tax is imposed by Section 66-12-6.1 NMSA 1978.

**History:** 1978 Comp., § 7-9-22.1, enacted by Laws 1987, ch. 247, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 1987, ch. 247, § 13 made Laws 1987, ch. 247, § 1 effective July 1, 1987.

## 7-9-23. Exemption; compensating tax; vehicles.

Exempted from the compensating tax is the use of vehicles on which the tax imposed by the Motor Vehicle Excise Tax Act [Chapter 7, Article 14 NMSA 1978] has been paid, the use of vehicles subject to registration under Section 66-3-16 NMSA 1978 and the use of vehicles exempt from the motor vehicle excise tax pursuant to Subsection F of Section 7-14-6 NMSA 1978.

**History:** 1953 Comp., § 72-16A-12.11, enacted by Laws 1969, ch. 144, § 16; 1976 (S.S.), ch. 36, § 3; 1983, ch. 220, § 5; 1988, ch. 73, § 9; 2004, ch. 66, § 2.

**ANNOTATIONS**

**The 2004 amendments,** effective July 1, 2004, added "and the use of vehicles exempt from the motor vehicle excise tax pursuant to Subsection F of Section 7-14-6 NMSA 1978" after "1978".

## 7-9-23.1. Exemption; compensating tax; boats.

Exempted from the compensating tax is the use of boats on which the tax imposed by Section 66-12-6.1 NMSA 1978 has been paid.

**History:** 1978 Comp., § 7-9-23.1, enacted by Laws 1987, ch. 247, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 1987, ch. 247, § 13 made Laws 1987, ch. 247, § 2 effective July 1, 1987.

## 7-9-24. Exemption; gross receipts tax; insurance companies.

Exempted from the gross receipts tax are the receipts of insurance companies or any agent thereof from premiums and any consideration received by a property bondsman, as that person is defined in Section 59A-51-2 NMSA 1978, as security or surety for a bail bond in connection with a judicial proceeding.

**History:** 1953 Comp., § 72-16A-12.12, enacted by Laws 1969, ch. 144, § 17; 1988, ch. 74, § 1.

## 7-9-25. Exemption; gross receipts tax; dividends and interest.

Exempted from the gross receipts tax are the receipts received as interest on money loaned or deposited, receipts received as dividends or interest from stocks, bonds or securities or receipts from the sale of stocks, bonds or securities.

**History:** 1953 Comp., § 72-16A-12.13, enacted by Laws 1969, ch. 144, § 18.

**ANNOTATIONS**

**Effective dates.** — Laws 1969, ch. 144, § 68 made Laws 1969, ch. 144, § 18 effective July 1, 1969.

**Pawnbroker's receipts from sales of pawned chattel** were not exempt or deductible from gross receipts tax as the recoupment of principal, interest, and handling charges attendant to the initial loan transaction. *Wing Pawn Shop v. Taxation & Revenue Dep't*, 1991-NMCA-024, 111 N.M. 735, 809 P.2d 649 (decided on facts existing prior to enactment of Pawnbrokers Act, Section 56-12-1 NMSA 1978 et seq.)

## 7-9-26. Exemption; gross receipts and compensating tax; fuel.

Exempted from the gross receipts and compensating tax are the receipts from selling and the use of gasoline, special fuel or alternative fuel on which the tax imposed by Section 7-13-3, 7-16A-3 or 7-16B-4 NMSA 1978 has been paid and not refunded.

**History:** 1953 Comp., § 72-16A-12.14, enacted by Laws 1969, ch. 144, § 19; 1971, ch. 176, § 1; 1980, ch. 105, § 2; 1981, ch. 175, § 1; 1983, ch. 225, § 1; 1993, ch. 31, § 7; 1995, ch. 16, § 12; 2023, ch. 85, § 12.

**ANNOTATIONS**

**Cross references.** — For other fuel related exemptions, *see* 7-9-32 to 7-9-34, 7-9-36 and 7-9-37 NMSA 1978.

**The 2023 amendment,** effective July 1, 2023, after "Section 7-13-3", deleted "7-16-3 or", after "7-16A-3", added "or 7-16B-4", and after "NMSA 1978", deleted "or the Alternative Fuel Tax Act".

**The 1995 amendment,** effective January 1, 1996, inserted "or alternative fuel" and "or the Alternative Fuel Tax Act".

**The 1993 amendment,** effective July 1, 1993, deleted the subsection designation "A" at the beginning; inserted "7-16A-3"; deleted former Subsection B, pertaining to the exemption of receipts from selling and use of ethanol blended fuel; and made a minor stylistic change.

**Constitutionality of deduction for ethanol-blended fuel.** — Former section 7-13-4.1 NMSA 1978 discriminated between the tax treatment of ethanol-blended fuel manufactured in New Mexico and ethanol-blended fuel manufactured elsewhere; this discrimination violated the commerce clause. *Giant Indus. Ariz., Inc. v. Taxation & Revenue Dep't*, 1990-NMCA-074, 110 N.M. 442, 796 P.2d 1138.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Exemption, from sales or use tax, of water, oil, gas, other fuel, or electricity provided for residential purposes, 15 A.L.R.4th 269.

## 7-9-26.1. Exemption; gross receipts tax and compensating tax; fuel for space vehicles.

A. Exempted from the gross receipts tax are the receipts from selling fuel, oxidizer or a substance that combines fuel and oxidizer to propel space vehicles or to operate space vehicle launchers.

B. Exempted from the compensating tax is the use of fuel, oxidizer or a substance that combines fuel and oxidizer to propel space vehicles or to operate space vehicle launchers.

**History:** 1978 Comp., § 7-9-26.1, enacted by Laws 2003, ch. 62, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 62, § 5 made Laws 2003, ch. 62, § 1 effective July 1, 2003.

## 7-9-27. Exemption; compensating tax; personal effects.

Exempted from the compensating tax is the use by an individual of personal or household effects brought into the state in connection with the establishment by him of an initial residence in this state and the use of property brought into the state by a nonresident for his own nonbusiness use while temporarily within this state.

**History:** 1953 Comp., § 72-16A-12.15, enacted by Laws 1969, ch. 144, § 20.

**ANNOTATIONS**

**Effective dates.** — Laws 1969, ch. 144, § 68 made Laws 1969, ch. 144, § 20 effective July 1, 1969.

## 7-9-28. Exemption; gross receipts tax; occasional sale of property or services.

Exempted from the gross receipts tax are the receipts from the isolated or occasional sale of or leasing of property or a service by a person who is neither regularly engaged nor holding himself out as engaged in the business of selling or leasing the same or similar property or service.

**History:** 1953 Comp., § 72-16A-12.16, enacted by Laws 1969, ch. 144, § 21.

**ANNOTATIONS**

**Effective dates.** — Laws 1969, ch. 144, § 68 made Laws 1969, ch. 144, § 21 effective July 1, 1969.

**Oil company's receipts from coal dragline leases not exempt.** — Although oil company had not "historically" engaged in the business of leasing draglines, where it had clearly entered that business with a large investment and a long-term commitment of resources, had established 20-year terms for the leases, resulting in a fixed amount of income over a long period of time, these transactions were not occasional and were accordingly not tax exempt. *Kewanee Indus., Inc. v. Reese*, 1993-NMSC-006, 114 N.M. 784, 845 P.2d 1238.

**Law reviews.** — For article, "The Deductibility for Federal Income Tax Purposes of the New Mexico Gross Receipts Tax Paid on the Purchase of a Newly Constructed Home," see 13 N.M.L. Rev. 625 (1983).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Casual or isolated sales: exemption of casual, isolated or occasional sales under sales and use taxes, 42 A.L.R.3d 292.

## 7-9-29. Exemption; gross receipts tax; certain organizations; exceptions.

A. Exempted from the gross receipts tax are the receipts of organizations that demonstrate to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as

that section may be amended or renumbered, except for receipts of a hospital licensed by the department of health.

B. Exempted from the gross receipts tax are the receipts from carrying on chamber of commerce, visitor bureau and convention bureau functions of organizations that demonstrate to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(6) of the United States Internal Revenue Code of 1986, as that section may be amended or renumbered.

C. This section does not apply to:

(1) receipts derived from an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1986, as that section may be amended or renumbered;

(2) receipts of a prime contractor that are derived from operating a facility in New Mexico designated as a national laboratory by an act of congress; or

(3) receipts of a prime contractor that are derived from operating a research facility in New Mexico that is owned by the state.

**History:** 1978 Comp., § 7-9-29, enacted by Laws 1970, ch. 12, § 3; 1983, ch. 220, § 6; 1988, ch. 139, § 1; 1990, ch. 41, § 5; 2019, ch. 44, § 1; 2019, ch. 270, § 33.

## ANNOTATIONS

**Cross references.** — For the exemption of certain organizations from the compensating tax, *see* 7-9-15 NMSA 1978.

For Sections 501 and 513 of the Internal Revenue Code, *see* 26 U.S.C. §§ 501 and 513.

**2019 Multiple Amendments.** — Laws 2019, ch. 44, § 1 and Laws 2019, ch. 270, § 33, both effective July 1, 2019, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2019, ch. 270, § 33, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2019, ch. 44, § 1 and Laws 2019, ch. 270, § 33 are described below. To view the session laws in their entirety, *see* the 2019 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2019, ch. 44, § 1, excluded national laboratory contractors and contractors running state-owned research facilities from the gross receipts tax exemption for nonprofit organizations, and made certain technical amendments, and Laws 2019, ch. 270, § 33, excluded hospitals from the gross receipts tax exemption.

**Laws 2019, ch. 44, § 1,** effective July 1, 2019, excluded national laboratory contractors and contractors running state-owned research facilities from the gross receipts tax exemption for nonprofit organizations, and made certain technical amendments; in the section heading, added "exceptions"; after "Internal Revenue Code of", deleted "1954" and added "1986" throughout; and in Subsection C, added Paragraphs C(2) and C(3).

**Laws 2019, ch. 270, § 33,** effective July 1, 2019, excluded hospitals from the gross receipts tax exemption; and in Subsection A, after "renumbered", added "except for receipts of a hospital licensed by the department of health".

**The 1990 amendment,** effective July 1, 1990, substituted "department" for "division" in Subsections A and B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Charitable organization: exemption of charitable or educational organization from sales or use tax, 53 A.L.R.3d 748.

Exemption of charitable or educational organization from sales or use tax, 69 A.L.R.5th 477.

## 7-9-30. Exemption; compensating tax; railroad equipment, aircraft and space vehicles.

A. Exempted from the compensating tax is the use of railroad locomotives, trailers, containers, tenders or cars procured or bought for use in railroad transportation.

B. Exempted from the compensating tax is the use of commercial aircraft bought or leased primarily for use in the transportation of passengers or property for hire in interstate commerce.

C. Exempted from the compensating tax is the use of space vehicles for transportation of persons or property in, to or from space.

**History:** 1953 Comp., § 72-16A-12.18, enacted by Laws 1969, ch. 144, § 23; 1988, ch. 148, § 1; 2003, ch. 62, § 2.

**ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, substituted "aircraft and space vehicles" for "and aircraft" in the section heading and added Subsection C.

**Applicability of former provision limited.** — Former 72-17-4I, 1953 Comp., (now Section 7-9-30A NMSA 1978) exempting certain railroad property from the purview of the former Compensating Tax Act, applied only to railroads engaged in the transportation of persons or property for hire on established lines. *Gibbons & Reed Co. v. Bureau of Revenue*, 1969-NMSC-096, 80 N.M. 462, 457 P.2d 710.

## 7-9-31. Exemption; gross receipts and compensating tax; resale activities of an armed forces instrumentality.

Exempted from the gross receipts and compensating tax are the receipts from selling tangible personal property and the use of property by any instrumentality of the armed forces of the United States engaged in resale activities.

**History:** 1953 Comp., § 72-16A-12.19, enacted by Laws 1969, ch. 144, § 24.

**ANNOTATIONS**

**Effective dates.** — Laws 1969, ch. 144, § 68 made Laws 1969, ch. 144, § 24 effective July 1, 1969.

## 7-9-32. Exemption; gross receipts tax; oil and gas or mineral interests.

Exempted from the gross receipts tax are the receipts from the sale of or leasing of oil, natural gas or mineral interests.

**History:** 1953 Comp., § 72-16A-12.20, enacted by Laws 1969, ch. 144, § 25.

**ANNOTATIONS**

**Effective dates.** — Laws 1969, ch. 144, § 68 made Laws 1969, ch. 144, § 25 effective July 1, 1969.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Mining exemption from sales or use tax, 47 A.L.R.4th 1229.

## 7-9-33. Exemption; gross receipts tax; products subject to Oil and Gas Emergency School Tax Act.

A. Exempted from the gross receipts tax are receipts from the sale of products the severance of which is subject to the tax imposed by the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978] except that receipts from the sale of products other than for subsequent resale in the ordinary course of business, for consumption outside the state, or for use as an ingredient or component part of a manufactured product are subject to the Gross Receipts and Compensating Tax Act as well as to the Oil and Gas Emergency School Tax Act.

B. No gross receipts tax or compensating tax pursuant to the Gross Receipts and Compensating Tax Act shall apply to storing crude oil, natural gas or liquid hydrocarbons, individually or any combination, or to the use of such products for fuel in

the operation of a "production unit" as defined by the Oil and Gas Emergency School Tax Act.

**History:** 1953 Comp., § 72-16A-12.21, enacted by Laws 1969, ch. 144, § 26; 1975, ch. 133, § 1; 1984, ch. 2, § 3; 1989, ch. 115, § 1.

**ANNOTATIONS**

**The 1989 amendment,** effective July 1, 1989, substituted "products" for "persons" in the catchline; rewrote Subsection A; and in Subsection B deleted "any person for the privilege of" following "apply to", and deleted "thereof" following "combination".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Mining exemption from sales or use tax, 47 A.L.R.4th 1229.

## 7-9-34. Exemption; gross receipts tax; refiners and persons subject to Natural Gas Processors Tax Act.

A. Exempted from the gross receipts tax are receipts from the sale or processing of products the processing of which is subject to the privilege tax imposed by the Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978] except that receipts from the sale of products other than for subsequent resale in the ordinary course of business, for consumption outside the state, or for use as an ingredient or component part of a manufactured product are subject to the Gross Receipts and Compensating Tax Act as well as to the Natural Gas Processors Tax Act.

B. No gross receipts tax or compensating tax pursuant to the Gross Receipts and Compensating Tax Act shall apply to receipts from storing or using crude oil, natural gas or liquid hydrocarbons, individually or any combination, when stored or used in New Mexico by a "processor", as defined by the Natural Gas Processors Tax Act, or by a person engaged in the business of refining oil, natural gas or liquid hydrocarbons who stores or uses the crude oil, natural gas or liquid hydrocarbons in the regular course of his refining business.

**History:** 1953 Comp., § 72-16A-12.22, enacted by Laws 1969, ch. 144, § 27; 1970, ch. 13, § 1; 1975, ch. 133, § 2; 1984, ch. 2, § 4; 1989, ch. 115, § 2.

**ANNOTATIONS**

**Cross references.** — For meaning of "processor", *see* 7-33-2 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, rewrote Subsection A; and in Subsection B substituted "receipts from storing" for "any person for the privilege of storing", and deleted "thereof" following "combination".

**Company not entitled to exemption when selling natural gas to refinery.** — A gas company is neither a user of natural gas nor in the business of refining natural gas when it sells natural gas to a refinery, and, thus, it is not entitled to the exemption provided in Subsection B. *Gas Co. v. O'Cheskey*, 1980-NMCA-085, 94 N.M. 630, 614 P.2d 547

## 7-9-35. Exemption; gross receipts tax; natural resources subject to Resources Excise Tax Act.

Exempted from the gross receipts tax are receipts from the sale or processing of natural resources the severance or processing of which are subject to the taxes imposed by the Resources Excise Tax Act [Chapter 7, Article 25 NMSA 1978] except as otherwise provided in Section 7-25-8 NMSA 1978.

**History:** 1953 Comp., § 72-16A-12.23, enacted by Laws 1969, ch. 144, § 28; 1984, ch. 2, § 5; 1989, ch. 115, § 3.

**ANNOTATIONS**

**The 1989 amendment,** effective July 1, 1989, substituted "natural resources" for "persons" in the catchline, and substituted the present provisions for "When a privilege tax is imposed for the privilege of severing or processing natural resources by the Resources Excise Tax Act, the provisions of the Resources Excise Tax Act shall apply for the privilege of engaging in business stated and in that act, and no gross receipts pursuant to the Gross Receipts and Compensating Tax Act shall apply to or create a tax liability for such privilege, except as is provided in Section 7-25-8 NMSA 1978. A taxpayer subject to the Resources Excise Tax Act is also subject to the compensating tax pursuant to the Gross Receipts and Compensating Tax Act and any other taxes imposed by any tax act which is applicable to the taxpayer pursuant to the NMSA 1978."

**Amendment to be prospectively applied.** — The amendment of this section by Laws 1984, ch. 2, § 5 is to be only prospectively applied from and after the date the legislation was signed into law, February 11, 1984. *Phelps Dodge Corp. v. Revenue Div., Dep't of Taxation & Revenue*, 1985-NMCA-055, 103 N.M. 20, 702 P.2d 10.

**Construction and severing work.** — Where both severing and construction work occur at the same time on the same job, the classification of "construction" is not justified and receipts from severing are exempt from gross receipts tax. *J.W. Jones Const. Co., v. Revenue Div., Dep't of Taxation & Revenue*, 1979-NMCA-144, 94 N.M. 39, 607 P.2d 126 (Ct. App. 1979).

**Construction work incidental to "severing" exempt.** — The exemption provided by this section applies since "severing" was taking place as the development work was performed and none of taxpayer's work was preliminary to or preparatory for "severing"; therefore, receipts from development work, which includes construction, are exempted from the gross receipts tax and taxable under the service tax (resources excise tax)

when such construction work was incidental to the "severing." *Patten v. Bureau of Revenue*, 1974-NMCA-051, 86 N.M. 355, 524 P.2d 527.

**Taxation of lumber business activities.** — "Road maintenance" and "hauling" are an integral and indispensable part of a taxpayer's activity of severing timber and delivering it to a lumber mill and as such are exempt from the Gross Receipts Tax Act, Chapter 7, Article 9 NMSA 1978, by the provisions of this section, while being taxable under the Resources Excise Tax Act, Chapter 7, Article 25 NMSA 1978. *Carter & Sons, Inc. v. New Mexico Bureau of Revenue*, 1979-NMCA-025, 92 N.M. 591, 592 P.2d 191.

**No compensation tax on property purchased outside state, used in state mine operations.** — Compensating tax may not be assessed based on property purchased outside of New Mexico but used in New Mexico in the mine operations of a taxpayer in severing uranium ore. *In re Ranchers-Tufco Limestone Project Joint Venture*, 1983-NMCA-126, 100 N.M. 632, 674 P.2d 522, cert. denied, 100 N.M. 505, 672 P.2d 1136 (decided prior to 1984 amendment).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Mining exemption from sales or use tax, 47 A.L.R.4th 1229.

## 7-9-36. Exemption; gross receipts tax; oil and gas consumed in the pipeline transportation of oil and gas products.

Exempted from the gross receipts tax are receipts from the sale of oil, natural gas, liquid hydrocarbon or any combination thereof consumed as fuel in the pipeline transportation of such products.

**History:** 1953 Comp., § 72-16A-12.24, enacted by Laws 1969, ch. 144, § 29.

**ANNOTATIONS**

**Effective dates.** — Laws 1969, ch. 144, § 68 made Laws 1969, ch. 144, § 29 effective July 1, 1969.

## 7-9-37. Exemption; compensating tax; use of oil and gas in the pipeline transportation of oil and gas products.

Exempted from the compensating tax is the use of oil, natural gas, liquid hydrocarbon or any combination thereof as fuel in the pipeline transportation of such products.

**History:** 1953 Comp., § 72-16A-12.25, enacted by Laws 1969, ch. 144, § 30.

**ANNOTATIONS**

**Effective dates.** — Laws 1969, ch. 144, § 68 made Laws 1969, ch. 144, § 30 effective July 1, 1969.

## 7-9-38. Exemption; compensating tax; use of electricity in the production, conversion and transmission of electricity.

Exempted from the compensating tax is electricity used in the production and transmission of electricity, including transmission using voltage source conversion technology.

**History:** 1953 Comp., § 72-16A-12.26, enacted by Laws 1969, ch. 144, § 31; 2012, ch. 12, § 1.

**ANNOTATIONS**

**The 2012 amendment,** effective July 1, 2012, exempted electricity used in the transmission of electricity using voltage source conversion technology and after “transmission of electricity”, added the remainder of the sentence.

## 7-9-38.1. Exemption; gross receipts tax; interstate telecommunications services.

Exempted from the gross receipts tax are receipts from the sale or provision of interstate telecommunications services subject to the Interstate Telecommunications Gross Receipts Tax Act [Chapter 7, Article 9C NMSA 1978].

**History:** Laws 1992, ch. 50, § 12 and Laws 1992, ch. 67, § 12; 1993, ch. 31, § 8.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, deleted the "to the extent that receipts from such services are" following "services" and "tax under" following "subject to".

## 7-9-38.2. Exemption; gross receipts tax; sale of certain telecommunications services.

Exempted from the gross receipts tax are receipts of a home service provider from providing mobile telecommunications services to persons whose place of primary use is outside New Mexico, regardless of where the mobile telecommunications services originate, terminate or pass through. For the purposes of this section, "home service provider", "mobile telecommunications services" and "place of primary use" have the meanings given in the federal Mobile Telecommunications Sourcing Act.

**History:** Laws 2002, ch. 18, § 2.

## ANNOTATIONS

**Cross references.** — For the federal Mobile Telecommunications Sourcing Act, *see* 4 U.S.C.S. § 116 et seq.

**Effective dates.** — Laws 2002, ch. 18, § 8 made Laws 2002, ch. 18, § 2 effective August 1, 2002.

# 7-9-39. Exemption; gross receipts tax; fees from social organizations.

A. Exempted from the gross receipts tax are the receipts from dues and registration fees of nonprofit social, fraternal, political, trade, labor or professional organizations and business leagues.

B. For the purposes of this section:

(1) "dues" means amounts that a member of an organization pays at recurring intervals to retain membership in an organization where such amounts are used for the general maintenance and upkeep of the organization; and

(2) "registration fees" means amounts paid by persons to attend a specific event sponsored by an organization to defray the cost of the event.

**History:** 1953 Comp., § 72-16A-12.27, enacted by Laws 1969, ch. 144, § 32; 1977, ch. 141, § 1.

## ANNOTATIONS

**Compiler's notes.** — The following cases were decided under the prior version of this section which exempted nonprofit business organizations.

**It is not necessary for all members to engage in business** in order for a group to constitute a business organization. *AAA v. Bureau of Revenue*, 1975-NMSC-058, 88 N.M. 462, 541 P.2d 967.

**Nonprofit business organization exempt.** — The supreme court has decided that a nonprofit business organization, the receipts of which are from dues and registration fees of its members, is exempt from the payment of a gross receipts tax. *Twining Coop. Domestic Water & Sewer Ass'n v. Bureau of Revenue*, 1976-NMCA-052, 89 N.M. 345, 552 P.2d 476, cert. denied, 90 N.M. 7, 558 P.2d 619.

**The American Automobile Association is a "business organization"** in the common understanding of that term. It is a group of people that has a more or less constant membership, a body of officers, a purpose and a set of regulations, and engages in a commercial activity, even though it is a nonprofit activity and the receipts involved in

AAA's activities are from dues and registration fees. *AAA v. Bureau of Revenue*, 1975-NMSC-058, 88 N.M. 462, 541 P.2d 967.

**A "nonprofit" corporation** means a corporation which distributes no part of the income or profit to its members, directors or officers. *AAA v. Bureau of Revenue*, 1975-NMSC-012, 87 N.M. 330, 533 P.2d 103, *rev'd on other grounds*, 1975-NMSC-058, 88 N.M. 462, 541 P.2d 967.

## 7-9-40. Exemption; gross receipts tax; purses and jockey remuneration at New Mexico racetracks; receipts from gross amounts wagered.

A. Exempted from the gross receipts tax are the receipts of horsemen, jockeys and trainers from race purses at New Mexico horse racetracks subject to the jurisdiction of the state racing commission.

B. Exempted from the gross receipts tax are the receipts of a racetrack from the commissions and other amounts authorized by Section 60-1-10 NMSA 1978 [repealed] to be retained by a racetrack conducting horse races under the authority of a license from the state racing commission.

**History:** 1953 Comp., § 72-16A-12.28, enacted by Laws 1970, ch. 60, § 2; 1971, ch. 145, § 1; 1985, ch. 137, § 1; 1989, ch. 260, § 1.

**ANNOTATIONS**

**Bracketed material.** — Laws 2007, ch. 39, § 34 repealed 60-1-10 NMSA 1978, effective July 1, 2007.

**Cross references.** — For the state racing commission, *see* 60-1A-3 NMSA 1978.

**The 1989 amendment,** effective June 16, 1989, deleted "admissions and" following "receipts from" in the section heading; and in Subsection B restructured former Paragraph (2) so as to constitute the language beginning with "the commissions", deleted former Paragraph (1) which read "admissions to the racetrack on any racing day", and deleted former Paragraph (3) which read "the tax imposed by Paragraph (1) of Subsection A of Section 60-1-15 NMSA 1978".

**Enactment of exemption shows no intent as to prior treatment.** — Since the reporting periods for the receipts of a horse owner and a horse trainer are prior to the enactment of this section, no exemption under it is available. The fact that an exemption was subsequently enacted does not show a legislative intent that the receipts were not subject to the gross receipts tax prior to enactment of the exemption. *Till v. Jones*, 1972-NMCA-046, 83 N.M. 743, 497 P.2d 745, cert. denied, 83 N.M. 740, 497 P.2d 742.

## 7-9-41. Exemption; gross receipts tax; religious activities.

Exempted from the gross receipts tax are the receipts of a minister of a religious organization, which organization has been granted an exemption from federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended or renumbered, from religious services provided by the minister to an individual recipient of the service.

**History:** 1953 Comp., § 72-16A-12.29, enacted by Laws 1972, ch. 61, § 2.

**ANNOTATIONS**

**Cross references.** — For Section 501(c)(3) of the Internal Revenue Code of 1954, *see* 26 U.S.C. § 501(c)(3).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Religious organization's exemption from sales or use tax, 54 A.L.R.3d 1204.

## 7-9-41.1. Exemption; gross receipts tax and governmental gross receipts tax; athletic facility surcharge.

Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts of a university from an athletic facility surcharge imposed pursuant to the University Athletic Facility Funding Act [21-30-1 to 21-30-10 NMSA 1978].

**History:** Laws 2007, ch. 117, § 1.

**ANNOTATIONS**

**Emergency clause.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.

## 7-9-41.2. Deleted.

**History:** Laws 2007, ch. 172, § 13.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2008, ch. 11, § 1, amended Laws 2007, ch. 172, § 29, to provide that if the requirements of Subsection A of Laws 2007, ch. 172, § 29 were not fulfilled, the effective date of this section would be July 1, 2010, provided that prior to January 1, 2010, the economic development department certify to the taxation and revenue department that construction of a railroad locomotive refueling facility project in Dona Ana county had commenced, including the land acquisition, acquisition of all

necessary permits and commencement of actual construction. On February 16, 2010, the New Mexico compilation commission received a letter from the economic development department dated February 12, 2010, notifying the compilation commission that while Union Pacific had made the land acquisition, construction of a railroad locomotive refueling facility project in Doña Ana county had not commenced as required by Laws 2007, ch. 172, § 29. Therefore, Section 7-9-41.2 NMSA 1978 failed to become effective and was deleted by the compiler. For provisions of former section, *see* the 2013 NMSA 1978 on *NMOneSource.com.*

## 7-9-41.3. Exemption; receipts from sales by disabled street vendors.

A. Exempt from payment of the gross receipts tax are receipts from the sale of goods by a disabled street vendor.

B. As used in this section:

(1) "disabled" means to be blind or permanently disabled with medical improvement not expected pursuant to 42 USCA 421 for purposes of the federal Social Security Act or to have a permanent total disability pursuant to the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978]; and

(2) "street vendor" means a person licensed by a local government to sell items of tangible personal property by newly setting up a sales site daily or selling the items from a moveable cart, tray, blanket or other device.

**History:** Laws 2007, ch. 45, § 13 and 2007, ch. 237, § 1.

**ANNOTATIONS**

**Cross references.** — For the federal Social Security Act, *see* 42 U.S.C. § 301.

**Duplicate laws.** — Laws 2007, ch. 45, § 13 and Laws 2007, ch. 237, § 1 enacted identical new sections. The section was set out as enacted by Laws 2007, ch. 237, § 1, effective June 15, 2007. *See* 12-1-8 NMSA 1978.

## 7-9-41.4. Exemption; officiating at New Mexico activities association-sanctioned school events.

Exempted from the gross receipts tax are the receipts from refereeing, umpiring, scoring or other officiating at school events sanctioned by the New Mexico activities association.

**History:** Laws 2009, ch. 62, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 62 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 7-9-41.5. Exemption; nonprofit hospitals from local option gross receipts taxes.

A. Exempted from any local option gross receipts tax, but not the state gross receipts tax, are receipts of a nonprofit hospital licensed by the department of health.

B. As used in this section, "nonprofit hospital" means a hospital that has been granted exemption from 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.

**History:** Laws 2019, ch. 270, § 34.

**ANNOTATIONS**

**Cross references.** — For Section 501(c)(3) of the Internal Revenue Code of 1986, *see* 26 U.S.C. § 501(c)(3).

**Effective dates.** — Laws 2019, ch. 270, § 60 made Laws 2019, ch. 270, § 34 effective July 1, 2019.

## 7-9-41.6. Exemption; gross receipts; certain health care providers from certain federal payments.

Exempted from the gross receipts tax are receipts of health care providers, other than hospitals licensed by the department of health, from payments by:

A. the United States department of health and human services from the federal public health and social services emergency fund to providers eligible to receive the payments pursuant to the federal Coronavirus Aid, Relief, and Economic Security Act; and

B. the medical assistance division of the human services department [health care authority department] from funds appropriated to New Mexico pursuant to the federal American Rescue Plan Act of 2021 for the state medicaid program to provide additional support for home and community-based services.

**History:** Laws 2020 (1st S.S.), ch. 4, § 3; 2023, ch. 85, § 13.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

**Cross references.** — For federal Coronavirus Aid, Relief, and Economic Security Act, *see* Pub.L. 116–136.

**The 2023 amendment,** effective April 1, 2023, included payments from the federal American Rescue Plan Act of 2021 in a gross receipts tax exemption for certain health care providers; in the section heading, added "certain", and deleted "Coronavirus Aid, Relief, and Economic Security Act'; and added Subsection B.

**Temporary provisions.** — Laws 2020 (1st S.S.), ch. 4, § 4, effective June 29, 2020, provided:

A. Notwithstanding Sections 7-1-67 and 7-1-69 NMSA 1978, no interest shall accrue and no penalty shall be assessed to a taxpayer for:

(1) tax liabilities pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act for failure to pay the tax that became due April 15, 2020 through July 15, 2020; provided that the failure to pay the tax was made without intent to evade or defeat the tax; and provided further that payment for the unpaid payments is made in full on or before April 15, 2021;

(2) tax liabilities pursuant to the Withholding Tax Act for failure to pay the tax that became due March 25, 2020 through July 25, 2020; provided that the failure to pay the tax was made without intent to evade or defeat the tax; and provided further that payment for the unpaid taxes is made in full on or before April 25, 2021;

(3) gross receipts tax, local option gross receipts tax or compensating tax liabilities for failure to pay any of those taxes that became due March 25, 2020 through July 25, 2020; provided that the failure to pay the tax was made without intent to evade or defeat the tax; and provided further that payment for the unpaid taxes is made in full on or before April 25, 2021; and

(4) tax liabilities assessed between September 3, 2019 and January 3, 2020 as the result of a managed audit performed in accordance with a managed audit agreement pursuant to Section 7-1-11.1 NMSA 1978; provided that payment for those liabilities is made pursuant to terms of the managed audit agreement on or before December 31, 2020.

B. Notwithstanding Sections 7-38-49 and 7-38-50 NMSA 1978, no interest shall accrue and no penalty shall be assessed to a property owner for unpaid property taxes that became due April 10, 2020 pursuant to Section 7-38-38 NMSA 1978; provided that:

(1) the unpaid property taxes did not become delinquent because of an intent to defraud by the property owner;

(2) payment for the unpaid property taxes is made in full on or before May 10, 2021; and

(3) the subject property does not have property taxes that became delinquent pursuant to Section 7-38-46 NMSA 1978 prior to May 10, 2020.

## 7-9-42. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1984, ch. 2, § 11, repealed 7-9-42 NMSA 1978, enacted by Laws 1973, ch. 67, § 2, relating to the exemption of the receipts from the leasing or licensing of theatrical and television films and tapes from the gross receipts and compensating tax, effective February 11, 1984. For present provisions relating to exemption of receipts from leasing and licensing theatrical and television films and tapes, *see* 7-9-76.2 NMSA 1978.

## 7-9-43. Nontaxable transaction certificates and other evidence required to entitle persons to deductions.

A. Except as provided in Subsection B of this section, a person may establish entitlement to a deduction from gross receipts allowed pursuant to the Gross Receipts and Compensating Tax Act by obtaining a properly executed nontaxable transaction certificate from the purchaser. Nontaxable transaction certificates shall contain the information and be in a form prescribed by the department. The department by regulation may deem to be nontaxable transaction certificates documents issued by other states or the multistate tax commission to taxpayers not required to be registered in New Mexico. Only buyers or lessees who have a registration number or have applied for a registration number and have not been refused one under Subsection C of Section 7-1-12 NMSA 1978 shall execute nontaxable transaction certificates issued by the department. If the seller or lessor has been given an identification number for tax purposes by the department, the seller or lessor shall disclose that identification number to the buyer or lessee prior to or upon acceptance of a nontaxable transaction certificate.

B. Except as provided in Subsection C of this section, a person who does not comply with Subsection A of this section may establish entitlement to a deduction from gross receipts by presenting alternative evidence that demonstrates the facts necessary

to support entitlement to the deduction, but the burden of proof is on that person. Alternative evidence includes:

(1) invoices or contracts that identify the nature of the transaction;

(2) documentation as to the purchaser's use or disposition of the property or service;

(3) a statement from the purchaser indicating that the purchaser sold or intends to resell the property or service purchased from the seller, either by itself or in combination with other property or services, in the ordinary course of business. The statement from the purchaser shall include:

(a) the seller's name;

(b) the date of the invoice or date of the transaction;

(c) the invoice number or a copy of the invoice;

(d) a copy of the purchase order, if available;

(e) the amount of purchase; and

(f) a description of the property or service purchased or leased; or

(4) any other evidence that demonstrates the facts necessary to establish entitlement to the deduction.

C. Subsection B of this section does not apply to sellers of electricity or fuels that are parties to an agreement with the department pursuant to Section 7-1-21.1 NMSA 1978 regarding the deduction pursuant to Subsection B of Section 7-9-46 NMSA 1978.

D. When a person accepts in good faith a properly executed nontaxable transaction certificate from the purchaser, the properly executed nontaxable transaction certificate shall be conclusive evidence that the proceeds from the transaction are deductible from the person's gross receipts.

E. To exercise the privilege of executing appropriate nontaxable transaction certificates, a buyer or lessee shall apply to the department for permission to execute nontaxable transaction certificates, except with respect to documents issued by other states or the multistate tax commission that the department has deemed to be nontaxable transaction certificates.

F. If a person has accepted in good faith a properly executed nontaxable transaction certificate, but the purchaser has not employed the property or service purchased in the nontaxable manner or has provided materially false or inaccurate

information on the nontaxable transaction certificate, the purchaser shall be liable for an amount equal to any tax, penalty and interest that the seller would have been required to pay if the seller had not complied with Subsection A of this section.

G. Any person who knowingly or willfully provides false or inaccurate information on a nontaxable transaction certificate or as alternative evidence provided in support of a claim for a deduction may be subject to prosecution under Sections 7-1-72 and 7-1-73 NMSA 1978.

**History:** 1953 Comp., § 72-16A-13, enacted by Laws 1966, ch. 47, § 13; 1969, ch. 144, § 33; 1973, ch. 219, § 1; 1983, ch. 220, § 7; 1990, ch. 41, § 6; 1991, ch. 9, § 29; 1992, ch. 39, § 3; 1993, ch. 31, § 9; 1994, ch. 94, § 1; 1994, ch. 98, § 1; 1997, ch. 72, § 1; 1998, ch. 89, § 3; 2001, ch. 332, § 1; 2003, ch. 330, § 1; 2005, ch. 12, § 1; 2011, ch. 148, § 1; 2018, ch. 56, § 1.

## ANNOTATIONS

**The 2018 amendment,** effective March 2, 2018, provided for alternative evidence other than a nontaxable transaction certificate to entitle persons to a deduction from gross receipts tax, which may include invoices or contracts that identify the nature of the transaction, documentation as to the purchaser's use or disposition of the property or service, a statement from the purchaser indicating that the purchaser sold or intends to resell the property or service purchased from the seller, either by itself or in combination with other property or services, in the ordinary course of business, or other evidence that demonstrates the facts necessary to establish entitlement to the deduction; in Subsection A, deleted "All nontaxable transaction certificates of the appropriate series executed by buyers or lessees should be in the possession of the seller or lessor for nontaxable transactions at the time the return is due for receipts from the transaction. If the seller or lessor is not in possession of the required nontaxable transaction certificates within sixty days from the date that the notice requiring possession of these nontaxable transaction certificates is given the seller or lessor by the department, deductions claimed by the seller or lessor that require delivery of these nontaxable transaction certificates shall be disallowed except as provided in Subsection E of this section. The" and added "Except as provided in Subsection B of this section, a person may establish entitlement to a deduction from gross receipts allowed pursuant to the Gross Receipts and Compensating Tax Act by obtaining a properly executed nontaxable transaction certificate from the purchaser"; added new Subsections B and C; added new subsection designation "D"; in Subsection D, after "When", deleted "the seller or lessor" and added "a person", after "accepts", added "in good faith", after "a", added "properly executed", after the first occurrence of "nontaxable transaction certificate", deleted "within the required time and in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner" and added "from the purchaser", and after "deductible from the", deleted "seller's or lessor's" and added "person's"; deleted former Subsections B and C and redesignated former Subsection D as Subsection E; in Subsection E, after "nontaxable transaction certificates.", deleted

the remainder of the subsection; and deleted former Subsection E and added Subsections F and G.

**The 2011 amendment,** effective April 7, 2011, added Subsection E to permit the secretary to accept evidence other than a nontaxable transaction certificate to support a deduction from gross receipts for the sale of tangible personal property or licenses.

**The 2005 amendment,** effective March 15, 2005, deleted Subsection D, eliminating the requirement that a new series of nontaxable transaction certificates be issued for twelve-year periods. Former Subsection E is now Subsection D.

**The 2003 amendment,** effective June 20, 2003, in Subsection D substituted "January 1, 2005" for "January 1, 1992" three times, substituted "December 31, 2004" for "December 31, 1991" following "transactions after" at the end of the first sentence, substituted "2005" for "1992" following "calendar year" at the end of the second sentence, and inserted "except the nontaxable transaction certificates issued by the department for the period January 1, 1992 to December 31, 2001 may be executed by buyers or lessees for transactions occurring prior to December 31, 2004" following "that twelve-year period" at the end of the third sentence; in Subsection E, inserted "or to have a non-filed period" following "delinquent taxpayer" near the beginning of the second sentence, inserted "has filed returns for all non-filed periods and" following "until the person" near the middle of the second sentence, inserted "or to have a non-filed period" following "delinquent taxpayer" near the middle of the third sentence, inserted "has filed returns for all non-filed periods and" following "until the person" near the end of the third sentence, deleted "annually" following "report to the department" near the middle of the fifth sentence, and deleted "annually" following "report to the department" near the middle of the sixth sentence.

**The 2001 amendment,** effective July 1, 2001, in Subsection D, converted the former "ten-year period" to a "twelve-year period" throughout the subsection.

**The 1991 amendment,** effective June 14, 1991, in the section heading, deleted "farmers' and ranchers' statements" following "certificates" and added "Fee - Renewal" at the end; added "Subject to the provisions of Subsection D of this section" at the beginning of Subsection A; and added Subsection D.

**Execution of certificate.** — This section makes clear that only the buyer, who has or had applied for a registration number, may execute a nontaxable transaction certificate. *House of Carpets, Inc., v. Bureau of Revenue*, 1973-NMCA-034, 84 N.M. 747, 507 P.2d 1078.

**Liability for payment of tax.** — Where a nontaxable transaction certificate has been properly delivered to a seller of service for resale, only the reseller of the service is liable for payment of the gross receipts tax. *House of Carpets, Inc., v. Bureau of Revenue*, 1973-NMCA-034, 84 N.M. 747, 507 P.2d 1078.

**Taxable transaction not transformed by "nontaxable transaction certificate".** — Issuance of a "nontaxable transaction certificate" does not operate to transform an otherwise taxable transaction into a nontaxable transaction. *Gas Co. v. O'Cheskey*, 1980-NMCA-085, 94 N.M. 630, 614 P.2d 547.

**Commissioner (now department) has authority to issue regulations interpreting and exemplifying statutes** concerning the possession of nontaxable transaction certificates and he also has such authority as may be fairly implied from the statutory authorization. *Rainbo Baking Co. v. Commissioner of Revenue*, 1972-NMCA-139, 84 N.M. 303, 502 P.2d 406.

**Words "properly executed"** are used in this section in the sense of completing - filling out and signing - the nontaxable transaction certificates. *Leaco Rural Tel. Coop., Inc. v. Bureau of Revenue*, 1974-NMCA-076, 86 N.M. 629, 526 P.2d 426.

**Taxpayer not liable if certificates incorrectly issued.** — Although receipts from transactions involving telephone service to schools, churches, police departments, fire departments and the like were not properly deductible in the first instance because the transactions were not sales of tangible personal property, nevertheless, when the telephone company accepted the nontaxable transaction certificates in compliance with this section, the deductions authorized thereby applied and protected the company from tax liability on receipts from those transactions, regardless of the propriety or impropriety of the certificates' issuance. *Leaco Rural Tel. Coop., Inc. v. Bureau of Revenue*, 1974-NMCA-076, 86 N.M. 629, 526 P.2d 426.

**Reliance on certificates improper following change in law.** — This section protects a taxpayer when the purchaser who provided the nontaxable transaction certificates (NTTC) has failed to live up to the promise that the actual transaction was nontaxable. However, it does not protect taxpayers from changes in the law that render formerly nontaxable transactions taxable. Indeed, a taxpayer has an affirmative duty to keep informed about changes in the tax law affecting liability and cannot escape tax liability for transactions based on NTTCs issued before a change in the law rendered the NTTCs invalid for those transactions. *Arco Materials, Inc. v. State Taxation & Revenue Dep't*, 1994-NMCA-062, 118 N.M. 12, 878 P.2d 330, *rev'd on other grounds sub nom. Blaze Constr. Co. v. Taxation & Revenue Dep't*, 1994-NMSC-110, 118 N.M. 647, 884 P.2d 803, cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

**Certificate inapplicable to in-state ambulance receipts.** — A nontaxable transaction certificate accepted by a taxpayer who will make initial use of the product or service outside of this state does not apply to receipts from the taxpayer's in-state ambulance service. *McKinley Ambulance Serv. v. Bureau of Revenue*, 1979-NMCA-026, 92 N.M. 599, 592 P.2d 515.

## 7-9-43.1. Nontaxable transaction certificates not required by liquor wholesalers.

Notwithstanding the provisions of Section 7-9-43 NMSA 1978, a liquor wholesaler licensed as a wholesaler by the superintendent of regulation and licensing pursuant to the Liquor Control Act [60-3A-1 NMSA 1978 et seq.] is not required to obtain a nontaxable transaction certificate from a person issued a retailer's, dispenser's, restaurant, public service or governmental license by the superintendent of regulation and licensing pursuant to the Liquor Control Act for the purpose of taking deductions under the Gross Receipts and Compensating Tax Act.

**History:** Laws 1981, ch. 333, § 1; 1992, ch. 39, § 4.

**ANNOTATIONS**

**The 1992 amendment,** effective July 1, 1992, substituted "as a wholesaler by the superintendent of regulation and licensing pursuant to the Liquor Control Act" for "by the department of alcoholic beverage control", and substituted all of the present language beginning with "person" for "liquor retailer licensed by the department of alcoholic beverage control for the purpose of taking deductions under the Gross Receipts and Compensating Tax Act".

## 7-9-44. Repealed.

**History:** 1953 Comp., § 72-16A-13.1, enacted by Laws 1969, ch. 144, § 34; 1983, ch. 220, § 8; 1990, ch. 41, § 7; 1992, ch. 39, § 5; 1993, ch. 31, § 10; 2001, ch. 343, § 3; repealed by Laws 2018, ch. 56, § 2.

**ANNOTATIONS**

**Repeals.** — Laws 2018, ch. 56, § 2 repealed 7-9-44 NMSA 1978, as enacted by Laws 1969, ch. 144, § 34, relating to suspension of the right to use a nontaxable transaction certificate, effective March 2, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

## 7-9-45. Deductions.

A. Receipts may only be deducted once from gross receipts or governmental gross receipts when computing the gross receipts tax or governmental gross receipts tax due.

B. The same receipts shall not be both exempt from the gross receipts tax and deducted from gross receipts.

C. The same receipts shall not be both exempt from the governmental gross receipts tax and deducted from governmental gross receipts.

**History:** 1978 Comp., § 7-9-45, enacted by Laws 1969, ch. 144, § 35; 1970, ch. 77, § 1; 1970, ch. 78, § 1; 1971, ch. 217, § 1; 1972, ch. 39, § 1; 1977, ch. 288, § 1; 1979, ch.

338, § 2; 1984, ch. 129, § 1; 1989, ch. 262, § 5; 1994, ch. 45, § 3; 1995, ch. 70, § 5; 1999, ch. 231, § 2; 2017 (1st S.S.), ch. 3, § 16.

## ANNOTATIONS

**The 2017 (1st S.S.) amendment,** effective July 1, 2017, clarified that certain receipts may only be deducted once from gross receipts or governmental gross receipts when computing the gross receipts tax or governmental gross receipts tax due; in Subsection A, deleted "In computing the gross receipts tax or governmental gross receipts tax due, only those receipts specified in Sections 7-9-46 through 7-9-76.2, 7-9-77.1, 7-9-83, 7-9-85 through 7-9-87 and 7-9-89 NMSA 1978 may be deducted. Receipts, whether specified once or several times in those sections, may be deducted only once from gross receipts or governmental gross" and after "Receipts", added "may only be deducted once from gross receipts or governmental gross receipts when computing the gross receipts tax or governmental gross receipts tax due"; in Subsection B, added "The same", after the first occurrence of "receipts", deleted "that are exempted from the gross receipts tax may" and added "shall", after "not be", added "both exempt from the gross receipts tax and", and deleted the last sentence, which provided "Receipts that are deducted from gross receipts may not be exempted from the gross receipts tax."; and in Subsection C, added "The same", after the first occurrence of "receipts", deleted "that are exempted from the governmental gross receipts tax", after "shall not be", added "both exempt from the governmental gross receipts tax and", and deleted the last sentence, which provided "Receipts that are deducted from governmental gross receipts shall not be exempted from the governmental gross receipts tax.".

**The 1999 amendment,** effective July 1, 1999, in Subsection A, substituted "Sections 7-9-46 through 7-9-76.2, 7-9-77.1, 7-9-83, 7-9-85 through 7-9-87 and 7-9-89 NMSA 1978 may be deducted" for "Sections 7-9-46 through 7-9-76.2, and 7-9-83, through 7-9-85 NMSA 1978 may be deducted" in the first sentence, and substituted "several times in those sections" for "several times in Sections 7-9-46 through 7-9-76.2 and 7-9-83 through 7-9-85 NMSA 1978" in the second sentence.

**The 1995 amendment,** effective July 1, 1995, substituted "and 7-9-83 through 7-9-85" for "7-9-83 and 7-9-84" in the first and second sentences of Subsection A.

**The 1994 amendment,** effective July 1, 1994, designated the previously undesignated first two sentences as Subsection A and the previously undesignated last sentence as Subsection B; in Subsection A, inserted "or governmental gross receipts tax" in the first sentence and "7-9-83 and 7-9-84" in both sentences, and added "or governmental gross receipts" at the end of the second sentence; and added Subsection C.

**The 1989 amendment,** effective July 1, 1989, added the third and fourth sentences.

**Deductions or exemptions from a tax must be strictly construed** in favor of the taxing authority, must be clearly and unambiguously expressed in the statute, and must

be clearly established by the taxpayer claiming the right thereto. *Chavez v. Commissioner of Revenue*, 1970-NMCA-116, 82 N.M. 97, 476 P.2d 67.

**Tax statute must also be given fair, unbiased and reasonable construction,** without favor or prejudice to either the taxpayer or the state, to the end that the legislative intent is effectuated and the public interests to be subserved thereby are furthered. *Chavez v. Commissioner of Revenue*, 1970-NMCA-116, 82 N.M. 97, 476 P.2d 67.

**Deductions narrowly but reasonably construed.** — If a tax is clearly applicable, except for a statutory exemption, exception or deduction therefrom, the provision for the exemption, exception or deduction must be narrowly but reasonably construed. *Chavez v. Commissioner of Revenue*, 1970-NMCA-116, 82 N.M. 97, 476 P.2d 67.

## 7-9-46. Deduction; gross receipts; governmental gross receipts; sales to manufacturers and manufacturing service providers.

A. Receipts from selling tangible personal property may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person engaged in the business of manufacturing who delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978. The buyer must incorporate the tangible personal property as an ingredient or component part of the product that the buyer is in the business of manufacturing.

B. Receipts from selling a manufacturing consumable to a manufacturer or a manufacturing service provider may be deducted from gross receipts or from governmental gross receipts if the buyer delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978; provided that if the seller is a utility company, an agreement with the department pursuant to Section 7-1-21.1 NMSA 1978 and a nontaxable transaction certificate shall be required.

C. Receipts from selling or leasing qualified equipment may be deducted from gross receipts if the sale is made to, or the lease is entered into with, a person engaged in the business of manufacturing or a manufacturing service provider who delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978; provided that a manufacturer or manufacturing service provider delivering a nontaxable transaction certificate or alternative evidence with respect to the qualified equipment shall not claim an investment credit pursuant to the Investment Credit Act [Chapter 7, Article 9A NMSA 1978] for that same equipment.

D. The purpose of the deductions provided in this section is to encourage manufacturing businesses to locate in New Mexico and to reduce the tax burden, including reducing pyramiding, on the tangible personal property that is consumed in the manufacturing process and that is purchased by manufacturing businesses in New Mexico.

E. The department shall annually report to the revenue stabilization and tax policy committee the aggregate amount of deductions taken pursuant to this section, the number of taxpayers claiming each of the deductions and any other information that is necessary to determine that the deductions are performing the purposes for which they are enacted.

F. A taxpayer deducting gross receipts pursuant to this section shall report the amount deducted separately for each deduction provided in this section and attribute the amount of the deduction to the appropriate authorization provided in this section in a manner required by the department that facilitates the evaluation by the legislature of the benefit to the state of these deductions.

G. As used in this section:

(1) "manufacturing consumable" means tangible personal property, other than qualified equipment or an ingredient or component part of a manufactured product, that is incorporated into, destroyed, depleted or transformed in the process of manufacturing a product, including electricity, fuels, water, manufacturing aids and supplies, chemicals, gases and other tangibles used to manufacture a product;

(2) "manufacturing operation" means a plant operated by a manufacturer or manufacturing service provider that employs personnel to perform production tasks to produce goods, in conjunction with machinery and equipment; and

(3) "qualified equipment" means machinery, equipment and tools, including component, repair, replacement and spare parts thereof, that are used directly in the manufacturing process of a manufacturing operation. "Qualified equipment" includes computer hardware and software used directly in the manufacturing process of a manufacturing operation but excludes any motor vehicle that is required to be registered in this state pursuant to the Motor Vehicle Code [66-1-1 NMSA 1978].

**History:** 1953 Comp., § 72-16A-14.1, enacted by Laws 1969, ch. 144, § 36; 1992, ch. 100, § 4; 2012, ch. 5, § 4; 2013, ch. 160, § 9; 2021, ch. 65, § 13; 2021, ch. 66, § 2; 2023, ch. 85, § 14.

## ANNOTATIONS

**Repeals.** — Laws 2023, ch. 85, § 27 repealed Laws 2021, ch. 65, § 13, effective July 1, 2023.

**The 2023 amendment,** effective July 1, 2023, clarified when alternative evidence may be used to support the deduction for gross receipts tax for manufacturers and manufacturing service providers; in Subsection A, after "nontaxable transaction certificate to the seller", added "or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978", and after "The buyer", deleted "delivering the nontaxable transaction certificate"; in subsection B, added "or provides alternative evidence pursuant to Section

7-9-43 NMSA 1978; provided that if the seller is a utility company, an agreement with the department pursuant to Section 7-1-21.1 NMSA 1978 and a nontaxable transaction certificate shall be required"; and in Subsection C, after "nontaxable transaction certificate to the seller", added "or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978", and after the next occurrence of "nontaxable transaction certificate", added "or alternative evidence".

**The 2021 amendment,** effective January 1, 2022, added manufacturing service providers to a gross receipts tax deduction for manufacturers, and defined "manufacturing consumable", as used in this section; in the section heading, deleted "tax", and added "and manufacturing service providers"; in Subsection B, after "Receipts from selling", deleted "tangible personal property that is", preceding "consumable", added "manufacturing", and after "consumable", deleted "and used in such a way that it is consumed in the manufacturing process of a product, provided that the tangible personal property is not a tool or equipment used to create the manufactured product, to a person engaged in the business of manufacturing that product and who delivers a nontaxable transaction certificate to the seller" and added "to a manufacturer or a manufacturing service provider", after "may be deducted", deleted "in the following percentages", and deleted former Paragraphs B(1) through B(5) and added "if the buyer delivers a nontaxable transaction certificate to the seller"; added a new Subsection C and redesignated former Subsections C through F as Subsection D through G, respectively; and in Subsection G, in the introductory clause, after "As used in", deleted "Subsection B of", in Paragraph G(1), added "manufacturing", after "personal property", added "other than qualified equipment or an ingredient or component part of a manufactured product", after "gases", deleted "repair parts, spares", and deleted former Paragraph F(2) and added Paragraphs G(2) and G(3).

**The 2013 amendment,** effective July 1, 2013, provided a definition of "consumable" for purposes of the deduction of receipts from sales to manufacturers; in Subsection B, in the introductory sentence, after "tangible personal property that is", added "a consumable and"; and added Subsection F.

**Applicability.** — Laws 2013, ch. 160, § 14 provided that Laws 2013, ch. 160, § 9 applies to gross receipts received on or after July 1, 2013.

**The 2012 amendment,** effective January 1, 2013, provided a deduction for receipts from selling tangible personal property that is consumed in the manufacturing process of a product and added Paragraphs B, C, D and E.

**The 1992 amendment,** effective July 1, 1992, inserted "governmental gross receipts" in the section heading; inserted "or from governmental gross receipts" in the first sentence; and substituted "that" for "which" in the second sentence.

**Entitlement to manufacturing deduction not found.** — A biotechnology company whose expertise was in the diagnosis of genetic disorders that could be detected through the appearance of chromosomes, and who produced tangible objects that were

provided to its customers, such as a written report of its experts' diagnosis and a laminated karyotype, which consisted of photographs of chromosomes that were numbered and pasted onto a piece of laminated cardboard, did not establish its entitlement to a manufacturing deduction, since the company could not identify any out-of-state purchases that would be subject to the compensating tax of products incorporated into its reports or laminated karyotypes. The department, whose assessment is assumed correct, had identified as subject to the compensating tax such items as microscopes, sinks, and furniture, which undoubtedly were not incorporated into the documents or laminated karyotypes. *Vivigen, Inc. v. Minzner*, 1994-NMCA-027, 117 N.M. 224, 870 P.2d 1382.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Sales or use tax upon containers or packaging materials purchased by manufacturer or processor for use with goods he distributes, 4 A.L.R.4th 581.

Items or materials exempt from use tax as becoming component part or ingredient of manufactured or processed article, 89 A.L.R.5th 493.

## 7-9-46.1. Deduction; gross receipts; governmental gross receipts; sales of services to manufacturers.

A. Receipts from selling professional services may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person engaged in the business of manufacturing who delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978. The professional services shall be related to the product that the buyer is in the business of manufacturing.

B. The purpose of the deductions provided in this section is to encourage manufacturing businesses to locate in New Mexico and to reduce the tax burden, including reducing pyramiding, on the professional services that are purchased by manufacturing businesses in New Mexico.

C. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

D. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deduction. The department shall compile and present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the deduction and whether the deduction is performing the purpose for which it was created.

E. As used in this section:

(1) "accounting services" means the systematic and comprehensive recording of financial transactions pertaining to a business entity and the process of summarizing, analyzing and reporting these transactions to oversight agencies or tax collection entities, including certified public auditing, attest services and preparing financial statements, bookkeeping, tax return preparation, advice and consulting and, where applicable, representing taxpayers before tax collection agencies. "Accounting services" does not include, except as provided with respect to financial management services, investment advice, wealth management advice or consulting or any tax return preparation, advice, counseling or representation for individuals, regardless of whether those individuals are owners of pass-through entities, such as partnerships, limited liability companies or S corporations;

(2) "architectural services" means services related to the art and science of designing and building structures for human habitation or use and includes planning, providing preliminary studies, designs, specifications and working drawings and providing for general administration of construction contracts;

(3) "engineering services" means consultation, the production of a creative work, investigation, evaluation, planning and design, the performance of studies and reviewing planning documents when performed by, or under the supervision of, a licensed engineer, including the design, development and testing of mechanical, electrical, hydraulic, chemical, pneumatic or thermal machinery or equipment, industrial or commercial work systems or processes and military equipment. "Engineering services" does not include medical or medical laboratory services, any engineering performed in connection with a construction service or the design and installation of computer or computer network infrastructure;

(4) "information technology services" means separately stated services for installing and maintaining a business's computers and computer network, including performing computer network design; installing, repairing, maintaining or restoring computer networks, hardware or software; and performing custom software programming or making custom modifications to existing software programming. "Information technology services" does not include:

(a) software maintenance and update agreements, unless made in conjunction with custom programming;

(b) computers, servers, chilling equipment and pre-programmed software;

(c) data processing services or the processing or storage of information to compile and produce records of transactions for retrieval or use, including data entry, data retrieval, data searches and information compilation; or

(d) access to telecommunications or internet;

(5) "legal services" means services performed by a licensed attorney or under the supervision of a licensed attorney for a client, regardless of the attorney's form of business entity or whether the services are prepaid, including legal representation before courts or administrative agencies; drafting legal documents, such as contracts or patent applications; legal research; advising and counseling; arbitration; mediation; and notary public and other ancillary legal services performed for a client in conjunction with and under the supervision of a licensed attorney. "Legal services" does not include lobbying or government relations services, title insurance agent services, licensing or selling legal software or legal document templates, insurance investigation services or any legal representation involving financial crimes or tax evasion in New Mexico; and

(6) "professional services" means accounting services, architectural services, engineering services, information technology services and legal services.

**History:** Laws 2022, ch. 47, § 14.

**ANNOTATIONS**

**Effective dates.** — Laws 2022, ch. 47, § 17 made Laws 2022, ch. 47, § 14 effective July 1, 2022.

## 7-9-47. Deduction; gross receipts tax; governmental gross receipts tax; sale of tangible personal property or licenses for resale.

Receipts from selling tangible personal property or licenses may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978. The buyer must resell the tangible personal property or license either by itself or in combination with other tangible personal property or licenses in the ordinary course of business.

**History:** 1953 Comp., § 72-16A-14.2, enacted by Laws 1969, ch. 144, § 37; 1992, ch. 39, § 6; 1992, ch. 100, § 5; 1994, ch. 45, § 4; 2021, ch. 65, § 14.

**ANNOTATIONS**

**The 2021 amendment,** effective July 1, 2021, provided that a taxpayer may provide the taxation and revenue department alternative evidence to claim a gross receipts tax deduction in lieu of providing a non-taxable transaction certificate; and after "certificate to the seller", added "or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978", and after "buyer", deleted "delivering the nontaxable transaction certificate".

**The 1994 amendment,** effective July 1, 1994, inserted "or licenses" in the section heading and in both sentences, and "or license" in the second sentence.

**The 1992 amendment,** effective July 1, 1992, inserted "governmental gross receipts" in the section heading; and inserted "or from governmental gross receipts" in the first sentence.

**Ordinary course of business.** — Where taxpayer, whose typical business practices included owning, operating, leasing, and controlling generating plants and facilities for the generation, transmission and distribution of electricity to the public at retail, purchased turbines and related equipment to be used in the construction of a generating plant that would be conveyed to a municipality as an industrial revenue bond project, the sale of the turbines and related equipment was not in the taxpayer's ordinary course of business because the taxpayer had not previously purchased turbines and related equipment and did not plan to do so in the future, the taxpayer had not previously constructed generating plants, and there was no evidence that the transaction at issue was typical or customary within the taxpayer's industry. *Pub. Serv. Co. of N.M. v. NM Taxation & Revenue Dept*., 2007-NMCA-050, 141 N.M. 520, 157 P.3d 85.

**The phrase "ordinary course of business"** contemplates some evidence that a transaction is customary, normal, or regular within the company's own business or within the relevant industry at large. *Pub. Serv. Co. of N.M. v. N.M. Taxation & Revenue Dept*., 2007-NMCA-050, 141 N.M. 520, 157 P.3d 85.

**Legislature possesses great freedom of classification in taxation field.** — In the field of taxation, more than in other fields, the legislature possesses the greatest freedom in classification, and to attack such a classification as a violation of U.S. Const., amend. XIV places the burden on the one attacking to negative every conceivable basis which might support the classification and unless the classification is clearly arbitrary and capricious or void for uncertainty, the appellate court cannot substitute its views in selecting and classifying for those of the legislature. *N.M. Newspapers, Inc. v. Bureau of Revenue*, 1971-NMCA-022, 82 N.M. 436, 483 P.2d 317 (Ct. App. 1971).

**Scope of authority.** — Commissioner (now secretary) has authority to issue regulations interpreting and exemplifying statutes concerning the possession of nontaxable transaction certificates and he also has such authority as may be fairly implied from the statutory authorization. This authority, however, does not extend to imposing a time requirement which would abridge or modify the deduction authorized by the legislature. *Rainbo Baking Co. v. Comm'r of Revenue*, 1972-NMCA-139, 84 N.M. 303, 502 P.2d 406.

**Certificate required.** — Since there was no evidence that contractors provided "nontaxable transaction certificates" to their vendors when they purchased property to be used in fulfilling their government contracts, the technical requirements of this section were not met. *United States v. New Mexico*, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Form of certificate.** — A seller's failure to possess a non-taxable transaction certificate in the form prescribed by the department and to procedurally present the form in a timely and proper manner provided a valid basis for denying the deductions claimed. A "blanket exemption certificate," issued by the buyer and relied upon by the seller, failed to meet this section's requirements. *Proficient Food Co. v. N.M. Taxation & Revenue Dep't*, 1988-NMCA-042, 107 N.M. 392, 758 P.2d 806, cert. denied, 107 N.M. 308, 756 P2d 1203.

**Reimbursement for services not sale.** — Reimbursements for materials and supplies consumed in performing services under certain government contracts were merely reimbursements for those services and did not involve a sale by the contractors of tangible personal property to the United States nor qualify for a deduction under this section. *United States v. New Mexico*, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

## 7-9-48. Deduction; gross receipts tax; governmental gross receipts; sale of a service for resale.

Receipts from selling a service for resale may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978. The buyer must resell the service in the ordinary course of business and the resale must be subject to the gross receipts tax or governmental gross receipts tax.

**History:** 1953 Comp., § 72-16A-14.3, enacted by Laws 1969, ch. 144, § 38; 1992, ch. 100, § 6; 2000, ch. 84, § 2; 2021, ch. 65, § 15.

**ANNOTATIONS**

**The 2021 amendment,** effective July 1, 2021, provided that a taxpayer may provide the taxation and revenue department alternative evidence to claim a gross receipts tax deduction in lieu of providing a non-taxable transaction certificate; and after "certificate to the seller", added "or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978", and after "buyer", deleted "delivering the nontaxable transaction certificate".

**The 2000 amendment,** effective July 1, 2000, in the second sentence, substituted "resell the service" for "separately state the value of the service purchased in his charge for the service on its subsequent sale, and the subsequent sale must be" and inserted "the resale must be" preceding "subject to the gross receipts tax".

**The 1992 amendment,** effective July 1, 1992, inserted "governmental gross receipts" in the section catchline; inserted "or from governmental gross receipts" in the first sentence, while adding "to the seller" at the end of that sentence; and added "or governmental gross receipts tax" at the end of the second sentence.

## 7-9-49. Deduction; gross receipts tax; sale of tangible personal property and licenses for leasing.

A. Except as otherwise provided by Subsection B of this section, receipts from selling tangible personal property and licenses may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978. The buyer shall be engaged in a business that derives a substantial portion of its receipts from leasing or selling tangible personal property or licenses of the type sold. The buyer may not utilize the tangible personal property or license in any manner other than holding it for lease or sale or leasing or selling it either by itself or in combination with other tangible personal property or licenses in the ordinary course of business.

B. The deduction provided by this section shall not apply to receipts from selling:

(1) furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53 NMSA 1978;

(2) coin-operated machines; or

(3) manufactured homes.

**History:** 1953 Comp., § 72-16A-14.4, enacted by Laws 1969, ch. 144, § 39; 1972, ch. 80, § 1; 1975, ch. 160, § 1; 1979, ch. 338, § 3; 1983, ch. 220, § 9; 1989, ch. 115, § 4; 1991, ch. 203, § 3; 1992, ch. 39, § 7; 2021, ch. 65, § 16.

**ANNOTATIONS**

**The 2021 amendment,** effective July 1, 2021, provided that a taxpayer may provide the taxation and revenue department alternative evidence to claim a gross receipts tax deduction in lieu of providing a non-taxable transaction certificate; and in Subsection A, after "certificate to the seller", added "or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978", and after "buyer", deleted "delivering the nontaxable transaction certificate".

**The 1992 amendment,** effective July 1, 1992, inserted "and licenses" in the section catchline and in the first sentence of Subsection A, substituted "that" for "which" and inserted "or licenses" in the second sentence, and inserted "or license" and "or licenses" in the last sentence.

**The 1991 amendment,** effective July 1, 1991, substituted "manufactured" for "mobile" in Paragraph (3) in Subsection B and made a minor stylistic change in Subsection A.

**The 1989 amendment,** effective July 1, 1989, designated the formerly undesignated provisions as Subsection A; in Subsection A substituted all of the language of the first sentence preceding "may" for "Receipts from selling tangible personal property other

than furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53 NMSA 1978, other than coin-operated machines and other than mobile homes", and substituted "sold" for "leased" at the end of the second sentence; and added Subsection B.

## 7-9-50. Deduction; gross receipts tax; lease for subsequent lease.

A. Except as provided otherwise in Subsection B of this section, receipts from leasing tangible personal property or licenses may be deducted from gross receipts if the lease is made to a lessee who delivers a nontaxable transaction certificate to the lessor or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978. The lessee may not use the tangible personal property or license in any manner other than for subsequent lease in the ordinary course of business.

B. The deduction provided by this section does not apply to receipts from leasing:

(1) furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53 NMSA 1978;

(2) coin-operated machines; or

(3) manufactured homes.

**History:** 1953 Comp., § 72-16A-14.5, enacted by Laws 1969, ch. 144, § 40; 1972, ch. 80, § 2; 1975, ch. 160, § 2; 1979, ch. 338, § 4; 1983, ch. 220, § 10; 1991, ch. 203, § 4; 1992, ch. 39, § 8; 2021, ch. 65, § 17.

**ANNOTATIONS**

**The 2021 amendment,** effective July 1, 2021, provided that a taxpayer may provide the taxation and revenue department alternative evidence to claim a gross receipts tax deduction in lieu of providing a non-taxable transaction certificate; and in Subsection A, after "certificate to the lessor", added "or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978", and after "lessee", deleted "delivering the nontaxable transaction certificate".

**The 1992 amendment,** effective July 1, 1992, in Subsection A, inserted "or licenses" in the first sentence and inserted "or license" in the second sentence.

**The 1991 amendment,** effective July 1, 1991, designated the formerly undesignated provision as Subsection A; rewrote the first sentence of Subsection A which read "receipts from leasing tangible personal property other than furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53 NMSA 1978, other than coin-operated machines and other than mobile homes may be deducted from gross receipts if the lease is made to a lessee who delivers a nontaxable transaction certificate to the lessor"; and added Subsection B.

## 7-9-51. Deduction; gross receipts tax; sale of construction material to persons engaged in the construction business.

A. Receipts from selling construction material 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 to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978.

B. The buyer must incorporate the construction material as:

(1) an ingredient or component part of a construction project that is subject to the gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part;

(2) an ingredient or component part of a construction project that is subject to the gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed; or

(3) an ingredient or component part of a construction project that is located on the tribal territory of an Indian nation, tribe or pueblo.

**History:** 1953 Comp., § 72-16A-14.6, enacted by Laws 1969, ch. 144, § 41; 2000, ch. 84, § 3; 2000, ch. 98, § 1; 2001, ch. 343, § 4; 2021, ch. 65, § 18.

### ANNOTATIONS

**The 2021 amendment,** effective July 1, 2021, provided that a taxpayer may provide the taxation and revenue department alternative evidence to claim a gross receipts tax deduction in lieu of providing a non-taxable transaction certificate; in Subsection A, after "certificate to the seller", added "or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978"; and in Subsection B, after "buyer", deleted "delivering the nontaxable transaction certificate".

**The 2001 amendment,** effective July 1, 2001, substituted "construction material" for "tangible personal property" in Subsections A and B.

**The 2000 amendment,** effective March 7, 2000, added Subsection B(3).

**"Engaged in the construction business."** — Since taxpayer constructed a hotel in this state, and taxpayer held a contractor's license and held itself out to the public as a contractor, there was sufficient evidence to conclude that taxpayer was "engaged in the construction business." *Continental Inn of Albuquerque, Inc. v. N.M. Taxation & Revenue Dep't*, 1992-NMCA-030, 113 N.M. 588, 829 P.2d 946.

**Proper issuance of nontaxable transaction certificate.** — The deduction from gross receipts pursuant to this section and 7-9-52 NMSA 1978 is not conditioned upon proper

issuance of the nontaxable transaction certificates (NTTC) by the buyer. The determination of whether a NTTC has been properly issued is a matter between the department and the buyer. *Continental Inn of Albuquerque, Inc. v. N.M. Taxation & Revenue Dep't*, 1992-NMCA-030, 113 N.M. 588, 829 P.2d 946.

**Message to seller that seller is entitled to deductions.** — The timely delivery of a nontaxable transaction certificate (NTTC) from the buyer to the seller conveys a message to the seller that the use of the NTTC's is such that the seller is entitled to deductions under this section or 7-9-52 NMSA 1978 when taxpayer issued NTTC's to the subcontractors; taxpayer, in essence, represented to the subcontractors that the use of the NTTC's was such that the subcontractors were entitled to deductions from the gross receipts tax. *Continental Inn of Albuquerque, Inc. v. N.M. Taxation & Revenue Dep't*, 1992-NMCA-030, 113 N.M. 588, 829 P.2d 946.

## 7-9-51.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 50, § 6, repealed 7-9-51.1 NMSA 1978, as enacted by Laws 1993, ch. 31, § 14, relating to gross receipts tax deductions for railway bed materials, effective July 1, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 7-9-52. Deduction; gross receipts tax; sale of construction services and construction-related services to persons engaged in the construction business.

A. Receipts from selling a construction service or a construction-related service 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 to the person performing the construction service or a construction-related service or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978.

B. The buyer shall have the construction services or construction-related services directly contracted for or billed to:

(1) a construction project that is subject to the gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part;

(2) a construction project that is subject to the gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed; or

(3) a construction project that is located on the tribal territory of an Indian nation, tribe or pueblo.

**History:** 1953 Comp., § 72-16A-14.7, enacted by Laws 1969, ch. 144, § 42; 2000, ch. 84, § 4; 2000, ch. 98, § 2; 2012, ch. 5, § 5; 2020, ch. 80, § 5; 2021, ch. 65, § 19.

## ANNOTATIONS

**The 2021 amendment,** effective July 1, 2021, provided that a taxpayer may provide the taxation and revenue department alternative evidence to claim a gross receipts tax deduction in lieu of providing a non-taxable transaction certificate; in Subsection A, after "construction-related service", added "or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978", and in Subsection B, after "buyer", deleted "delivering the nontaxable transaction certificate".

**The 2020 amendment,** effective May 20, 2020, removed a provision defining "construction-related service"; and deleted former Subsection C.

**The 2012 amendment,** effective January 1, 2013, provided a deduction for receipts from selling construction-related services; in the title, added "and construction-related services"; in Subsection A, after "selling a construction service", added "or a construction-related service" and after "performing the construction service", added "or a construction-related service"; in Subsection B, after "construction services", deleted "performed upon" and added the remainder of the sentence; and added Subsection C.

**The 2000 amendment,** effective March 7, 2000, added Subsection B(3).

**Language of this section is definite and unambiguous.** *Miller v. Bureau of Revenue*, 1979-NMCA-005, 93 N.M. 252, 599 P.2d 1049, cert. denied, 92 N.M. 532, 591 P.2d 286.

**"Engaged in the construction business".** — Since taxpayer constructed a hotel in this state, and taxpayer held a contractor's license and held itself out to the public as a contractor, there is sufficient evidence to conclude that taxpayer was "engaged in the construction business." *Continental Inn of Albuquerque, Inc. v. N.M. Taxation & Revenue Dep't*, 1992-NMCA-030, 113 N.M. 588, 829 P.2d 946.

**Construction services exempt from tax.** — A decision of the commissioner of the bureau of revenue (now secretary of the taxation and revenue department) denying the exemption of the sale of construction services from the gross receipts tax is contrary to the law of this state providing an exemption for construction services. *Miller v. Bureau of Revenue*, 1979-NMCA-005, 93 N.M. 252, 599 P.2d 1049, cert. denied, 92 N.M. 532, 591 P.2d 286.

**Proper issuance of nontaxable transaction certificate.** — The deduction from gross receipts pursuant to Section 7-9-51 NMSA 1978 and this section is not conditioned

upon proper issuance of the nontaxable transaction certificates (NTTC) by the buyer. The determination of whether a NTTC has been properly issued is a matter between the department and the buyer. *Continental Inn of Albuquerque, Inc. v. N.M. Taxation & Revenue Dep't*, 1992-NMCA-030, 113 N.M. 588, 829 P.2d 946.

**Message to seller that seller is entitled to deductions.** — The timely delivery of a nontaxable transaction certificate (NTTC) from the buyer to the seller conveys a message to the seller that the use of the NTTC's is such that the seller is entitled to deductions under Section 7-9-51 NMSA 1978 or this section when taxpayer issued NTTC's to the subcontractors; taxpayer, in essence, represented to the subcontractors that the use of the NTTC's was such that the subcontractors were entitled to deductions from the gross receipts tax. *Continental Inn of Albuquerque, Inc. v. N.M. Taxation & Revenue Dep't*, 1992-NMCA-030, 113 N.M. 588, 829 P.2d 946.

## 7-9-52.1. Deduction; gross receipts tax; lease of construction equipment to persons engaged in the construction business.

A. Receipts from leasing construction equipment may be deducted from gross receipts if the construction equipment is leased to a person engaged in the construction business who delivers a nontaxable transaction certificate to the person leasing the construction equipment or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978.

B. The lessee shall only use the construction equipment at the construction location of:

(1) a construction project that is subject to the gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part;

(2) a construction project that is subject to the gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed; or

(3) a construction project that is located on the tribal territory of an Indian nation, tribe or pueblo.

C. As used in this section, "construction equipment" means equipment used on a construction project, including trash containers, portable toilets, scaffolding and temporary fencing.

**History:** Laws 2012, ch. 5, § 6; 2021, ch. 65, § 20.

**ANNOTATIONS**

**The 2021 amendment,** effective July 1, 2021, provided that a taxpayer may provide the taxation and revenue department alternative evidence to claim a gross receipts tax deduction in lieu of providing a non-taxable transaction certificate; in Subsection A, after "construction equipment", added "or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978", and in Subsection B, after "lessee", deleted "delivering the nontaxable transaction certificate".

## 7-9-53. Deduction; gross receipts tax; sale or lease of real property and lease of manufactured homes.

A. Receipts from the sale or lease of real property and from the lease of a manufactured home as provided in Subsection B of this section, other than receipts from the sale or lease of oil, natural gas or mineral interests exempted by Section 7-9-32 NMSA 1978, may be deducted from gross receipts. However, 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 his construction business may not be deducted from gross receipts.

B. Receipts from the rental of a manufactured home for a period of at least one month may be deducted from gross receipts. Receipts received by hotels, motels, rooming houses, campgrounds, guest ranches, trailer parks or similar facilities, except receipts received by trailer parks from the rental of a space for a manufactured home or recreational vehicle for a period of at least one month, from lodgers, guests, roomers or occupants are not receipts from leasing real property for the purposes of this section.

C. Receipts attributable to the inclusion of furniture or appliances furnished as part of a leased or rented dwelling house, manufactured home or apartment by the landlord or lessor may be deducted from gross receipts.

**History:** 1953 Comp., § 72-16A-14.8, enacted by Laws 1969, ch. 144, § 43; 1972, ch. 80, § 3; 1973, ch. 205, § 1; 1975, ch. 160, § 3; 1979, ch. 338, § 5; 1983, ch. 220, § 11; 1991, ch. 203, § 5; 1998, ch. 94, § 1.

**ANNOTATIONS**

**Cross references.** — For deduction of real estate commissions from gross receipts tax, *see* 7-9-66.1 NMSA 1978.

**The 1998 amendment,** effective April 1, 1998, inserted "or recreational vehicle" near the middle of the second sentence in Subsection B.

**The 1991 amendment,** effective July 1, 1991, substituted "manufactured" for "mobile" in the section heading and throughout the section.

**Contract for correctional services not a lease.** — Where a contract for correctional services provided that the contractor was paid based on the number of inmates housed

and that the contractor had the right to fill up unoccupied space with inmates from other jurisdictions, the contract was not a lease for real property. *Corrections Corp. of Am. v. State of N.M.*, 2007-NMCA-148, 142 N.M. 779, 170 P.3d 1017.

**Receipts attributable to improvements.** — Real estate developer was not entitled to deduction for receipts from the sale of real estate attributable to improvements made on the land since those improvements were completed prior to the effective date of this section but sale was not made until after effective date, as the plain language of this section shows a legislative intent not to allow a deduction on receipts from sale of real property attributable to such improvements. *Doña Ana Dev. Corp. v. Commissioner of Revenue*, 1973-NMCA-018, 84 N.M. 641, 506 P.2d 798.

**Monies not received from lease of real property.** — The receipts, which this section declares not to be "receipts from leasing real property," are clearly intended to mean the monies or rentals normally received by operators of hotels, motels, etc., when being operated as such in their customary and ordinary manner, from the lodgers, guests, roomers and occupants thereof. *Chavez v. Commissioner of Revenue*, 1970-NMCA-116, 82 N.M. 97, 476 P.2d 67.

**"Lease" not "license".** — An arrangement between the owner of several properties used as bingo halls and the non-profit organizations who operated the bingo games was a lease and not a license where the organizations were required to pay rent, they were granted exclusive possession of certain facilities on the premises and the use of the facilities at certain times, and the owner could not revoke the agreement at will; although the arrangement was not a typical lease, restrictions in the Bingo and Raffle Act [repealed] accounted for the type of arrangement created and to deny that this was a lease would have made it impossible for bingo operators to enter arrangements that would qualify as leases. *Quantum Corp. v. Taxation & Revenue Dep't*, 1998-NMCA-050, 125 N.M. 49, 956 P.2d 848.

**"License" not "lease".** — The buy-down contract payments were reimbursements to the taxpayer for her sales loss incurred as a result of engaging in the discount promotions and where the shelf-display contract receipts were taxable pursuant to this section because those contracts bore a much greater resemblance to a license than to the creation and conveyance of an interest in real property that would have constituted a lease. *Grogan v. N.M. Taxation & Revenue Dep't*, 2003-NMCA-033, 133 N.M. 354, 62 P.3d 1236, cert. denied, 133 N.M. 413, 63 P.3d 516.

**Yearly lease of motel.** — Since taxpayers leased motel to a railway on an annual basis at a fixed rental, having no relationship to whether the railway company let the rooms to lodgers, guests or roomers, the rental received by the taxpayer was not income received from lodgers, guests or roomers, but was income by way of rental received from the lessee railway for the entire premises, and was deductible from gross receipts. *Chavez v. Commissioner of Revenue*, 1970-NMCA-116, 82 N.M. 97, 476 P.2d 67.

**Receipts from license agreements not deductible.** — Agreements between the taxpayer and several other companies providing for the use of space in the taxpayer's department stores for the purpose of retailing certain items, which agreements expressly negatived the intention to create a lease, constituted licenses, the money from selling which was not deductible from the gross receipts tax under this section. *S.S. Kresge Co. v. Bureau of Revenue*, 1975-NMCA-015, 87 N.M. 259, 531 P.2d 1232.

**Law reviews.** — For article, "The Deductibility for Federal Income Tax Purposes of the New Mexico Gross Receipts Tax Paid on the Purchase of a Newly Constructed Home," see 13 N.M.L. Rev. 625 (1983).

## 7-9-54. Deduction; gross receipts tax; governmental gross receipts tax; sales to governmental agencies.

A. Receipts from selling tangible personal property, or from selling licenses to use digital goods for the purpose of loaning those digital goods to the public, to the United States or to New Mexico or a governmental unit, subdivision, agency, department or instrumentality thereof may be deducted from gross receipts or from governmental gross receipts. Unless contrary to federal law, the deduction provided by this subsection does not apply to:

(1) receipts from selling metalliferous mineral ore;

(2) receipts from selling tangible personal property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code;

(3) receipts from selling 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 ten-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; or

(4) that portion of the receipts from performing a "service" that reflects the value of tangible personal property utilized or produced in performance of such service.

B. Receipts from selling tangible personal property, or from selling licenses to use digital goods for the purpose of loaning those digital goods to the public, for any purpose to an Indian tribe, nation or pueblo or a governmental unit, subdivision, agency, department or instrumentality thereof for use on Indian reservations or pueblo grants may be deducted from gross receipts or from governmental gross receipts.

C. When a seller, in good faith, deducts receipts for tangible personal property or licenses to use digital goods for the purpose of loaning those digital goods to the public sold to the state or a governmental unit, subdivision, agency, department or instrumentality thereof, after receiving written assurances from the buyer's

representative that the property sold is not construction material, the department shall not assert in a later assessment or audit of the seller that the receipts are not deductible pursuant to Paragraph (3) of Subsection A of this section.

**History:** 1953 Comp., § 72-16A-14.9, enacted by Laws 1969, ch. 144, § 44; 1976, ch. 25, § 2; 1985, ch. 225, § 4; 1989, ch. 115, § 5; 1992, ch. 100, § 7; 1993, ch. 31, § 11; 1995, ch. 50, § 3; 2000, ch. 84, § 5; 2000, ch. 98, § 3; 2001, ch. 343, § 5; 2003, ch. 272, § 6; 2003, ch. 330, § 2; 2018, ch. 58, § 1; 2023, ch. 85, § 15.

## ANNOTATIONS

**The 2023 amendment,** effective July 1, 2023, added to a deduction for gross receipts tax for licenses to use digital goods sold to a governmental entity when subsequently loaning those digital goods to the public; in Subsection A, in the introductory paragraph, after "tangible personal property", added "or from selling licenses to use digital goods for the purpose of loaning those digital goods to the public"; in Subsection B, after "tangible personal property", added "or from selling licenses to use digital goods for the purpose of loaning those digital goods to the public"; and in Subsection C, after "tangible personal property", added "or licenses to use digital goods for the purpose of loaning those digital goods to the public".

**The 2018 amendment,** effective March 2, 2018, clarified the meaning of construction material as used in the Gross Receipts and Compensating Tax Act; and in Paragraph A(3), after "construction material," added the remainder of the paragraph.

**2003 Amendments.** — Laws 2003, ch. 330, § 2, effective June 20, 2003, deleted "as defined in Subsection K of Section 7-9-3 NMSA 1978" near the middle of Paragraph A(4); in Subsection C substituted "shall not assert" for "is precluded from asserting" following "material, the department" near the middle and inserted "of the seller" following "assessment or audit" near the end.

Laws 2003, ch. 272, § 6, effective July 1, 2003, in Subsection A, deleted "or" preceding "subdivision, agency"; and in Paragraph A(4), substituted "Subsection M" for "Subsection K".

**The 2001 amendment,** effective July 1, 2001, substituted "construction material" for "tangible personal property that will become an ingredient or component part of a construction project" in Paragraph A(3); and added Subsection C.

**The 2000 amendment,** effective March 7, 2000, inserted "for any purpose" following "personal property" in Subsection B.

**The 1995 amendment,** effective July 1, 1995, inserted "tax" following "governmental gross receipts" in the section heading, deleted "nonfissionable" preceding "metalliferous" in Paragraph C(1), and made a minor stylistic change.

**The 1993 amendment,** effective July 1, 1993, deleted "or any agency or instrumentality thereof" following "United States" and substituted "any governmental unit or subdivision, agency, department or instumentality" for "any political subdivision" in Subsection A, and deleted "the governing body of" following "personal property to" and substituted "nation or pueblo or any governmental subdivision, agency, department or instrumentality thereof" for "or Indian pueblo" in Subsection B.

**The 1992 amendment,** effective July 1, 1992, inserted "governmental gross receipts" in the section heading; added "or from governmental gross receipts" at the end of Subsections A and B; substituted "that" for "which" in Subsection C(2); and substituted "that" for "which" in Subsection C(4), while deleting "is not deductible" at the end of that subsection.

**The 1989 amendment,** effective July 1, 1989, designated the formerly undesignated first sentence as Subsection A, while substituting therein "as provided otherwise in Subsection C of this section" for "for receipts from selling nonfissionable metalliferous mineral ore and except for receipts from selling tangible personal property which is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code; designated the formerly undesignated second sentence as Subsection B, while substituting all of the language thereof preceding "to" for "Receipts from selling tangible personal property other than nonfissionable metalliferous mineral ore"; added the introductory paragraph of Subsection C and Subsections C(1) through C(3); and designated the formerly undesignated third sentence as Subsection C(4).

**Effect on government's contract costs does not invalidate tax.** — That the gross receipts tax may increase cost on a contract to the government does not validate the tax on the grounds that a state may not directly tax the federal government where its legal incidence falls elsewhere. *United States v. New Mexico*, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Suppliers of personal property for federal agents entitled to deduction.** — If contractors are procurement agents for the federal government, their suppliers of tangible personal property would be entitled to a tax deduction. *United States v. New Mexico*, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Tax proper unless purchasing contractors agents of United States.** — Since contracts do not authorize the contractors to act as agents of the United States in purchasing supplies and materials, an application of the gross receipts tax to the contractual transactions for materials and supplies is not unconstitutional. *United States v. New Mexico*, 581 F.2d 803 (10th Cir. 1978), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Construction project includes wide variety of activities.** — This section was intended to make sales of construction materials to governmental entities taxable when

the materials were to be incorporated into construction projects. Contrary to taxpayer's argument that Regulation GR 51:16 (now 3.2.1.11 NMAC) establishes a definite test for determining whether an endeavor is a "construction project," this regulation merely states nonexclusive guidelines for determining whether materials constitute a component part of a construction project. Thus, construction projects include the wide variety of activities listed in 7-9-3C NMSA 1978. *Arco Materials, Inc. v. Taxation & Revenue Dep't*, 1994-NMCA-062, 118 N.M. 12, 878 P.2d 330, *rev'd on other grounds sub nom. Blaze Constr. Co. v. Taxation & Revenue Dep't*, 1994-NMSC-110, 118 N.M. 647, 884 P.2d 803, cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

**Direct passage of title to government insufficient to establish agency.** — That title to tangible personal property passes directly from the vendor to the federal government is insufficient in itself to establish an agency relationship. *United States v. New Mexico*, 455 F. Supp. 993 (D.N.M. 1978), *aff'd in part, rev'd in part on other grounds*, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Contract and circumstances establish agency relationship.** — In determining whether contractors are procurement agents of the federal government, the surrounding facts and contract provisions must be analyzed, and specific words naming the contractors as agents are not required so long as it is clear from the contracts and the factual circumstances that the relationship is one of agency. *United States v. New Mexico*, 455 F. Supp. 993 (D.N.M. 1978), *aff'd in part, rev'd in part on other grounds*, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Determining whether contractor was a federal agent.** — Facts that contracts were management contracts, in existence for nearly 30 years and conducted in government-owned facilities with government-owned funds for the purpose of carrying out significant energy research and development administration statutory responsibilities, were important in determining whether contractor was an agent of the federal government. *United States v. New Mexico*, 455 F. Supp. 993 (D.N.M. 1978), *aff'd in part, rev'd in part on other grounds*, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

**Tax may not be imposed on non-Indian for purchase price of materials for tribal housing project.** — The state, through its bureau of revenue (now taxation and revenue department) and the commissioner of revenue (now secretary of the taxation and revenue department), may not impose upon a non-Indian construction company its gross receipts tax for the purchase price of materials used in connection with a tribal housing project on the Mescalero Apache reservation. *Mescalero Apache Tribe v. O'Cheskey*, 439 F. Supp. 1063 (D.N.M. 1977), *aff'd*, 625 F.2d 967 (10th Cir. 1980), cert. denied, 450 U.S. 959, 101 S. Ct. 1417, 67 L. Ed. 2d 383 (1981), reh’g denied, 455 U.S. 929, 102 S. Ct. 1296, 71 L. Ed. 2d 474 (1982).

**Telephone service.** — Decision that a telephone company was not entitled to a deduction under this section for receipts collected for intrastate toll charges and local phone calls from certain government organizations and organizations which had been granted federal income tax exemptions would be held, since there was a reasonable basis for differentiating between electricity (declared to be tangible personalty at 7-9-3J NMSA 1978) and telephone communications where the evidence showed that more was involved in the telephone business than the selling of electricity. *Leaco Rural Tel. Coop., Inc. v. Bureau of Revenue*, 1974-NMCA-076, 86 N.M. 629, 526 P.2d 426.

## 7-9-54.1. Deduction; gross receipts from sale of aerospace services to certain organizations.

A. Receipts from performing or selling an aerospace service for resale may be deducted from gross receipts if the sale is made to a buyer who delivers a nontaxable transaction certificate or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978. The buyer shall separately state the value of the aerospace service purchased in the buyer's charge for the aerospace service on its subsequent sale to an organization or, if the buyer is an organization, on the organization's subsequent sale to the United States, and the subsequent sale shall be in the ordinary course of business of selling aerospace services to an organization or to the United States.

B. As used in this section:

(1) "aerospace services" means research and development services sold to or for resale to an organization for resale by the organization to the United States air force; and

(2) "organization" means an organization described in Subsection A of Section 7-9-29 NMSA 1978 other than a prime contractor operating facilities in New Mexico designated as a national laboratory by act of congress.

**History:** Laws 1992, ch. 40, § 1; 1993, ch. 310, § 1; 1994, ch. 45, § 5; 1995, ch. 183, § 1; 2021, ch. 65, § 21.

**ANNOTATIONS**

**Cross references.** — For Spaceport Development Act, *see* 58-31-1 NMSA 1978 et seq.

**The 2021 amendment,** effective July 1, 2021, provided that a taxpayer may provide the taxation and revenue department alternative evidence to claim a gross receipts tax deduction in lieu of providing a non-taxable transaction certificate, removed a table containing gross receipts tax deduction amounts, and reorganized the section; deleted former Subsection A and redesignated former Subsection B as Subsection A; in Subsection A, after "performing or selling", deleted "on or after October 1, 1995", after "certificate", added "or provides alternative evidence pursuant to Section 7-9-43 NMSA

1978", and after "buyer", deleted "delivering the nontaxable transaction certificate"; and deleted former Subsection C and added a new Subsection B.

**The 1995 amendment,** effective July 1, 1995, rewrote Subsection A, inserted "if the buyer is an organization, on the organization's subsequent sale" in Subsection B, and substituted "or for resale to an organization" for "the United States or any agency or instrumentality thereof" in Subsection C.

**The 1994 amendment,** effective July 1, 1994, substituted "sold to or for resale to" for "performed or sold by" in Subparagraph A(1)(a) and inserted "performing or" in the first sentence in Subsection B.

**The 1993 amendment,** effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

## 7-9-54.2. Gross receipts; deduction; spaceport operation; space operations; launching, operating and recovering space vehicles or payloads; payload services; operationally responsive space program services.

A. Receipts from launching, operating or recovering space vehicles or payloads in New Mexico may be deducted from gross receipts.

B. Receipts from preparing a payload in New Mexico are deductible from gross receipts.

C. Receipts from operating a spaceport in New Mexico are deductible from gross receipts.

D. Receipts from the provision of research, development, testing and evaluation services for the United States air force operationally responsive space program may be deducted from gross receipts.

E. As used in this section:

(1) "operationally responsive space program" means a program authorized pursuant to 10 U.S.C. 2273a;

(2) "payload" means a system, subsystem or other mechanical structure or material to be conveyed into space that is designed, constructed or intended to perform a function in space;

(3) "space" means any location beyond altitudes of sixty thousand feet above the earth's mean sea level;

(4) "space operations" means the process of commanding and controlling payloads in space; and

(5) "spaceport" means an installation and related facilities used for the launching, landing, operating, recovering, servicing and monitoring of vehicles capable of entering or returning from space.

F. Receipts from the sale of tangible personal property that will become an ingredient or component part of a construction project or from performing construction services may not be deducted under this section.

**History:** Laws 1995, ch. 183, § 2; 1997, ch. 73, § 1; 2001, ch. 18, § 1; 2003, ch. 62, § 3; 2007, ch. 172, § 5.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, added Subsection D and Paragraph (1) of Subsection E.

**The 2003 amendment,** effective July 1, 2003, deleted "For the period from July 1, 2001 through June 30, 2006" at the beginning of Subsections A to C and rewrote Paragraph D(1).

**The 2001 amendment,** effective July 1, 2001, substituted "space operations; launching, operating and recovering space vehicles or payloads" for "launching and recovery of space launch vehicles" in the section heading; added the time periods in which receipts may be deducted from gross receipts in Subsections A, B and C; substituted "launching, operating or recovering space vehicles" for "launching or recovering space launch vehicles" in Subsection A; deleted "for launching" following "payload" in Subsection C; in Paragraph D(1), replaced the former definition of "payload" which read "includes systems, subsystems and mechanical structures required to perform or conduct research and development on or to conduct operations of space functions, such as reconnaissance, communications, navigation and target simulations, but does not include weapons"; added Paragraph D(3) and renumbered the following subsection; and substituted "operating, recovering" for "recovery" in present Paragraph D(4).

**The 1997 amendment,** effective June 20, 1997, in Subsection A, substituted "launching or recovering space launch vehicles or payloads" for "operating a spaceport"; in Subsection B, inserted "preparing a payload for" preceding "launching" and deleted "or recovering space launch vehicles or payloads from a spaceport" following "launching"; in Subsection C, substituted "operating" for "preparing a payload for launching at"; designated former Subsection D as Paragraph D(3) and rewrote that paragraph and added Paragraphs D(1) and D(2).

## 7-9-54.3. Deduction; gross receipts tax; wind and solar generation equipment; sales to governments.

A. Receipts from selling wind generation equipment or solar generation equipment to a government for the purpose of installing a wind or solar electric generation facility may be deducted from gross receipts.

B. The deduction allowed pursuant to this section shall not be claimed for receipts from an expenditure for which a taxpayer claims a credit pursuant to Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978.

C. As used in this section:

(1) "government" means the United States or the state or a governmental unit or a subdivision, agency, department or instrumentality of the federal government or the state;

(2) "related equipment" means transformers, circuit breakers and switching and metering equipment used to connect a wind or solar electric generation plant to the electric grid;

(3) "solar generation equipment" means solar thermal energy collection, concentration and heat transfer and conversion equipment; solar tracking hardware and software; photovoltaic panels and inverters; support structures; turbines and associated electrical generating equipment used to generate electricity from solar thermal energy; and related equipment; and

(4) "wind generation equipment" means wind generation turbines, blades, nacelles, rotors and supporting structures used to generate electricity from wind and related equipment.

**History:** Laws 2002, ch. 37, § 8; 2010, ch. 77, § 2; 2010, ch. 78, § 2.

**ANNOTATIONS**

**The 2010 amendment,** effective July 1, 2010, in the catchline, after "wind", deleted "energy" and added "and solar" and after "sales to", deleted "government agencies" and added "governments"; in Subsection A, after "selling wind generation", deleted "nacelles, rotors or related equipment to the United States or New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof, if such equipment is installed on a supporting structure" and added "equipment or solar generation equipment to a government for the purpose of installing a wind or solar electric generation facility"; and added Subsections B and C.

**Duplicate laws.** — Laws 2010, ch. 77, § 2 and Laws 2010, ch. 78, § 2 enacted identical amendments to this section. The section was set out as amended by Laws 2010, ch. 78, § 2. *See* 12-1-8 NMSA 1978.

## 7-9-54.4. Deduction; compensating tax; space-related test articles.

A. The value of space-related test articles used in New Mexico exclusively for research or testing, placing on public display after research or testing or storage for future research, testing or public display may be deducted in computing compensating tax due. This subsection does not apply to any other use of a space-related test article.

B. The value of equipment and materials used in New Mexico for research or testing, or for supporting the research or testing of, space-related test articles or for storage of such equipment or materials for research or testing, or supporting the research and testing of, space-related test articles may be deducted in computing compensating tax due. This subsection does not apply to any other use of such equipment and materials.

C. As used in this section, a "space-related test article" is a material or device intended to be used primarily in research or testing to determine properties and qualities of the material or properties, qualities or functioning of a device or technology when the principal use of the material, device or technology is intended to be in space or as part of, or associated with, a space vehicle.

**History:** 1978 Comp., § 7-9-54.4, enacted by Laws 2003, ch. 62, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 62, § 5 made Laws 2003, ch. 62, § 4 effective July 1, 2003.

## 7-9-54.5. Deduction; compensating tax; test articles.

A. The value of test articles upon which research or testing is conducted in New Mexico pursuant to a contract with the United States department of defense may be deducted in computing the compensating tax due.

B. As used in this section, "test article" means a material or device upon which research or testing is conducted to determine the properties and qualities of the material or the properties, qualities or functioning of the device or a technology used with the device.

C. The deduction provided by this section does not apply to the value of property purchased by a prime contractor operating a facility designated as a national laboratory by an act of congress.

**History:** Laws 2004, ch. 16, § 3.

**ANNOTATIONS**

**Emergency clause.** — Laws 2004, ch. 16, § 4 contained an emergency clause and was approved February 27, 2004.

## 7-9-55. Deduction; gross receipts tax; governmental gross receipts tax; transaction in interstate commerce.

A. Receipts from transactions in interstate commerce may be deducted from gross receipts to the extent that the imposition of the gross receipts tax would be unlawful under the United States constitution.

B. Receipts from transactions in interstate commerce may be deducted from governmental gross receipts.

C. Receipts from transmitting messages or conversations by radio other than from one point in this state to another point in this state and receipts from the sale of radio or television broadcast time when the advertising message is supplied by or on behalf of a national or regional seller or advertiser not having its principal place of business in or being incorporated under the laws of this state, may be deducted from gross receipts. Commissions of advertising agencies from performing services in this state may not be deducted from gross receipts under this section.

**History:** 1953 Comp., § 72-16A-14.10, enacted by Laws 1969, ch. 144, § 45; Laws 1986, ch. 20, § 65; Laws 1986, ch. 52, § 2; 1993, ch. 31, § 12.

**ANNOTATIONS**

**Repeals.** — Laws 1988, ch. 19, § 5, effective July 1, 1988, repealed Laws 1986, ch. 20, § 129 and Laws 1986, ch. 52, § 5, which amended versions of this section which were to take effect July 1, 1988.

Laws 1988, ch. 19, § 2 repealed and reenacted 7-9-55 NMSA 1978 as amended by Laws 1986, ch. 20, § 65 and Laws 1986, ch. 52, § 2, effective July 1, 1990; however, Laws 1990, ch. 27, § 2A repealed Laws 1988, ch. 19, § 2, effective May 16, 1990.

**The 1993 amendment,** effective July 1, 1993, inserted "governmental gross receipts tax" in the section heading; inserted the subsection designations A and C; and added Subsection B.

**Constitutionality.** — The New Mexico gross receipts tax did not violate the commerce clause of the United States constitution, as applied to a California corporation which owned and operated a food and restaurant supply business with a warehouse located in Texas, and which sold food and other restaurant supplies to restaurants for use in New Mexico by obtaining orders for deliveries by telephoning the restaurants and taking down the orders over the phone, then delivering the goods in its own trucks from its warehouse in Texas to the restaurants in New Mexico. *Proficient Food Co. v. N.M. Taxation & Revenue Dep't*, 1988-NMCA-042, 107 N.M. 392, 758 P.2d 806, cert. denied, 107 N.M. 308, 756 P.2d 1203.

**All interstate commerce is not per se immune** from taxation. *Spillers v. Commissioner of Revenue*, 1970-NMCA-097, 82 N.M. 41, 475 P.2d 41, cert. denied, 82 N.M. 81, 475 P.2d 778.

**Scope of deduction.** — This section permits deduction from gross receipts to the extent that the imposition of gross receipts tax would be unlawful under the United States constitution. If imposition of the tax upon the particular gross receipts is constitutionally lawful then such receipts are not deductible hereunder. *Spillers v. Commissioner of Revenue*, 1970-NMCA-097, 82 N.M. 41, 475 P.2d 41, cert. denied, 82 N.M. 81, 475 P.2d 778.

**Federal law does not preempt tax assessed on receipts from transportation of railroad crew members within the state.** — Where plaintiff contracted with union pacific railroad and burlington northern Santa Fe railroad to transport railroad employees to and from railroad trains both within New Mexico and from New Mexico to another state, and where the New Mexico taxation and revenue department (department), after an audit, assessed plaintiff for gross receipts on the revenues from plaintiff's service between locations within New Mexico, and where plaintiff filed a complaint for tax refund claiming that federal law preempts the department from imposing gross receipts tax on the transportation of passengers traveling in interstate commerce by motor carrier, the district court did not err in granting the department's motion for summary judgment, because Congress, in passing 49 U.S.C. §14505, intended to address passengers of a motor carrier who were traveling as passengers in interstate commerce, and plaintiff's transportation of railroad crew members is not part of ticketed travel between states and thus the railroad crew members were not passengers traveling in interstate commerce traveling by motor carrier. *Renzenberger, Inc. v. N.M. Taxation & Revenue Dep't*, 2018-NMCA-010, cert. denied.

**Immunity from undue burdens.** — To attain immunity a showing must be made of multiple taxation or the lack of a local taxable incident. Such showing is essential to classify the tax as one unduly burdensome to interstate commerce. *Spillers v. Commissioner of Revenue*, 1970-NMCA-097, 82 N.M. 41, 475 P.2d 41, cert. denied, 82 N.M. 81, 475 P.2d 778.

**Multiple taxation.** — If compensation received under advertising contracts is not protected by the commerce clause, then multiple taxation of the receipts would not bring them within such protection. *N.M. Newspapers, Inc. v. Bureau of Revenue*, 1971-NMCA-022, 82 N.M. 436, 483 P.2d 317.

**Classification pursuant to constitutional mandate not violative of equal protection.** — Granting a deduction, whether in accordance with statute or administrative regulations, of gross receipts which are not taxable by the state under the commerce clause, and denying such deduction with respect to receipts which are subject to state taxation, although the receipts in each instance are produced by comparable activities, is a reasonable and proper basis for classification. *N.M. Newspapers, Inc. v. Bureau of Revenue*, 1971-NMCA-022, 82 N.M. 436, 483 P.2d 317.

**Equal protection.** — Imposition of tax upon receipts derived by newspaper from advertising, while receipts of radio and television broadcasters are not taxed, does not constitute arbitrary and discriminatory treatment or classification in violation of the equal protection clauses of the federal and state constitutions. *N.M. Newspapers, Inc. v. Bureau of Revenue*, 1971-NMCA-022, 82 N.M. 436, 483 P.2d 317.

**Educational materials.** — Tax levied on gross receipts from out-of-state sales of tangible personal property in the nature of reproducible educational materials is an impermissible burden on commerce. *Evco v. Jones*, 409 U.S. 91, 93 S. Ct. 349, 34 L. Ed. 2d 325 (1972).

**Interstate telegraph messages.** — Employee who transmitted telegraph messages both interstate and intrastate is allowed to deduct receipts derived from interstate messages from gross receipts under this section. *Ealey v. Bureau of Revenue*, 1976-NMSC-010, 89 N.M. 160, 548 P.2d 440.

**Access charges and telephone carriers.** — Since the access charge is for the service of transmitting the telephone signal between the inter-local access and transport areas carrier's switching center and the local phone customer, such taxation of access charge receipts is barred by this section. *GTE Sw., Inc. v. Taxation & Revenue Dep't*, 1992-NMCA-024, 113 N.M. 610, 830 P.2d 162, cert. denied, 113 N.M. 605, 830 P.2d 157.

**Ancillary services and telephone carriers.** — Gross receipts tax imposed on receipts for ancillary services performed for interstate carriers is proper even though these services are related to the provision of interstate telephone service; the receipts are not receipts from transmitting messages or conversations by telephone. *GTE Sw., Inc. v. Taxation & Revenue Dep't*, 1992-NMCA-024, 113 N.M. 610, 830 P.2d 162, cert. denied, 113 N.M. 605, 830 P.2d 157.

**Newspaper advertising.** — Assessment of gross receipts tax against receipts of taxpayer derived from out-of-state advertising published in its newspaper was not violative of the commerce clause. *N.M. Newspapers, Inc. v. Bureau of Revenue*, 1971-NMCA-022, 82 N.M. 436, 483 P.2d 317.

**Commissions for booking transportation services.** — Imposition of gross receipts tax upon commissions paid to a resident agent of an interstate carrier of household goods for initiating or booking interstate transportation of such goods does not violate the federal constitution, and consequently such receipts are not properly deductible. *Spillers v. Commissioner of Revenue*, 1970-NMCA-097, 82 N.M. 41, 475 P.2d 41, cert. denied, 82 N.M. 81, 475 P.2d 778.

**Burden on taxpayer.** — Even if multiple taxation could be treated as invoking the protection of the commerce clause, the taxpayer, nevertheless, would have the burden of establishing his right to immunity from taxation. *N.M. Newspapers, Inc. v. Bureau of Revenue*, 1971-NMCA-022,82 N.M. 436, 483 P.2d 317.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Sales and Use Taxes §§ 35 et seq.

## 7-9-56. Deduction; gross receipts tax; intrastate transportation and services in interstate commerce.

A. Receipts from transporting persons or property from one point to another in this state may be deducted from gross receipts when such persons or property, including any special or extra service reasonably necessary in connection therewith, is being transported in interstate or foreign commerce under a single contract.

B. Receipts from handling, storage, drayage or packing of property or any other accessorial services on property, which property has moved or will move in interstate or foreign commerce, when such services are performed by a local agent for a carrier or by a carrier and when such services are performed under a single contract in relation to transportation services, may be deducted from gross receipts.

C. Receipts from providing telephone or telegraph services in this state that will be used by other persons in providing telephone or telegraph services to the final user may be deducted from gross receipts.

**History:** 1978 Comp., § 7-9-56, enacted by Laws 1994, ch. 112, § 2.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1994, ch. 112, § 2 repealed 7-9-56 NMSA 1978, as amended by Laws 1994, ch. 112, § 1, and enacted a new section, effective July 1, 2001.

**To deduct receipts under Subsection A,** taxpayer is required to show three items: (1) the receipts must be from transporting persons from one point to another in this state, (2) the transportation must have been in interstate commerce and (3) the transportation must have been under a single contract. *McKinley Ambulance Serv. v. Bureau of Revenue*, 1979-NMCA-026, 92 N.M. 599, 592 P.2d 515.

**Intrastate transportation receipts not deductible.** — Transportation into one state from another is the indispensable test of interstate commerce. That there is both intrastate and interstate transportation under a single contract does not authorize a deduction under Subsection A for receipts attributable to the intrastate transportation. *McKinley Ambulance Serv. v. Bureau of Revenue*, 1979-NMCA-026, 92 N.M. 599, 592 P.2d 515.

## 7-9-56.1. Deduction; gross receipts tax; internet services.

On and after July 1, 1998, receipts from providing leased telephone lines, telecommunications services, internet services, internet access services or computer

programming that will be used by other persons in providing internet access and related services to the final user may be deducted from gross receipts if the sale is made to a person who is subject to the gross receipts tax or the interstate telecommunications gross receipts tax.

**History:** Laws 1998, ch. 92, § 1; 2000, ch. 84, § 6.

**ANNOTATIONS**

**The 2000 amendment,** effective July 1, 2000, substituted "On and after July 1, 1998" for "During the period July 1, 1998, through June 30, 2000" at the beginning of the section.

## 7-9-56.2. Deduction; gross receipts tax; hosting world wide web sites.

Receipts from hosting world wide web sites may be deducted from gross receipts. For purposes of this section, "hosting" means storing information on computers attached to the internet.

**History:** Laws 1998, ch. 92, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 1998, ch. 92, § 7 made Laws 1998, ch. 92, § 2 effective July 1, 1998.

## 7-9-56.3. Deduction; gross receipts; trade-support company in a border zone.

A. The receipts of a trade-support company may be deducted from gross receipts if:

(1) the trade-support company first locates in New Mexico within twenty miles of a port of entry on New Mexico's border with Mexico on or after July 1, 2003 but before July 1, 2013 or on or after January 1, 2016 but before January 1, 2021;

(2) the receipts are received by the company within a five-year period beginning on the date the trade-support company locates in New Mexico and the receipts are derived from its business activities and operations at its border zone location; and

(3) the trade-support company employs at least two employees in New Mexico.

B. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

C. The department shall compile an annual report on the deduction created pursuant to this section that shall include the number of taxpayers approved by the department to receive the deduction, the aggregate amount of deductions approved and any other information necessary to evaluate the effectiveness of the deduction. Beginning in 2016 and every four years thereafter that the deduction is in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction.

D. As used in this section:

(1) "dependent" means "dependent" as defined in 26 U.S.C. 152(a), as that section may be amended or renumbered;

(2) "employee" means an individual, other than an individual who:

(a) is a dependent of the employer;

(b) if the employer is an estate or trust, is a grantor, beneficiary or fiduciary of the estate or trust or is a dependent of a grantor, beneficiary or fiduciary of the estate or trust;

(c) if the employer is a corporation, is a dependent of an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation; or

(d) if the employer is an entity other than a corporation, estate or trust, is a dependent of an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interests in the entity;

(3) "port of entry" means an international port of entry in New Mexico at which customs services are provided by United States customs and border protection; and

(4) "trade-support company" means a customs brokerage firm or a freight forwarder.

**History:** Laws 2003, ch. 232, § 1; 2007, ch. 172, § 6; 2015 (1st S.S.), ch. 2, § 8; 2021, ch. 65, § 22.

## ANNOTATIONS

**The 2021 amendment,** effective July 1, 2021, defined "dependent" and revised the definition of "employee", as used in this section; and in Subsection D, added new

Paragraph D(1) and redesignated former Paragraphs D(1) through D(3) as Paragraphs D(2) through D(4), and in Paragraph D(2), deleted former Subparagraphs D(2)(a) through D(2)(c) and added new Subparagraphs D(2)(a) through D(2)(d).

**The 2015 (1st S.S.) amendment,** effective January 1, 2016, restored, for a five-year period, the gross receipts tax deduction for trade-support companies that locate in New Mexico within twenty miles of a port of entry on New Mexico's border with Mexico, and required an annual report from the taxation and revenue department regarding the effectiveness of the tax deduction; in Subsection A, Paragraph (1), after "July 1, 2013", added "or on or after January 1, 2016 but before January 1, 2021"; and added new Subsections B and C, and redesignated the succeeding subsection accordingly.

**The 2007 amendment,** effective April 2, 2007, in Subsection A, extended the time frame from July 1, 2008 to July 1, 2013 and revised the definition of "port of entry" to be an international port of entry at which custom services are provided by United States customs and border protection.

## 7-9-57. Deduction; gross receipts tax; sale of certain services to an out-of-state buyer.

A. Receipts from performing a service may be deducted from gross receipts if the sale of the service is made to an out-of-state buyer who delivers to the seller either an appropriate nontaxable transaction certificate or other evidence acceptable to the secretary unless the buyer of the service or any of the buyer's employees or agents makes initial use of the product of the service in New Mexico or takes delivery of the product of the service in New Mexico.

B. Receipts from performing a service that initially qualified for the deduction provided in this section but that no longer meets the criteria set forth in Subsection A of this section shall be deductible for the period prior to the disqualification.

**History:** 1953 Comp., § 72-16A-14.12, enacted by Laws 1969, ch. 144, § 47; 1973, ch. 132, § 1; 1977, ch. 86, § 1; 1983, ch. 220, § 12; 1988, ch. 118, § 1; 1989, ch. 262, § 6; 1998, ch. 89, § 4; 2000, ch. 84, § 7.

### ANNOTATIONS

**Repeals.** — Laws 1993, ch. 31, § 13A, effective July 1, 1993, repealed Laws 1989, ch. 262, § 7, which provided for the repeal and reenactment of 7-9-57 NMSA 1978, effective July 1, 1993.

**The 2000 amendment,** effective July 1, 2000, substituted "an out-of-state buyer" for "a buyer" in Subsection A.

**The 1998 amendment,** effective July 1, 1998, substituted "for export" for "to an out-of-state buyer" in the section heading; rewrote Subsection A; deleted former Subsections B and C; and redesignated Subsection D as Subsection B.

**The 1989 amendment,** effective July 1, 1989, in Subsection C substituted all of the present language of the introductory paragraph following "buyer of the service" for ", any of his employees or any person in privity with him", and deleted former Paragraph (3) which read: "concurrent with the performance of the service, has a regular place of work in New Mexico or spends more than brief and occasional periods of time in New Mexico and: (a) has any communication in New Mexico related in any way to the subject matter, performance or administration of the service with the person performing the service; or (b) himself performs work in New Mexico related to the subject matter of the service".

**Initial use.** — The flying of an airplane to a customer's out-of-state location for inspection and acceptance of airplane painting service does not constitute initial use in New Mexico. *N.M. Taxation & Revenue Dep't v. Dean Baldwin Painting, Inc*., 2007-NMCA-153, 143 N.M. 189, 174 P.3d 525.

**Services not deductible.** — Taxpayer, whose services performed for a buyer involved deconstruction of ammunition, ordnance, and other energetic material, was not entitled to a deduction on the basis that the services did not result in a product. *TPL, Inc. v. N.M. Taxation & Revenue Dep't*, 2000-NMCA-083, 129 N.M. 539, 10 P.3d 863, *rev'd*, 2003-NMSC-007, 133 N.M. 447, 64 P.3d 474.

**Services deductible.** — When the corporation contracted with an out-of-state provider for the corporation to destroy munitions, it was entitled to the gross receipts deduction, and the hearing officer could not properly determine that use or delivery took place within the state without some affirmative evidence in the record to support that conclusion. *TPL, Inc. v. N.M. Taxation & Revenue Dep't*, 2003-NMSC-007, 133 N.M. 447, 64 P.3d 474, *rev'g*, 2000-NMCA-083, 129 N.M. 539, 10 P.3d 863.

**"Initial use" following repair.** — Mechanic was not entitled to a deduction with respect to repairs made on a truck brought into New Mexico for such repairs and then driven back to Texas for use exclusively as a delivery truck within that state, because the return of the truck to Texas constituted an "initial use" after repair in New Mexico. *Reed v. Jones*, 1970-NMCA-050, 81 N.M. 481, 468 P.2d 882.

## 7-9-57.1. Repealed.

**History:** Laws 1998, ch. 92, § 3; repealed by Laws 2020, ch. 80, § 14.

### ANNOTATIONS

**Repeals.** — Laws 2020, ch. 80, § 14 repealed 7-9-57.1 NMSA 1978, as enacted by Laws 1998, ch. 92, § 3, relating to deduction, gross receipts tax, sales through world

wide web sites, effective July 1, 2020. For provisions of former section, *see* the 2019 NMSA 1978 on *NMOneSource.com*.

## 7-9-57.2. Deduction; gross receipts tax; sale of software development services.

A. To stimulate new business development, the receipts of an eligible software development company from the sale of software development services that are performed in a qualified area may be deducted from gross receipts.

B. As used in this section:

(1) "eligible software development company" means a taxpayer who is not a successor in business of another taxpayer and whose primary business in New Mexico is established after the effective date of this section, is providing software development services and who had no business location in New Mexico other than in a qualified area during the period for which a deduction under this section is sought;

(2) "qualified area" means the state of New Mexico except for an incorporated municipality with a population of more than fifty thousand according to the most recent federal decennial census; and

(3) "software development services" means custom software design and development and web site design and development but does not include software implementation or support services.

**History:** Laws 2002, ch. 10, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2002, ch. 10, § 2 made Laws 2002, ch. 10, § 1 effective July 1, 2002.

## 7-9-58. Deduction; gross receipts tax; feed; fertilizers.

A. Receipts from selling feed for livestock, including the baling wire or twine used to contain the feed, fish raised for human consumption, poultry or animals raised for their hides or pelts and from selling seeds, roots, bulbs, plants, soil conditioners, fertilizers, insecticides, germicides, insects used to control populations of other insects, fungicides or weedicides or water for irrigation purposes may be deducted from gross receipts if the sale is made to a person who states in writing that he is regularly engaged in the business of farming, ranching or raising animals for their hides or pelts.

B. Receipts of auctioneers from selling livestock or other agricultural products at auction may also be deducted from gross receipts.

**History:** 1953 Comp., § 72-16A-14.13, enacted by Laws 1969, ch. 144, § 48; 1977, ch. 231, § 1; 1983, ch. 220, § 13; 1991, ch. 9, § 30; 1991, ch. 203, § 6; 1992, ch. 48, § 3; 2002, ch. 29, § 1.

**ANNOTATIONS**

**The 2002 amendment,** effective May 15, 2002, in Subsection A inserted "including the baling wire or twine used to contain the feed" near the beginning, and made three minor stylistic changes.

**The 1992 amendment,** effective July 1, 1992, added the subsection designations and inserted "and from selling" near the beginning of Subsection A.

**The 1991 amendment,** effective July 1, 1991, inserted "germicides" in the first sentence.

## 7-9-59. Deduction; gross receipts tax; warehousing, threshing, harvesting, growing, cultivating and processing agricultural products; testing or transporting milk.

A. Receipts from warehousing grain or other agricultural products may be deducted from gross receipts.

B. Receipts from threshing, cleaning, growing, cultivating or harvesting agricultural products, including the ginning of cotton, may be deducted from gross receipts.

C. Receipts from testing or transporting milk for the producer or nonprofit marketing association from the farm to a milk processing or dairy product manufacturing plant may be deducted from gross receipts.

D. Receipts from processing for growers, producers or nonprofit marketing associations of agricultural products raised for food and fiber, including livestock, may be deducted from gross receipts.

**History:** 1953 Comp., § 72-16A-14.14, enacted by Laws 1969, ch. 144, § 49; 1970, ch. 27, § 1; 2000, ch. 26, § 1; 2000, ch. 87, § 1; 2019, ch. 49, § 1.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, clarified the language allowing a gross receipts tax deduction for receipts from testing or transporting milk; in the section heading, added "testing or transporting milk"; in Subsection B, after "ginning of cotton", added "may be deducted from gross receipts"; in Subsection C, added "Receipts from", after "testing", deleted "and" and added "or", and after "manufacturing plant", deleted "or" and added "may be deducted from gross receipts"; and in Subsection D, added "Receipts from".

**The 2000 amendment,** effective July 1, 2000, inserted the provision that receipts from testing and transporting milk from the farm to the plant may be deducted from the gross receipts.

**Duplicate laws.** — Laws 2000, ch. 26, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 2000, ch. 87, § 1. *See* 12-1-8 NMSA 1978.

## 7-9-60. Deduction; gross receipts tax; governmental gross receipts tax; sales to certain organizations.

A. Except as provided otherwise in Subsection B of this section, receipts from selling tangible personal property to 501(c)(3) organizations may be deducted from gross receipts or from governmental gross receipts if the sale is made to an organization that delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978. The buyer shall employ the tangible personal property in the conduct of functions described in Section 501(c)(3) and shall not employ the tangible personal property 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.

B. The deduction provided by this section does not apply to receipts from selling 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 ten-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, or from selling metalliferous mineral ore; except that receipts from selling construction material or from selling metalliferous mineral ore to a 501(c)(3) organization that is organized for the purpose of providing homeownership opportunities to low-income families may be deducted from gross receipts. Receipts may be deducted under this subsection only if the buyer delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978. The buyer shall use the property in the conduct of functions described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not employ the tangible personal property in the conduct of an unrelated trade or business, as defined in Section 513 of that code.

C. For the purposes of this section, "501(c)(3) organization" means an organization that has been 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 United States Internal Revenue Code of 1986, as amended or renumbered.

**History:** 1953 Comp., § 72-16A-14.15; Laws 1970, ch. 12, § 4; 1992, ch. 100, § 8; 1995, ch. 50, § 4; 2001, ch. 343, § 6; 2007, ch. 45, § 12; 2018, ch. 58, § 2; 2021, ch. 65, § 23.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1970, ch. 12, § 4 repealed former 7-9-60 NMSA 1978, as enacted by Laws 1969, ch. 144, § 50.

**Cross references.** — For Sections 501(c)(3) and 513 of the Internal Revenue Code of 1986, *see* 26 U.S.C. §§ 501(c)(3) and 513, respectively.

**The 2021 amendment,** effective July 1, 2021, provided that a taxpayer may provide the taxation and revenue department alternative evidence to claim a gross receipts tax deduction in lieu of providing a non-taxable transaction certificate; in Subsection A, after "to the seller", added "or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978", and after "buyer", deleted "delivering the nontaxable transaction certificate"; and in Subsection B, after "to the seller", added "or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978".

**The 2018 amendment,** effective March 2, 2018, clarified the meaning of construction material as used in the Gross Receipts and Compensating Tax Act; and in Subsection B, after the first occurrence of "construction material", added "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 ten-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".

**The 2007 amendment,** effective July 1, 2007, in Subsection A, changed "organizations" to "501(c)(3) organizations" and deleted the former qualification that organizations had to have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended or renumbered; in Subsection B, added the exception that receipts from selling to a 501(c)(3) organization that is organized for the purpose of providing homeownership opportunities to low-income families may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate and the buyer uses the property in the conduct of functions described in Section 501(c)(3); and added Subsection C.

**The 2001 amendment,** effective July 1, 2001, substituted "construction material" for "tangible personal property that will become an ingredient or component part of a construction project" in Subsection B.

**The 1995 amendment,** effective July 1, 1995, added "tax" following "governmental growth receipts" in the section heading; designated the existing provisions as Subsection A and added Subsection B; and, in Subsection A, added the exception at the beginning, deleted "other than metalliferous mineral ore" following "personal property" near the beginning of the first sentence, substituted "shall" for "must" in two places in the second sentence, and deleted the former third sentence which read

"Receipts from selling tangible personal property that will become an ingredient or component part of a construction project are not receipts from selling tangible personal property for purposes of this section".

**The 1992 amendment,** effective July 1, 1992, inserted "governmental gross receipts" in the section heading; inserted "or from governmental gross receipts" near the end of the first sentence; and twice substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

**Telephone services not tangible personalty.** — Decision that a telephone company was not entitled to a deduction under this section for receipts collected for intrastate toll charges and local phone calls from certain government organizations and organizations which had been granted federal income tax exemptions would be upheld, since there was a reasonable basis for differentiating between electricity (declared to be tangible personalty at Section 7-9-3J NMSA 1978) and telephone communications where the evidence showed that more was involved in the telephone business than the selling of electricity. *Leaco Rural Tel. Coop., Inc. v. Bureau of Revenue*, 1974-NMCA-076, 86 N.M. 629, 526 P.2d 426.

## 7-9-61. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1981, ch. 37, § 97, repealed 7-9-61 NMSA 1978, relating to the deduction from the gross receipts tax of the sale of tangible personal property to banks and financial corporations, effective January 1, 1982.

## 7-9-61.1. Deduction; gross receipts tax; certain receipts.

Receipts from charges made in connection with the origination, making or assumption of a loan or from charges made for handling loan payments may be deducted from gross receipts.

**History:** 1978 Comp., § 7-9-61.1, enacted by Laws 1981, ch. 37, § 52.

**ANNOTATIONS**

**Effective dates.** — Laws 1981, ch. 37, § 99 made Laws 1981, ch. 37, § 52 effective January 1, 1982.

**"Charges made for handling loan payments".** — The phrase "charges made for handling loan payments", as used in this section, does not encompass charges made by taxpayers for their escrow services in connection with installment payments on real estate contracts. The legislature intended to allow the deduction from gross receipts only for typical loan transactions involving both a traditional lender and borrower. Any processing or collection charges typically made by either independent escrow agents, or

banks acting as escrow agents, are not properly deductible from gross receipts. *Security Escrow Corp. v. State Taxation & Revenue Dep't*, 1988-NMCA-068, 107 N.M. 540, 760 P.2d 1306.

## 7-9-61.2. Deduction; receipts from sales to state-chartered credit unions.

Receipts from selling tangible personal property to credit unions chartered under the provisions of the Credit Union Act [Chapter 58, Article 11 NMSA 1978] are deductible to the same extent that receipts from the sale of tangible personal property to federal credit unions may be deducted pursuant to the provisions of Section 7-9-54 NMSA 1978.

**History:** 1978 Comp., § 7-9-61.2, enacted by Laws 2000, ch. 48, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2000, ch. 48, § 2 made Laws 2000, ch. 48, § 1 effective July 1, 2000.

## 7-9-62. Deduction; gross receipts tax; agricultural implements; aircraft manufacturers; vehicles that are not required to be registered; aircraft parts and maintenance services; reporting requirements.

A. Except for receipts deductible under Subsection B of this section, fifty percent of the receipts from selling agricultural implements, farm tractors, aircraft or vehicles that are not required to be registered under the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] may be deducted from gross receipts; provided that, with respect to agricultural implements, the sale is made to a person who states in writing that the person is regularly engaged in the business of farming or ranching. Any deduction allowed under Section 7-9-71 NMSA 1978 must be taken before the deduction allowed by this subsection is computed.

B. Receipts of an aircraft manufacturer or affiliate from selling aircraft or from selling aircraft flight support, pilot training or maintenance training services may be deducted from gross receipts. Any deduction allowed under Section 7-9-71 NMSA 1978 must be taken before the deduction allowed by this subsection is computed.

C. Receipts from selling aircraft parts or maintenance services for aircraft or aircraft parts may be deducted from gross receipts. Any deduction allowed under Section 7-9-71 NMSA 1978 must be taken before the deduction allowed by this subsection is computed.

D. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

E. The department shall compile an annual report on the deductions provided by this section that shall include the number of taxpayers approved by the department to receive the deductions, the aggregate amount of deductions approved and any other information necessary to evaluate the effectiveness of the deductions. Beginning in 2019 and every five years thereafter that the deductions are in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deductions.

F. As used in this section:

(1) "affiliate" means a business entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the aircraft manufacturer;

(2) "agricultural implement" means a tool, utensil or instrument that is depreciable for federal income tax purposes and that is:

(a) designed to irrigate agricultural crops above ground or below ground at the place where the crop is grown; or

(b) designed primarily for use with a source of motive power, such as a tractor, in planting, growing, cultivating, harvesting or processing agricultural crops at the place where the crop is grown; in raising poultry or livestock; or in obtaining or processing food or fiber, such as eggs, milk, wool or mohair, from living poultry or livestock at the place where the poultry or livestock are kept for this purpose;

(3) "aircraft manufacturer" means a business entity that in the ordinary course of business designs and builds private or commercial aircraft certified by the federal aviation administration;

(4) "business entity" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership or real estate investment trust, but does not mean an individual or a joint venture;

(5) "control" means equity ownership in a business entity that:

(a) represents at least fifty percent of the total voting power of that business entity; and

(b) has a value equal to at least fifty percent of the total equity of that business entity; and

(6) "flight support" means providing navigation data, charts, weather information, online maintenance records and other aircraft or flight-related information and the software needed to access the information.

**History:** 1953 Comp., § 72-16A-14.17, enacted by Laws 1969, ch. 144, § 52; 1975, ch. 159, § 1; 1998, ch. 89, § 5; 2000 (2nd S.S.), ch. 4, § 1; 2007, ch. 172, § 7; 2014, ch. 19, § 1.

**ANNOTATIONS**

**The 2014 amendment,** effective July 1, 2014, provided for a deduction from gross receipts for selling aircraft parts or maintenance services; in the catchline, after "registered", added "aircraft parts and maintenance services; reporting requirements"; in Subsection B, in the first sentence, after "selling aircraft", deleted "or aircraft parts or from selling services performed on aircraft or aircraft components"; added Subsections C, D and E; and in Subsection F, Paragraph (2), after "instrument that is" added "depreciable for federal income tax purposes and that is" and deleted Subparagraph (c) which read "and depreciable for federal income tax purposes".

**The 2007 amendment,** effective July 1, 2007, included receipts from the sale of aircraft parts and services and added Paragraphs (1), Subparagraph (a) of Paragraph (2) and Paragraphs (3) through (6) of Subsection C.

**The 2000 amendment,** effective July 1, 2000, inserted "Except for receipts deductible under Subsection B of this section" at the beginning of Subsection A, added a new Subsection B, and redesignated the former Subsection B as Subsection C.

**The 1998 amendment,** effective July 1, 1998, designated the existing material as Subsection A, added the proviso at the end of the first sentence and substituted "7-9-71 NMSA 1978" for "72-16A-14.28 NMSA 1978" in the second sentence; and added Subsection B.

**Lease-purchase transaction.** — Lease agreement providing that upon full payment of rentals lessee would become owner of equipment in question constituted a sale with reservation of security interest, for which seller-secured party was to pay gross receipts tax at the rate specified for transactions covering vehicles not registered under the Motor Vehicle Code. *Rust Tractor Co. v. Bureau of Revenue*, 1970-NMCA-107, 82 N.M. 82, 475 P.2d 779, cert. denied, 82 N.M. 81, 475 P.2d 778.

## 7-9-62.1. Deduction; gross receipts tax; aircraft sales and services; reporting requirements.

A. Receipts from the sale of or from maintaining, refurbishing, remodeling or otherwise modifying a commercial or military carrier over ten thousand pounds gross landing weight may be deducted from gross receipts.

B. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

C. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers approved by the department to receive the deduction, the aggregate amount of deductions approved and any other information necessary to evaluate the effectiveness of the deduction. Beginning in 2019 and every five years thereafter that the deduction is in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction.

**History:** Laws 2000 (2nd S.S.), ch. 4, § 2; 2005, ch. 104, § 24; 2014, ch. 8, § 1.

**ANNOTATIONS**

**The 2014 amendment,** effective July 1, 2014, provided a deduction from gross receipts for sales of commercial and military carriers; required taxpayers to separately report the amount of the deduction; required the taxation and revenue department to compile annual reports; in the catchline, after "aircraft" added "sales and", and after "services", added "; reporting requirements"; in Subsection A, after "Receipts", added "from the sale of or"; and added Subsections B and C.

**The 2005 amendment,** effective July 1, 2005, provided a credit for receipts from maintaining refurbishing, remodeling or otherwise modifying a commercial or military carrier over ten thousand pounds gross landing weight.

## 7-9-63. Deduction; gross receipts tax; publication sales.

Receipts from publishing newspapers or magazines, except from selling advertising space, may be deducted from gross receipts.

Receipts from selling magazines at retail may not be deducted from gross receipts.

**History:** 1953 Comp., § 72-16A-14.18, enacted by Laws 1969, ch. 144, § 53.

**ANNOTATIONS**

**Effective dates.** — Laws 1969, ch. 144, § 68 made Laws 1969, ch. 144, § 53 effective July 1, 1969.

**Advertising inserts** purchased by a New Mexico retailer from out-of-state advertising coordinators were not "newspapers" within the meaning of this section. *Phillips Mercantile Co. v. N.M. Taxation & Revenue Dep't*, 1990-NMCA-006, 109 N.M. 487, 786 P.2d 1221.

**Royalties from advertising.** — Since taxpayer's receipts were a royalty paid to it from advertising revenues and not receipts from publishing the magazine, there would be no deduction under this section. *N.M. Sheriffs & Police Ass'n v. Bureau of Revenue*, 1973-NMCA-130, 85 N.M. 565, 514 P.2d 616.

**No double taxation shown.** — Since, aside from the tax paid on the taxpayer association's royalty receipts from advertising revenue, the only other tax involved was the tax asserted to have been paid by the publisher on his receipts, there was no factual basis for a claim of double taxation. *N.M. Sheriffs & Police Ass'n v. Bureau of Revenue*, 1973-NMCA-130, 85 N.M. 565, 514 P.2d 616.

## 7-9-64. Deduction; gross receipts tax; newspaper sales.

Receipts from selling newspapers, except from selling advertising space, may be deducted from gross receipts.

**History:** 1953 Comp., § 72-16A-14.19, enacted by Laws 1969, ch. 144, § 54.

**ANNOTATIONS**

**Effective dates.** — Laws 1969, ch. 144, § 68 made Laws 1969, ch. 144, § 54 effective July 1, 1969.

**Advertising inserts** purchased by a New Mexico retailer from out-of-state advertising coordinators were not "newspapers" within the meaning of this section. *Phillips Mercantile Co. v. N.M. Taxation & Revenue Dep't*, 1990-NMCA-006, 109 N.M. 487, 786 P.2d 1221.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What constitutes newspapers, magazines, periodicals, or the like, under sales or use tax law exemption, 25 A.L.R.4th 750.

## 7-9-65. Deduction; gross receipts tax; chemicals and reagents.

Receipts from selling chemicals or reagents to any mining, milling or oil company for use in processing ores or oil in a mill, smelter or refinery or in acidizing oil wells, and receipts from selling chemicals or reagents in lots in excess of eighteen tons to any hard-rock mining or milling company for use in any combination of extracting, leaching, milling, smelting, refining or processing ore at a mine site, may be deducted from gross receipts. Receipts from selling explosives, blasting powder or dynamite may not be deducted from gross receipts.

**History:** 1953 Comp., § 72-16A-14.21, enacted by Laws 1969, ch. 144, § 56; 2019, ch. 172, § 1.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, revised the criteria for a gross receipts tax deduction on certain receipts from selling chemicals or reagents; and after "eighteen tons", added "to any hard-rock mining or milling company for use in any combination of extracting, leaching, milling, smelting, refining or processing ore at a mine site".

**Words used in this section are not ambiguous,** and the issue of legislative intent does not arise. *Runco Acidizing & Fracturing Co. v. Bureau of Revenue*, 1974-NMCA-145, 87 N.M. 146, 530 P.2d 410.

**Aggregation of deliveries not authorized.** — Since no single delivery or single day's delivery of chemicals or reagents to a well ever amounted to 18 tons or more, although the amount specified in a purchase order might aggregate that much, taxpayer was not entitled to a deduction under this section, since the wording of taxpayer's purchase orders and contract, supported inference that a purchase order was not a transfer for consideration and therefore not a sale. *Runco Acidizing & Fracturing Co. v. Bureau of Revenue*, 1974-NMCA-145, 87 N.M. 146, 530 P.2d 410.

**Statute is inapplicable to receipts from the sale and use of natural gas.** — Where taxpayer, an electric power company, appealed from an administrative hearing officer's (AHO) decision and order denying its protest of New Mexico taxation and revenue department's denial of taxpayer's request for a tax refund based on its belief that its purchases of natural gas qualified for a deduction, the AHO did not err in denying taxpayer's protest because had the legislature intended to provide a deduction for receipts from the sale or use of natural gas, it could have specified the inclusion of natural gas within the statutory language establishing the deduction, as in the enactment of other legislation applicable to natural gas. *Tucson Elec. Power Co. v. N.M. Taxation and Revenue Dep't*, 2020-NMCA-011.

## 7-9-66. Deduction; gross receipts tax; commissions.

A. Receipts derived from commissions on sales of tangible personal property which are not subject to the gross receipts tax may be deducted from gross receipts.

B. Receipts of the owner of a dealer store derived from commissions received for performing the service of selling from the owner's dealer store a principal's tangible personal property may be deducted from gross receipts.

C. As used in this section, "dealer store" means a merchandise facility open to the public that is owned and operated by a person who contracts with a principal to act as an agent for the sale from that facility of merchandise owned by the principal.

**History:** 1953 Comp., § 72-16A-14.22, enacted by Laws 1969, ch. 144, § 57; 1999, ch. 169, § 1.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, added Subsections B and C.

## 7-9-66.1. Deduction; gross receipts tax; certain real estate transactions.

A. Receipts from real estate commissions on that portion of the transaction subject to gross receipts tax pursuant to Subsection A of Section 7-9-53 NMSA 1978 may be deducted from gross receipts if the person claiming the deduction submits to the department evidence that the secretary finds substantiates the deduction.

B. For the purposes of this section, "commissions on that portion of the transaction subject to gross receipts tax" means that portion of the commission that bears the same relationship to the total commission as the amount of the transaction subject to gross receipts tax does to the total purchase price.

**History:** 1978 Comp., § 7-9-76.2, enacted by Laws 1984, ch. 129, § 2; 1990, ch. 41, § 8.

**ANNOTATIONS**

**Compiler's notes.** — This section was enacted as 7-9-76.2 NMSA 1978 by Laws 1984, ch. 129, § 2, but was redesignated as 7-9-66.1 NMSA 1978, as another 7-9-76.2 NMSA 1978 had previously been enacted by Laws 1984, ch. 2, § 6.

**The 1990 amendment,** effective July 1, 1990, substituted "department evidence that the secretary" for "division evidence which the director" in Subsection A and made a minor stylistic change in Subsection B.

## 7-9-67. Deduction; gross receipts tax; governmental gross receipts tax; refunds; uncollectible debts.

A. Refunds and allowances made to buyers or amounts written off the books as an uncollectible debt by a person reporting gross receipts tax on an accrual basis may be deducted from gross receipts. If debts reported uncollectible are subsequently collected, such receipts shall be included in gross receipts in the month of collection.

B. Refunds and allowances made to buyers or amounts written off the books as an uncollectible debt by a person reporting governmental gross receipts tax on an accrual basis may be deducted from governmental gross receipts. If debts reported uncollectible are subsequently collected, such receipts shall be included in governmental gross receipts in the month of collection.

**History:** 1953 Comp., § 72-16A-14.23, enacted by Laws 1969, ch. 144, § 58; 1994, ch. 45, § 6.

**ANNOTATIONS**

**The 1994 amendment,** effective July 1, 1994, inserted "governmental gross receipts tax" in the section heading, designated the previously undesignated language as Subsection A and added Subsection B.

## 7-9-68. Deduction; gross receipts tax; warranty obligations.

Receipts of a dealer from furnishing goods or services to the purchaser of tangible personal property to fulfill a warranty obligation of the manufacturer of the property may be deducted from gross receipts.

**History:** 1953 Comp., § 72-16A-14.25, enacted by Laws 1969, ch. 144, § 60.

**ANNOTATIONS**

**Effective dates.** — Laws 1969, ch. 144, § 68 made Laws 1969, ch. 144, § 60 effective July 1, 1969.

## 7-9-69. Deduction; gross receipts tax; administrative and accounting services.

A. Receipts of a business entity for administrative, managerial, accounting and customer services performed by it for an affiliate upon a nonprofit or cost basis and receipts of a business entity from an affiliate for the joint use or sharing of office machines and facilities upon a nonprofit or cost basis may be deducted from gross receipts.

B. For the purposes of this section:

(1) "affiliate" means a business entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with another business entity;

(2) "business entity" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership or real estate investment trust, but does not mean an individual or a joint venture; and

(3) "control" means equity ownership in a business entity that:

(a) represents at least fifty percent of the total voting power of that business entity; or

(b) has a value equal to at least fifty percent of the total equity of that business entity.

**History:** 1953 Comp., § 72-16A-14.26, enacted by Laws 1969, ch. 144, § 61; 1990, ch. 43, § 1; 1993, ch. 149, § 1; 1998, ch. 112, § 1; 2002, ch. 21, § 1; 2015, ch. 38, § 1.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, removed a restriction in the definition of "control" in the gross receipts tax deduction for administrative and accounting services; and in Paragraph (3)(a) of Subsection B, after the semicolon, deleted "and" and added "or".

**The 2002 amendment,** effective July 1, 2002, throughout the section deleted references to corporations or limited partnerships and substituted "business entity"; added Paragraph B(2) defining "business entity"; added the paragraph and subparagraph designations under Subsection B; and made minor stylistic changes in four places within Subsection B.

**The 1998 amendment,** effective July 1, 1998, in Subsection A, inserted "or an affiliate" following "corporation" near the beginning, inserted "customer" preceding "services" and substituted "the corporation or an affiliate" for "an affiliated corporation", twice; in Subsection B, substituted "'an affiliate'" for "'affiliated corporation'" and inserted "or a limited partnership" and "or limited partnership" in the first sentence, and substituted "or of an interest in a limited partnership that" for "which" in the second sentence; and inserted "or limited partnership" at the end of Paragraphs B(1) and (2).

**The 1993 amendment,** effective June 18, 1993, substituted "fifty percent" for "eighty percent" in Paragraphs (1) and (2) of Subsection B.

**The 1990 amendment,** effective July 1, 1990, designated the former section as Subsection A, inserted "managerial" and substituted "an affiliated" and "an affiliated corporation" for "a wholly-owned subsidiary" in Subsection A, and added Subsection B.

**Scope of deduction.** — This section is purely exclusionary and limited to machines of a general administrative nature, and heavy construction equipment exchanged by taxpayers in no way qualifies for this exemption. *Co-Con, Inc. v. Bureau of Revenue*, 1974-NMCA-134, 87 N.M. 118, 529 P.2d 1239, cert. denied, 87 N.M. 111, 529 P.2d 1232.

## 7-9-70. Deduction; gross receipts tax; rental or lease of vehicles used in interstate commerce.

Receipts from the rental or leasing of vehicles used in the transportation of passengers or property for hire in interstate commerce under the regulations or authorization of any agency of the United States may be deducted.

**History:** 1953 Comp., § 72-16A-14.27, enacted by Laws 1969, ch. 144, § 62.

**ANNOTATIONS**

**Effective dates.** — Laws 1969, ch. 144, § 68 made Laws 1969, ch. 144, § 62 effective July 1, 1969.

## 7-9-71. Deduction; gross receipts tax; trade-in allowance.

That portion of the receipts of a seller that is represented by a trade-in of tangible personal property of the same type being sold, except for the receipts represented by a trade-in of a manufactured home, may be deducted from gross receipts.

**History:** 1953 Comp., § 72-16A-14.28, enacted by Laws 1969, ch. 144, § 63; 1979, ch. 338, § 6; 1991, ch. 203, § 7.

**ANNOTATIONS**

**The 1991 amendment,** effective July 1, 1991, substituted "manufactured" for "mobile".

## 7-9-72. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 30, § 28 repealed 7-9-72 NMSA 1978, as amended by Laws 1992, ch. 100, § 9, relating deductions for special fuel receipts, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-9-73. Deduction; gross receipts tax; governmental gross receipts; sale of prosthetic devices.

Receipts from selling prosthetic devices may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person who is licensed to practice medicine, osteopathic medicine, dentistry, podiatry, optometry, chiropractic or professional nursing and who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must deliver the prosthetic device incidental to the performance of a service and must include the value of the prosthetic device in his charge for the service.

**History:** 1953 Comp., § 72-16A-14.30, enacted by Laws 1970, ch. 78, § 2; 1992, ch. 100, § 10.

**ANNOTATIONS**

**The 1992 amendment,** effective July 1, 1992, inserted "governmental gross receipts" in the section heading, and inserted "or from governmental gross receipts" in the first sentence while therein substituting "osteopathic medicine" for "osteopathy".

## 7-9-73.1. Deduction; gross receipts; governmental gross receipts; hospitals.

A. Sixty percent of the receipts of hospitals licensed by the department of health may be deducted from gross receipts; provided that this deduction may be applied only to the taxable gross receipts remaining after all other appropriate deductions have been taken.

B. Sixty percent of the receipts of a hospital licensed by the department of health may be deducted from governmental gross receipts.

**History:** Laws 1991, ch. 8, § 3; 1993, ch. 56, § 1; 1995, ch. 50, § 5; 2019, ch. 270, § 35.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, increased the deduction from gross receipts for hospitals licensed by the department of health, and provided a governmental gross receipts tax deduction for hospitals licensed by the department of health; in the section heading, added "governmental gross receipts"; in Subsection A, changed "Fifty" to "Sixty"; and added Subsection B.

**The 1995 amendment,** effective July 1, 1995, added the proviso at the end.

**The 1993 amendment,** effective July 1, 1993, deleted "tax" following "receipts" and "general" preceding "hospitals" in the section heading and rewrote this section which read "Fifty percent of the receipts of general hospitals may be deducted from gross receipts."

## 7-9-73.2. Deduction; gross receipts tax and governmental gross receipts tax; prescription drugs; oxygen; cannabis.

A. Receipts from the sale of prescription drugs and oxygen and oxygen services provided by a licensed medicare durable medical equipment provider and cannabis products that are sold in accordance with the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978] may be deducted from gross receipts and governmental gross receipts.

B. For the purposes of this section, "prescription drugs" means insulin and substances that are:

(1) dispensed by or under the supervision of a licensed pharmacist or by a physician or other person authorized under state law to do so;

(2) prescribed for a specified person by a person authorized under state law to prescribe the substance; and

(3) subject to the restrictions on sale contained in Subparagraph 1 of Subsection (b) of 21 USCA 353.

**History:** Laws 1998, ch. 95, § 2; Laws 1998, ch. 99, § 4; 2003, ch. 272, § 7; 2007, ch. 361, § 3; 2021 (1st S.S.), ch. 4, § 53.

## ANNOTATIONS

**The 2021 (1st S.S.) amendment,** effective June 29, 2021, provided a deduction from gross receipts for the sale of certain cannabis products; and in Subsection A, after "equipment provider", added "and cannabis products that are sold in accordance with the Lynn and Erin Compassionate Use Act".

**The 2007 amendment,** effective July 1, 2007, permitted a deduction for receipts from the sale of oxygen and oxygen services provided by a licensed medicare durable medical equipment provider.

**The 2003 amendment,** effective July 1, 2003, added the Subsection A designation and added Subsection B.

**Medical marijuana deduction from gross receipts.** — Where taxpayer, a licensed producer authorized to dispense medical marijuana to qualified patients consistent with the Compassionate Use Act, §§ 26-2B-1 through 26-2B-7 (2007, as amended through 2021) NMSA 1978, sought refunds of gross receipts taxes that it paid in association with sales of medical marijuana from 2011-2016, and where those claims were denied by the administrative hearing officer on the grounds that the medical marijuana it dispenses to qualified patients does not constitute a "prescription drug" for purposes of the statutory deduction set forth in this section, the hearing officer erred in denying taxpayer's request for gross receipt tax refunds, because medical marijuana dispensed pursuant to the Compassionate Use Act meets the criteria set forth in Subsection B of this section; taxpayer is a licensed producer under the Compassionate Use Act and is undisputedly authorized under state law to dispense medical marijuana, the use of the marijuana at issue in this case was authorized by and for specific persons in accordance with state law, and medical marijuana is subject to restrictions for sale insofar as the Compassionate Use Act provides for access only after the patient has been duly diagnosed with a debilitating medical condition and has received written certification from a licensed practitioner that, in the practitioner's professional opinion, the potential health benefits of medical marijuana would likely outweigh the health risks to the patient. *Sacred Garden, Inc. v. N.M. Tax'n & Revenue Dep't*, 2021-NMCA-038, cert. granted.

## 7-9-73.3. Deduction; gross receipts tax and governmental gross receipts tax; durable medical equipment; medical supplies.

A. Prior to July 1, 2030, receipts from the sale or rental of durable medical equipment and medical supplies may be deducted from gross receipts and governmental gross receipts.

B. The purpose of the deduction provided in this section is to help protect jobs and retain businesses in New Mexico that sell or rent durable medical equipment and medical supplies.

C. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

D. The deduction provided in this section shall be taken only by a taxpayer participating in the New Mexico medicaid program whose gross receipts are no less than ninety percent derived from the sale or rental of durable medical equipment, medical supplies or infusion therapy services, including the medications used in infusion therapy services.

E. Acceptance of a deduction provided by this section is authorization by the taxpayer receiving the deduction for the department to reveal information to the revenue stabilization and tax policy committee and the legislative finance committee necessary to analyze the effectiveness and cost of the deduction and whether the deduction is performing the purpose for which it was created.

F. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers approved by the department to receive the deduction, the aggregate amount of deductions approved and any other information necessary to evaluate the effectiveness of the deduction. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction and whether the deduction is performing the purpose for which it was created.

G. As used in this section:

(1) "durable medical equipment" means a medical assistive device or other equipment that:

(a) can withstand repeated use;

(b) is primarily and customarily used to serve a medical purpose and is not useful to an individual in the absence of an illness, injury or other medical necessity, including improved functioning of a body part;

(c) is appropriate for use at home exclusively by the eligible recipient for whom the durable medical equipment is prescribed; and

(d) is prescribed by a physician or other person licensed by the state to prescribe durable medical equipment;

(2) "infusion therapy services" means the administration of prescribed medication through a needle or catheter;

(3) "medical supplies" means items for a course of medical treatment, including nutritional products, that are:

(a) necessary for an ongoing course of medical treatment;

(b) disposable and cannot be reused; and

(c) prescribed by a physician or other person licensed by the state to prescribe medical supplies; and

(4) "prescribe" means to authorize the use of an item or substance for a course of medical treatment.

**History:** Laws 2014, ch. 26, § 1; 2020, ch. 18, § 1.

**ANNOTATIONS**

**The 2020 amendment,** effective July 1, 2020, extended the sunset date for a gross receipts tax and governmental gross receipts tax deduction for durable medical equipment and medical supplies, and changed the reporting requirement for the taxation and revenue department regarding the effectiveness and cost of the deduction from being presented every five years to every year; in Subsection A, added "Prior to July 1, 2030", and after the first occurrence of "receipts", deleted "from transactions occurring prior to July 1, 2020 that are"; and in Subsection F, after "the effectiveness of the deduction.", deleted "Beginning in 2019 and every five years thereafter", after "shall", deleted "compile and", and after "present the", deleted "annual reports" and added "report".

## 7-9-74. Deduction; gross receipts tax; sale of property used in the manufacture of jewelry.

Receipts from selling tangible personal property may be deducted from gross receipts if the sale is made to a person who states in writing that he will use the property so purchased in manufacturing jewelry. The buyer must incorporate the tangible personal property as an ingredient or component part of the jewelry that he is in the business of manufacturing. The deduction allowed a seller under this section shall not

exceed five thousand dollars ($5,000) during any twelve-month period attributable to purchases by a single purchaser.

**History:** 1953 Comp., § 72-16A-14.31, enacted by Laws 1971, ch. 217, § 2; 1975, ch. 322, § 1; 1994, ch. 94, § 2.

**ANNOTATIONS**

**The 1994 amendment,** effective April 1, 1994, deleted the former third sentence which read, "The deduction allowed a seller under this section shall not exceed the sum of one thousand dollars ($1,000) during any twelve month period attributable to purchases by a single purchaser".

## 7-9-75. Deduction; gross receipts tax; sale of certain services performed directly on product manufactured.

Receipts from selling the service of combining or processing components or materials may be deducted from gross receipts if the sale is made to a person engaged in the business of manufacturing who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must have the service performed directly upon tangible personal property which he is in the business of manufacturing or upon ingredients or component parts thereof.

**History:** 1953 Comp., § 72-16A-14.32, enacted by Laws 1972, ch. 39, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 1972, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 1972, 90 days after the adjournment of the legislature.

## 7-9-76. Deduction; gross receipts tax; travel agents' commissions paid by certain entities.

Receipts of travel agents derived from commissions paid by maritime transportation companies and interstate airlines, railroads and passenger buses for booking, referral, reservation or ticket services may be deducted from gross receipts.

**History:** 1953 Comp., § 72-16A-14.33, enacted by Laws 1977, ch. 288, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 1977, ch. 288, § 3 made Laws 1977, ch. 288, § 2 effective July 1, 1977.

## 7-9-76.1. Deduction; gross receipts tax; certain manufactured homes.

Receipts from the resale of a manufactured home may be deducted from gross receipts if the sale is made of a manufactured home that was subject to the gross receipts, compensating or motor vehicle excise tax upon its initial sale or use in New Mexico. The seller shall retain and furnish proof satisfactory to the department that a gross receipts, compensating or motor vehicle excise tax was paid upon the initial sale or use in New Mexico of a manufactured home, and in the absence of such proof, it is presumed that the tax was not paid. Proof that a New Mexico certificate of title was issued for a manufactured home in 1972 or a prior year or proof that a manufactured home for which a New Mexico certificate of title has been issued was manufactured in 1967 or a prior year is proof that a motor vehicle excise tax was paid on the initial sale or use in New Mexico of that manufactured home.

**History:** 1978 Comp., § 7-9-76.1, enacted by Laws 1979, ch. 338, § 7; 1980, ch. 103, § 1; 1990, ch. 41, § 9; 1991, ch. 203, § 8.

**ANNOTATIONS**

**The 1991 amendment,** effective July 1, 1991, substituted "manufactured" for "mobile" in the section heading and throughout the section.

**The 1990 amendment,** effective July 1, 1990, substituted "department" for "director" and made a minor stylistic change in the second sentence.

## 7-9-76.2. Deduction; gross receipts tax; films and tapes.

Receipts from the leasing or licensing of theatrical and television films and tapes to a person engaged in the business of providing public or commercial entertainment from which gross receipts are derived may be deducted from gross receipts.

**History:** 1978 Comp., § 7-9-76.2, enacted by Laws 1984, ch. 2, § 6.

**ANNOTATIONS**

**Emergency clauses.** — Laws 1984, ch. 2, § 14 contained an emergency clause and was approved February 11, 1984.

**Compiler's notes.** — Laws 1984, ch. 129, § 2, also enacted a 7-9-76.2 NMSA 1978, but that section, which related to a deduction of real estate commissions from the gross receipts tax, was redesignated as 7-9-66.1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Applicability of sales or use taxes to motion pictures and video tapes, 10 A.L.R.4th 1209.

## 7-9-77. Deductions; compensating tax.

A. Fifty percent of the value of agricultural implements, farm tractors, aircraft not exempted under Section 7-9-30 NMSA 1978 or vehicles that are not required to be registered under the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] may be deducted from the value in computing the compensating tax due; provided that, with respect to use of agricultural implements, the person using the property is regularly engaged in the business of farming or ranching. Any deduction allowed under Subsection B of this section is to be taken before the deduction allowed by this subsection is computed. As used in this subsection, "agricultural implement" means a tool, utensil or instrument that is:

(1) designed primarily for use with a source of motive power, such as a tractor, in planting, growing, cultivating, harvesting or processing agricultural produce at the place where the produce is grown; in raising poultry or livestock; or in obtaining or processing food or fiber, such as eggs, milk, wool or mohair, from living poultry or livestock at the place where the poultry or livestock are kept for this purpose; and

(2) depreciable for federal income tax purposes.

B. That portion of the value of tangible personal property on which an allowance was granted to the buyer for a trade-in of tangible personal property of the same type that was bought may be deducted from the value in computing the compensating tax due.

**History:** 1953 Comp., § 72-16A-15, enacted by Laws 1966, ch. 47, § 15; 1969, ch. 144, § 64; 1975, ch. 159, § 2; 1988, ch. 148, § 2; 1998, ch. 89, § 6.

**ANNOTATIONS**

**The 1998 amendment,** effective July 1, 1998, in Subsection A, added the proviso at the end of the first sentence, added the last sentence and added Paragraphs A(1) and (2).

**"Vehicle" construed.** — To be a "vehicle" within the meaning of Subsection A, a machine must be capable of being utilized as a means of carrying people or other property over the highways. *Kaiser Steel Corp. v. Revenue Div*., 1981-NMCA-042, 96 N.M. 117, 628 P.2d 687, cert. denied, 96 N.M. 116, 628 P.2d 686.

**Neither dragline nor continuous miner within scope of section.** — Because neither a dragline nor a continuous miner can be classified as a vehicle under Section 66-1-4B NMSA 1978 (now Section 66-1-4.11 NMSA 1978), neither is in the category of "vehicles not required to be registered" within the meaning of this section. *Kaiser Steel Corp. v. Revenue Div*., 1981-NMCA-042, 96 N.M. 117, 628 P.2d 687, cert. denied, 96 N.M. 116, 628 P.2d 686; *Pittsburgh & Midway Coal Mining Co. v. Revenue Div*., 1983-NMCA-019, 99 N.M. 545, 660 P.2d 1027, appeal dismissed, 464 U.S. 923, 104 S. Ct. 323, 78 L. Ed. 2d 296 (1983).

## 7-9-77.1. Deduction; gross receipts tax; certain medical and health care services.

A. Receipts of a health care practitioner or an association of health care practitioners from payments by the United States government, or any agency thereof, or from a medicare administrative contractor for medical and other health services provided by a health care practitioner to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

B. Receipts of a hospice or nursing home from payments by the United States government, or any agency thereof, or from a medicare administrative contractor for medical and other health and palliative services provided by the hospice or nursing home to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

C. Receipts of a health care practitioner or an association of health care practitioners from payments by a third-party administrator of the federal TRICARE program for medical and other health services provided by physicians and osteopathic physicians to covered beneficiaries may be deducted from gross receipts.

D. Receipts of a health care practitioner or an association of health care practitioners from payments by or on behalf of the Indian health service of the United States department of health and human services for medical and other health services provided by physicians and osteopathic physicians to covered beneficiaries may be deducted from gross receipts.

E. Receipts of a clinical laboratory from payments by the United States government, or any agency thereof, or from a medicare administrative contractor for medical services provided by the clinical laboratory to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

F. Receipts of a home health agency from payments by the United States government, or any agency thereof, or from a medicare administrative contractor for medical, other health and palliative services provided by the home health agency to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

G. Prior to July 1, 2032, receipts of a dialysis facility from payments by the United States government, or any agency thereof, or from a medicare administrative contractor for medical and other health services provided by the dialysis facility to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

H. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department. A taxpayer who

has receipts that are deductible pursuant to this section and Section 7-9-93 NMSA 1978 shall deduct the receipts under this section prior to calculating the receipts that may be deducted pursuant to Section 7-9-93 NMSA 1978.

I. The department shall compile an annual report on the deductions created pursuant to this section that shall include the number of taxpayers that claimed each deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deductions. The department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deductions and whether the deductions are providing a benefit to the state.

J. For the purposes of this section:

(1) "association of health care practitioners" means a corporation, unincorporated business entity or other legal entity organized by, owned by or employing one or more health care practitioners; provided that the entity is not:

(a) an organization granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as that section may be amended or renumbered; or

(b) a health maintenance organization, hospital, hospice, nursing home or an entity that is solely an outpatient facility or intermediate care facility licensed pursuant to the Public Health Act [Chapter 24, Article 1 NMSA 1978];

(2) "clinical laboratory" means a laboratory accredited pursuant to 42 USCA 263a;

(3) "dialysis facility" means a facility that provides outpatient maintenance dialysis services or home dialysis training and support services, including a facility considered by the federal centers for medicare and medicaid services to be an independent or hospital-based facility that includes a self-care dialysis unit that furnishes only self-dialysis services;

(4) "health care practitioner" means:

(a) an athletic trainer licensed pursuant to the Athletic Trainer Practice Act [Chapter 61, Article 14D NMSA 1978];

(b) an audiologist licensed pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act [Chapter 61, Article 14B NMSA 1978];

(c) a chiropractic physician licensed pursuant to the Chiropractic Physician Practice Act [Chapter 61, Article 4 NMSA 1978];

(d) a counselor or therapist practitioner licensed pursuant to the Counseling and Therapy Practice Act [Chapter 61, Article 9A NMSA 1978];

(e) a dentist licensed pursuant to the Dental Health Care Act [Chapter 61, Article 5A NMSA 1978];

(f) a doctor of oriental medicine licensed pursuant to the Acupuncture and Oriental Medicine Practice Act [Chapter 61, Article 14A NMSA 1978];

(g) an independent social worker licensed pursuant to the Social Work Practice Act [Chapter 61, Article 31 NMSA 1978];

(h) a massage therapist licensed pursuant to the Massage Therapy Practice Act [Chapter 61, Article 12C NMSA 1978];

(i) a naprapath licensed pursuant to the Naprapathic Practice Act [61-12F-1 to 61-12F-11 NMSA 1978];

(j) a nutritionist or dietitian licensed pursuant to the Nutrition and Dietetics Practice Act [61-7A-1 to 61-7A-15 NMSA 1978];

(k) an occupational therapist licensed pursuant to the Occupational Therapy Act [Chapter 61, Article 12A NMSA 1978];

(l) an optometrist licensed pursuant to the Optometry Act [Chapter 61, Article 2 NMSA 1978];

(m) an osteopathic physician licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978];

(n) a pharmacist licensed pursuant to the Pharmacy Act [Chapter 61, Article 11 NMSA 1978];

(o) a physical therapist licensed pursuant to the Physical Therapy Act [61-12D-1 to 61-12D-19 NMSA 1978];

(p) a physician licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978];

(q) a podiatrist licensed pursuant to the Podiatry Act [Chapter 61, Article 8 NMSA 1978];

(r) a psychologist licensed pursuant to the Professional Psychologist Act [Chapter 61, Article 9 NMSA 1978];

(s) a radiologic technologist licensed pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act [Chapter 61, Article 14E NMSA 1978];

(t) a registered nurse licensed pursuant to the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978];

(u) a respiratory care practitioner licensed pursuant to the Respiratory Care Act [Chapter 61, Article 12B NMSA 1978]; and

(v) a speech-language pathologist licensed pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act [Chapter 61, Article 14B NMSA 1978];

(5) "home health agency" means a for-profit entity that is licensed by the department of health and certified by the federal centers for medicare and medicaid services as a home health agency and certified to provide medicare services;

(6) "hospice" means a for-profit entity licensed by the department of health as a hospice and certified to provide medicare services;

(7) "medicare administrative contractor" means a third-party administrator operating under contract with the federal centers for medicare and medicaid services to process medicare claims and make medicare fee-for-service payments for medicare fee-for-service beneficiaries;

(8) "nursing home" means a for-profit entity licensed by the department of health as a nursing home and certified to provide medicare services; and

(9) "TRICARE program" means the program defined in 10 U.S.C. 1072(7).

**History:** 1978 Comp., § 7-9-77.1, enacted by Laws 1998, ch. 96, § 1; 2000 (2nd S.S.), ch. 16, § 1; 2003, ch. 350, § 1; 2003, ch. 351, § 1; 2005, ch. 91, § 1; 2007, ch. 361, § 4; 2014, ch. 56, § 1; 2016 (2nd S.S.), ch. 3, § 4; 2021, ch. 54, § 1; 2021, ch. 65, § 24; 2022, ch. 43, § 1; 2022, ch. 49, § 1.

## ANNOTATIONS

**Cross references.** — For the provisions of Title XVIII of the federal Social Security Act, *see* 42 U.S.C. § 1395 et seq.

**2022 Multiple Amendments.** — Laws 2022, ch. 43, § 1 and Laws 2022, ch. 49, § 1, both effective July 1, 2022, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2022, ch. 49, § 1 as the last act

signed by the governor is set out above and incorporates both amendments. The amendments enacted by Laws 2022, ch. 43, § 1 and Laws 2022, ch. 49, § 1 are described below. To view the session laws in their entirety, *see* the 2022 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2022, ch. 43, § 1, provided that receipts from payments of a medicare administrative contractor are eligible for a gross receipts tax deduction for certain medical and health care services, and Laws 2022, ch. 49, § 1, extended a gross receipts tax deduction for dialysis facilities, and revised the definition of "dialysis facility".

**Laws 2022, ch. 49, § 1,** effective July 1, 2022, extended a gross receipts tax deduction for dialysis facilities, and revised the definition of "dialysis facility"; in Subsection F, deleted "Prior to July 1, 2024, receipts" and added "Prior to July 1, 2032, receipts"; and in Subsection I, Paragraph I(3), deleted "an end-stage renal disease facility as defined pursuant to 42 C.F.R. 405.2102" and added "a facility that provides outpatient maintenance dialysis services or home dialysis training and support services, including a facility considered by the federal centers for medicare and medicaid services to be an independent or hospital-based facility that includes a self-care dialysis unit that furnishes only self-dialysis services".

**Laws 2022, ch. 43, § 1,** effective July 1, 2022, provided that receipts from payments of a medicare administrative contractor are eligible for a gross receipts tax deduction for certain medical and health care services; in Subsection A, after "any agency thereof", added "or from a medicare administrative contractor", after "for", deleted "provision of", after "other health services", added "provided", and after "by a health care practitioner", deleted "or of medical or other health and palliative services by hospices or nursing homes"; added a new Subsection B and redesignated former Subsections B through I as Subsections C through J, respectively; in Subsections E, F, and G, after "or any agency thereof", added "or from a medicare administrative contractor"; in Subsection I, after "number of taxpayers", deleted "approved by the department to receive" and added "that claimed", and after "aggregate amount of deductions", deleted "approved" and added "claimed"; and in Subsection J, added a new Paragraph J(7) and redesignated former Paragraphs (7) and (8) as Paragraphs J(8) and J(9), respectively.

**2021 Amendments.** — Laws 2021, ch. 65, § 24, effective July 1, 2021, provided that associations of health care practitioners are eligible to claim certain gross receipts tax deductions, and defined "association of health care practitioners" for purposes of this section; in Subsection A, after "Receipts of a health care practitioner", added "or an association of health care practitioners"; in Subsection B, after "Receipts of a health care practitioner", added "or an association of health care practitioners"; in Subsection C, after "Receipts of a health care practitioner", added "or an association of health care practitioners"; and in Subsection I, added a new Paragraph I(1) and redesignated former Paragraphs I(1) through I(7) as Paragraphs I(2) through I(8), respectively.

Laws 2021, ch. 54, § 1, effective June 18, 2021, removed osteopathic physicians licensed pursuant to the Osteopathic Medicine Act from the definition of "health care practitioner", and added osteopathic physicians licensed pursuant to the Medical Practice Act to the definition of "health care practitioner"; and in Subsection I, Subparagraph I(3)(m), after "pursuant to the", deleted "Osteopathic Medicine" and added "Medical Practice".

**The 2016 (2nd S.S.) amendment,** effective November 1, 2016, clarified the type of health care provider that may take certain gross receipts tax deductions for medical and health care services; in Subsection A, after "Receipts", added "of a health care practitioner", after "health services by", deleted "medical doctors, osteopathic physicians, doctors of oriental medicine, athletic trainers, chiropractic physicians, counselor and therapist practitioners, dentists, massage therapists, naprapaths, nurses, nutritionists, dietitians, occupational therapists, optometrists, pharmacists, physical therapists, psychologists, radiologic technologists, respiratory care practitioners, audiologists, speech-language pathologists, social workers and podiatrists" and added "a health care practitioner", and after "or of medical", added "or"; in Subsection B, after "Receipts", added "of a health care practitioner"; in Subsection C, after "Receipts", added "of a health care practitioner"; in Subsection D, after "Receipts", added "of a clinical laboratory"; in Subsection E, after "Receipts", added "of a home health agency"; in Subsection F, after "receipts", added "of a dialysis facility", after "services provided by a", deleted "a" and added "the", after "deducted from gross receipts", deleted "according to the following schedule:" and deleted Paragraphs F(1) through F(3), relating to deductions from gross receipts; in Subsection G, after the first sentence, added the second sentence; in Subsection H, after "evaluate the effectiveness of the deductions.", deleted "Beginning in 2020 and every five years thereafter that this section is in effect"; in Subsection I, deleted Paragraphs I(1) and I(2) and redesignated former Paragraph I(3) as Paragraph I(1); deleted Paragraphs I(4) and I(5) and redesignated former Paragraph I(6) as Paragraph I(2), deleted Paragraph I(7), added new Paragraph I(3) and redesignated former Paragraphs I(8) and I(9) as Paragraph I(4) and I(5), respectively, deleted Paragraphs I(10) through I(13) and redesignated former Paragraph I(14) as Paragraph I(6), deleted Paragraphs I(15) through I(26) and redesignated former Paragraph I(27) as Paragraph I(7).

**The 2014 amendment,** effective July 1, 2014, provided a deduction from gross receipts of payments for services rendered by dialysis facilities; added Subsections F, G and H; and in Subsection I, added Paragraph (6).

**The 2007 amendment,** effective July 1, 2007, eliminated the schedules of deductible receipts for the years 2003 through 2005; expanded the list of health care providers who may deduct receipts from the United States government and its agencies; added Subsection C; and added Paragraphs (1), (2), (4) through (6), (9), (11), (12), (14), (15), and (17) through (25) of Subsection F.

**The 2005 amendment,** effective June 17, 2005, added Subsection C to provide a deduction for certain payments by the United States for medical services provided by a

clinical laboratory; added Subsection D to provide a deduction for certain payments by the United States for medical, other health and palliative services provided to a home health agency; requireed that "hospice" be certified to provide medicare services; and in Subsection E, defined "clinical laboratory", "home health agency" and "nursing home".

**The 2003 amendment,** effective July 1, 2003, in Subsection A, substituted "osteopathic physicians and podiatrists" for "osteopaths"; redesignated former Subsection B as C and added present Subsection B; in Subsection C, rewrote Paragraph C(2) and added Paragraphs C(3) and (4).

**The 2000 amendment,** effective July 1, 2000, deleted former Subsections A & B, concerning deductions from gross receipts from specific dates, and redesignated the remaining subsections accordingly; in present Subsection A, deleted "on or after July 1, 2000" following "Receipts" and inserted "or of medical, other health and palliative services by a hospice"; and in present Subsection B, added Paragraph (1) and designated the remaining section text as Paragraph (2).

## 7-9-78. Deductions; compensating tax; use of tangible personal property for leasing.

A. Except as provided otherwise in Subsection B of this section, the value of tangible personal property may be deducted in computing the compensating tax due if the person using the tangible personal property:

(1) is engaged in a business which derives a substantial portion of its receipts from leasing or selling tangible personal property of the type leased;

(2) does not use the tangible personal property in any manner other than holding it for lease or sale or leasing or selling it either by itself or in combination with other tangible personal property in the ordinary course of business; and

(3) does not use the tangible personal property in a manner incidental to the performance of a service.

B. The deduction provided by this section shall not apply to the value of:

(1) furniture or appliances furnished as part of a leased or rented dwelling house or apartment by the landlord or lessor;

(2) coin-operated machines; or

(3) manufactured homes.

**History:** 1953 Comp., § 72-16A-15.1, enacted by Laws 1969, ch. 144, § 65; 1973, ch. 245, § 1; 1975, ch. 160, § 4; 1979, ch. 338, § 8; 1981, ch. 184, § 3; 1984, ch. 2, § 7; 1991, ch. 203, § 9.

## ANNOTATIONS

**The 1991 amendment,** effective July 1, 1991, inserted the subsection designation A at the beginning of the section and redesignated former Subsections A to C as Paragraphs (1) to (3) of Subsection A; rewrote the introductory paragraph of Subsection A which read "The value of tangible personal property other than furniture or appliances furnished as part of a leased or rented dwelling house or apartment by the landlord or lessor, other than coin-operated machines and other than mobile homes may be deducted in computing the compensating tax due if the person using the tangible personal property" and added Subsection B.

**Determining character of transaction.** — The characterization of a transaction as a lease may be determined by looking to the intentions of the parties as evidenced by their actions with respect to the leased property. *Music Serv. Co. v. Bureau of Revenue*, 1975-NMCA-114, 88 N.M. 432, 540 P.2d 1321.

**Lease and bailment distinguished.** — Since taxpayer, which was in the business of providing coin-operated, amusement and vending equipment for use by business establishments for the pleasure or amusement of their patrons, utilized two types of agreements, one of which was a lease under which payment was made to taxpayer by a flat fee, whereas in the other type of agreement payment was made by a division of the proceeds from the machines under an oral agreement based on a document called "Agreement for Joint Operation of Amusement Devices," it was held that the taxpayer knew the difference between a lease agreement and a bailment for the mutual benefit of itself and a business establishment, supporting the inference that the relationship between taxpayer and establishment was not a lease. *Music Serv. Co. v. Bureau of Revenue*, 1975-NMCA-114, 88 N.M. 432, 540 P.2d 1321.

**Laundry transactions are leasings.** — Since the taxpayer's coin-operated laundry business is used for a consideration by persons other than the owner, the transactions are "leasings" as defined in Section 7-9-3J NMSA 1978, and the taxpayer is entitled to a deduction from compensating tax liability for the value of the washers and dryers. *Strebeck Props., Inc. v. New Mexico Bureau of Revenue*, 1979-NMCA-035, 93 N.M. 262, 599 P.2d 1059.

**Construction of temporary provision.** — Temporary provision enacted by Laws 1977, ch. 144, § 66, providing for exemption from higher tax rate for certain contracts "entered into prior to the passage of this act," necessarily referred to contracts entered into prior to July 1, 1969, the date on which, pursuant to N.M. Const., art. IV, § 23, the bill became law, and an attempt by the commissioner (now the secretary of the taxation and revenue department) to set by regulation an earlier cutoff date (the date on which the bill was signed by the governor) was invalid. *R.H. Fulton, Inc. v. N.M. Bureau of Revenue*, 1973-NMCA-133, 85 N.M. 583, 514 P.2d 1079.

**Exemption not waived.** — Failure to register pursuant to the terms of a regulation promulgated under a temporary exemption provision which was invalid because it set a

cutoff date contrary to that provided by the legislature was not a waiver by the taxpayer of his rights under the statute. *R.H. Fulton, Inc. v. N.M. Bureau of Revenue*, 1973-NMCA-133, 85 N.M. 583, 514 P.2d 1079.

**Constitutionality of former temporary exemption.** — Former 72-16-5D, 1953 Comp., which exempted lump-sum or unit-price contracts entered into prior to the effective date of the act, which by their terms would not permit a price increase in the event of imposition of additional tax, from the operation of the gross receipts tax, did not amount to an arbitrary or unreasonable distinction violative of principles of equal protection and uniform taxation. *Gruschus v. Bureau of Revenue*, 1965-NMSC-013, 74 N.M. 775, 399 P.2d 105 (decided under prior law).

## 7-9-78.1. Deduction; compensating tax; uranium enrichment plant equipment.

The value of equipment and replacement parts for that equipment may be deducted in computing the compensating tax due if the person uses the equipment and replacement parts to enrich uranium in a uranium enrichment plant.

**History:** Laws 1999, ch. 231, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 1999, ch. 231, § 5 made Laws 1999, ch. 231, § 4 effective July 1, 1999.

**Cross references.** — For deduction of receipts from enriched uranium and enrichment of uranium, *see* 7-9-90 NMSA 1978.

## 7-9-79. Credit; compensating tax.

A. If, on property or services bought outside this state, a gross receipts, sales, compensating or similar tax has been levied by another state or political subdivision thereof on the transaction by which the person using the property or services in New Mexico acquired the property or a compensating, use or similar tax has been levied by another state on the use of the property subsequent to its acquisition by the person using the property or services in New Mexico and such tax has been paid, the amount of such tax paid may be credited against any compensating tax due this state on the same property. The credit allowed pursuant to this subsection shall not exceed the compensating tax due on the property or services used in New Mexico.

B. When the receipts from the sale of real property constructed by a person in the ordinary course of the person's construction business are subject to the gross receipts tax, the amount of compensating tax previously paid by the person on materials that became an ingredient or component part of the construction project and on construction

services performed upon the construction project may be credited against the gross receipts tax due on the sale.

**History:** 1953 Comp., § 72-16A-16, enacted by Laws 1966, ch. 47, § 16; 1973, ch. 342, § 1; 1991, ch. 203, § 10; 2021, ch. 65, § 25.

**ANNOTATIONS**

**The 2021 amendment,** effective July 1, 2021, amended the existing credit for compensating taxes paid in another state to include services; and in Subsection A, after the first, second, and fifth occurrence of "property", added "or services", and added the last sentence of the subsection.

**The 1991 amendment,** effective July 1, 1991, inserted "or a compensating, use or similar tax has been levied by another state on the use of the property subsequent to its acquisition by the person using the property in New Mexico" in Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and construction of provisions allowing use tax credit for tax paid in other state, 31 A.L.R.4th 1206.

## 7-9-79.1. Credit; gross receipts tax; services.

If on services performed outside the state a gross receipts sales or similar tax has been levied by another state or a political subdivision thereof and such tax has been paid, the amount of the tax paid may be credited against any gross receipts tax due this state on the receipts after July 1, 1989 from the sale in New Mexico of the product of the services performed outside this state. The amount of credit shall not exceed an amount equal to the rate of tax imposed under Section 7-9-4 NMSA 1978 multiplied by the amount subject to tax by both New Mexico and the other state or political subdivision of that state.

**History:** 1978 Comp., § 7-9-79.1, enacted by Laws 1989, ch. 262, § 8; 1994, ch. 45, § 7.

**ANNOTATIONS**

**The 1994 amendment,** effective July 1, 1994, added the second sentence and substituted "after July 1, 1989" for "during the period July 1, 1989 through June 30, 1993" in the first sentence.

## 7-9-79.2. Gross receipts tax; compensating tax; biodiesel blending facility tax credit.

A. A taxpayer who is a rack operator as defined in the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978] and who installs biodiesel blending equipment in property owned by the taxpayer for the purpose of establishing or expanding a facility

to produce blended biodiesel fuel is eligible to claim a credit against gross receipts tax or compensating tax. The credit shall be an amount equal to thirty percent of the purchase cost of the equipment plus thirty percent of the cost of installing that equipment. The credit provided by this section may be referred to as the "biodiesel blending facility tax credit".

B. The biodiesel blending facility tax credit shall not exceed fifty thousand dollars ($50,000) with respect to equipment installed at any one facility.

C. Upon application from a taxpayer wishing to claim the biodiesel blending facility tax credit, the energy, minerals and natural resources department shall determine if the equipment for which the tax credit will be claimed meets the requirements of this section and if purchase and installation costs reported by the taxpayer are legitimate. Upon these determinations being made in favor of the taxpayer, the energy, minerals and natural resources department shall issue a dated certificate of eligibility containing this information and an estimate of the amount of the biodiesel blending facility tax credit for which the taxpayer is eligible.

D. To claim the biodiesel blending facility tax credit, the taxpayer shall provide to the taxation and revenue department the certificate of eligibility from the energy, minerals and natural resources department. Upon receipt of the certificate, the taxation and revenue department shall approve the claim for the credit if the total cumulative amount of approved claims for the credit for all taxpayers for the calendar year does not exceed one million dollars ($1,000,000). The department shall maintain a record of the cumulative amount of claims for the credit that have been approved and when it determines that this cumulative amount has reached one million dollars ($1,000,000), it shall cease approving any additional claims for the biodiesel blending facility tax credit.

E. If a taxpayer who has received the biodiesel blending facility tax credit ceases biodiesel blending without completing at least one hundred eighty days of availability of the facility within the first three hundred sixty-five days after the issuance of the certificate of eligibility from the energy, minerals and natural resources department, any amount of approved credit not applied against the taxpayer's gross receipts tax or compensating tax liability shall be extinguished. The taxpayer must amend the taxpayer's return, self-assess the tax owed and return any biodiesel blending facility tax credit received within four hundred twenty-five days of the date of issuance of the certificate of eligibility.

F. The tax credit provided by this section may only be applied against the taxpayer's gross receipts tax liability or compensating tax liability. If the credit exceeds the taxpayer's tax liability in the reporting period for which it is granted, the credit may be carried forward for four years from the date of the certificate of eligibility.

G. For the purposes of this section:

(1) "biodiesel" means renewable, biodegradable, monoalkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets American society for testing and materials D 6751 standard specification for biodiesel B100 blend stock for distillate fuels;

(2) "biodiesel blending equipment" means equipment necessary for the process of blending biodiesel with diesel fuel to produce blended biodiesel fuel;

(3) "blended biodiesel fuel" means a diesel fuel that contains at least two percent biodiesel; and

(4) "diesel fuel" means any diesel-engine fuel used for the generation of power to propel a motor vehicle."

**History:** Laws 2007, ch. 204, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204, § 23 made Laws 2007, ch. 204, § 9 effective July 1, 2007.

## 7-9-80. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1982, ch. 18, § 27, repealed 7-9-80 NMSA 1978, enacted by Laws 1975, ch. 263, § 9, relating to a credit for electrical energy tax or similar tax on generation of electricity which may be applied against any gross receipts tax due, effective July 1, 1982.

## 7-9-80.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 115, § 6A repealed 7-9-80.1, as enacted by Laws 1981, ch. 39, § 114, relating to tax credit during period of economic adjustment, effective July 1, 1989.

## 7-9-81. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 115, § 6A repealed 7-9-81 NMSA 1978, as enacted by Laws 1966, ch. 47, § 19, relating to cross references, effective July 1, 1989.

## 7-9-82. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 2004, ch. 116, § 7 repealed 7-9-82 NMSA 1978, as enacted by Laws 1986, ch. 20, § 68, relating to a municipal gross receipt tax credit equal to one-half of one percent, effective January 1, 2005. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com.*

## 7-9-83. Deduction; gross receipts tax; jet fuel.

A. From July 1, 2003 through June 30, 2017, fifty-five percent of the receipts from the sale of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted from gross receipts.

B. After June 30, 2017, forty percent of the receipts from the sale of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted from gross receipts.

**History:** Laws 1993, ch. 364, § 1; 2003, ch. 214, § 2; 2006, ch. 51, § 1; 2011, ch. 74, § 1.

### ANNOTATIONS

**Repeals.** — Laws 1995, ch. 36, § 2, effective June 16, 1995, repealed Laws 1993, ch. 364, § 4, as amended by Laws 1994, ch. 5, § 26, which had provided for the repeal of 7-9-83 NMSA 1978, as enacted by Laws 1993, ch. 364, § 1, effective July 1, 1995.

**The 2011 amendment,** effective July 1, 2011, extended the sunset date for the deduction to June 30, 2017.

**The 2006 amendment,** effective May 17, 2006, changed "June 30, 2007" to "June 30, 2012" in Subsections A and B.

**The 2003 amendment,** effective July 1, 2003, added present Subsection B and inserted "From July 1, 2003 through June 30, 2007, fifty-five percent of the receipts" for "Forty percent of the receipts" at the beginning of Subsection A.

## 7-9-84. Deduction; compensating tax; jet fuel.

A. From July 1, 2003 through June 30, 2017, fifty-five percent of the value of the fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted in computing the compensating tax due.

B. After June 30, 2017, forty percent of the value of the fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted in computing the compensating tax due.

**History:** Laws 1993, ch. 364, § 2; 2003, ch. 214, § 3; 2006, ch. 51, § 2; 2011, ch. 74, § 2.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 36, § 2, effective June 16, 1995, repealed Laws 1993, ch. 364, § 4, as amended by Laws 1994, ch. 5, § 26, which had provided for the repeal of 7-9-84 NMSA 1978, as enacted by Laws 1993, ch. 364, § 2, effective July 1, 1995.

**The 2011 amendment,** effective July 1, 2011, extended the sunset date for the deduction to June 30, 2017.

**The 2006 amendment,** effective May 17, 2006, changed "June 30, 2007" to "June 30, 2012" in Subsections A and B.

**The 2003 amendment,** effective July 1, 2003 added present Subsection B and inserted "From July 1, 2003 through June 30, 2007, fifty-five percent of the receipts" for "The" at the beginning of Subsection A and deleted "from the value of such fuel" following "may be deducted".

## 7-9-85. Deduction; gross receipts tax; certain organization fundraisers.

Receipts from not more than two fundraising events annually conducted by an organization that is exempt from the federal income tax as an organization described in Section 501(c), other than an organization described in Section 501(c)(3), of the United States Internal Revenue Code of 1986, as amended may be deducted from gross receipts.

**History:** Laws 1994, ch. 43, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 1994, ch. 43, § 2 made Laws 1994, ch. 43, § 1 effective July 1, 1994.

**Cross references.** — For Section 501 of the Internal Revenue Code, *see* 26 U.S.C. § 501.

## 7-9-86. Repealed.

**History:** Laws 1995, ch. 80, § 1; 2003, ch. 127, § 3; repealed by Laws 2023, ch. 85, § 28.

**ANNOTATIONS**

**Repeals.** — Laws 2023, ch. 85, § 28 repealed 7-9-86 NMSA 1978, as enacted by Laws 1995, ch. 80, § 1, relating to deduction, gross receipts tax, sales to qualified film production company, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

## 7-9-87. Deduction; gross receipts tax; lottery retailer receipts.

Receipts of a lottery game retailer from selling lottery tickets pursuant to the New Mexico Lottery Act [Chapter 6, Article 24 NMSA 1978] may be deducted from gross receipts.

**History:** Laws 1995, ch. 155, § 35.

**ANNOTATIONS**

**Effective dates.** — Laws 1995, ch. 155, § 39 made Laws 1995, ch. 155, § 35 effective July 1, 1995.

## 7-9-88. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 414, § 3 repealed 7-9-88 NMSA 1978, as enacted by Laws 1997, ch. 64, § 2, relating to credit; gross receipts tax; tax paid to Santa Clara pueblo. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.* For similar present provision, *see* 7-9-88.1 NMSA 1978.

## 7-9-88.1. Credit; gross receipts tax; tax paid to certain tribes.

A. If on a taxable transaction taking place on tribal land a qualifying gross receipts, sales or similar tax has been levied by the tribe, the amount of the tribe's tax may be credited against gross receipts tax due this state or its political subdivisions pursuant to the Gross Receipts and Compensating Tax Act and a local option gross receipts tax on the same transaction. The amount of the credit shall be equal to the lesser of seventy-five percent of the tax imposed by the tribe on the receipts from the transaction or seventy-five percent of the revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of local option gross receipts taxes imposed on the receipts from the same transaction. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amount of the gross receipts

tax and local option gross receipts taxes and against the amount of distribution of those taxes pursuant to Section 7-1-6.1 NMSA 1978.

B. A qualifying gross receipts, sales or similar tax levied by the tribe shall be limited to a tax that:

(1) is substantially similar to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act;

(2) does not unlawfully discriminate among persons or transactions based on membership in the tribe;

(3) provides a credit against the tribe's tax equal to the lesser of twenty-five percent of the tax imposed by the tribe on the receipts from the transactions or twenty-five percent of the tax revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of the local option gross receipts taxes imposed on the receipts from the same transactions; and

(4) is subject to a cooperative agreement between the tribe and the secretary entered into pursuant to Section 9-11-12.1 NMSA 1978 and in effect at the time of the taxable transaction.

C. For purposes of the tax credit allowed by this section:

(1) "pueblo" means the Pueblo of Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Picuris, Pojoaque, Sandia, San Felipe, San Ildefonso, San Juan, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia or Zuni or the nineteen New Mexico pueblos acting collectively;

(2) "tribal land" means all land that is owned by a tribe located within the exterior boundaries of a tribe's reservation or grant and all land held by the United States in trust for that tribe; and

(3) "tribe" means a pueblo, the Jicarilla Apache Nation or the Mescalero Apache Tribe.

**History:** Laws 1999, ch. 223, § 2; 2000, ch. 62, § 1; 2001, ch. 42, § 1; 2003, ch. 414, § 1; 2023, ch. 85, § 16.

## ANNOTATIONS

**Cross references.** — For definition of local option gross receipts tax, *see* 7-1-3 NMSA 1978.

**The 2023 amendment,** effective July 1, 2023, removed a provision that required that a gross receipts or similar tax levied by a tribe be at a rate not greater than the total of the

gross receipts tax rate and local option gross receipts tax rate; and in Subsection B, deleted former Paragraph B(3) and redesignated Paragraphs B(4) and B(5) as Paragraphs B(3) and B(4), respectively.

**The 2003 amendment,** effective July 1, 2003, substituted "tribes" for "pueblos" in the section heading; deleted "any" following "be credited against" in Subsection A; rewrote Subsection C; and substituted "tribal" or "tribe's" for "pueblo" throughout the section.

**The 2001 amendment,** effective July 1, 2001, substituted "certain pueblos" for "Santa Ana pueblo, Laguna pueblo or Nambe pueblo" in the section heading; substituted "pueblo land" for "Santa Ana pueblo land, Laguna pueblo land or Nambe pueblo land" near the beginning of Subsection A and rewrote Subsection C, which formerly defined each of the pueblo lands separately.

**The 2000 amendment,** effective July 1, 2000, inserted "or Nambe pueblo" in the section heading, inserted "or Nambe pueblo land" in Subsection A, assigned designations (1) and (2) to existing Subsection C text, and added Subsection C(3).

## 7-9-88.2. Credit; gross receipts tax; tax paid to Navajo Nation on receipts from selling coal.

A. If on receipts from selling coal severed from Navajo Nation land a qualifying gross receipts, sales, business activity or similar tax has been levied by the Navajo Nation, the amount of the Navajo Nation tax paid and not refunded may be credited against any gross receipts tax due this state or its political subdivisions pursuant to the Gross Receipts and Compensating Tax Act and any local option gross receipts tax on the same receipts. The amount of the credit shall be equal to:

(1) for the period from July 1, 2001 through June 30, 2002, the lesser of thirty-seven and one-half percent of the tax imposed by the Navajo Nation on the receipts or thirty-seven and one-half percent of the revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of local option gross receipts taxes imposed on the same receipts; and

(2) after June 30, 2002, the lesser of seventy-five percent of the tax imposed by the Navajo Nation on the receipts or seventy-five percent of the revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of local option gross receipts taxes imposed on the same receipts.

B. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amounts of the distributions made pursuant to Section 7-1-6.1 NMSA 1978 of the gross receipts tax and local option gross receipts taxes imposed on those receipts.

C. A qualifying gross receipts, sales, business activity or similar tax levied by the Navajo Nation shall be limited to a tax that:

(1) is substantially similar to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act;

(2) does not unlawfully discriminate among persons or transactions based on membership in the Navajo Nation;

(3) is levied on the receipts from selling coal at a rate not greater than the total of the gross receipts tax rate and local option gross receipts tax rates imposed by this state and its political subdivisions located within the exterior boundaries of the Navajo Nation;

(4) provides a credit against the Navajo Nation tax equal to:

(a) for the period from July 1, 2001 through June 30, 2002, the lesser of twelve and one-half percent of the tax imposed by the Navajo Nation on the receipts from selling coal severed from Navajo Nation land or twelve and one-half percent of the tax revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of the local option gross receipts taxes imposed on the same receipts; and

(b) after June 30, 2002, the lesser of twenty-five percent of the tax imposed by the Navajo Nation on the receipts from selling coal severed from Navajo Nation land or twenty-five percent of the tax revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of the local option gross receipts taxes imposed on the same receipts;

(5) is not used to calculate an intergovernmental coal severance tax credit with respect to the same receipts or time period; and

(6) is subject to a cooperative agreement between the Navajo Nation and the secretary entered into pursuant to Section 9-11-12.2 NMSA 1978 and in effect at the time of the taxable transaction.

D. For purposes of the tax credit allowed by this section, "Navajo Nation land" means all land in New Mexico that, on March 1, 2001, was located within the exterior boundaries of the Navajo Nation reservation or within a dependent community of the Navajo Nation or was land held by the United States in trust for the Navajo Nation.

**History:** 1978 Comp., § 7-9-88.2, enacted by Laws 2001, ch. 134, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2001, ch. 134, § 4 made Laws 2001, ch. 134, § 1 effective July 1, 2001.

## 7-9-89. Deduction; [gross receipts tax;] sales to certain accredited diplomats and missions.

Receipts from selling or leasing property to, or from performing services for, an accredited foreign mission or an accredited member of a foreign mission may be deducted from gross receipts when a treaty in force to which the United States is a party requires forbearance of tax when the legal incidence is upon the buyer or when the tax is customarily passed on to the buyer.

**History:** Laws 1998, ch. 89, § 2.

### ANNOTATIONS

**Effective dates.** — Laws 1998, ch. 89, § 7 made Laws 1998, ch. 89, § 2 effective July 1, 1998.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 7-9-90. Deductions; gross receipts tax; sales of uranium hexafluoride and enrichment of uranium.

A. Receipts from selling uranium hexafluoride and from providing the service of enriching uranium may be deducted from gross receipts.

B. The department shall annually report to the revenue stabilization and tax policy committee aggregate amounts of deductions taken pursuant to this section, the number of taxpayers claiming the deduction and any other information that is necessary to determine that the deduction is performing a purpose that is beneficial to the state.

C. A taxpayer deducting gross receipts pursuant to this section shall report the amount deducted separately and attribute the amount of the deduction to the authorization provided in this section in a manner required by the department that facilitates the evaluation by the legislature for the benefit to the state of this deduction.

**History:** Laws 1999, ch. 231, § 3; 2012, ch. 13, § 1.

### ANNOTATIONS

**Cross references.** — For deduction of value of equipment and its replacement parts from compensating tax, *see* 7-9-78.1 NMSA 1978.

**The 2012 amendment,** effective May 16, 2012, provided for a deduction of receipts from sales of uranium hexafluoride; required reports to determine whether the deduction is beneficial to the state; in the title, after "sales of", deleted "enriched", and after "uranium", added "hexafluoride"; in Subsection A, after "Receipts from selling", deleted "enriched", and after "uranium", added "hexafluoride"; and added Subsections B and C.

## 7-9-91. Deduction; compensating tax; contributions of inventory to certain organizations and governmental agencies.

A. Except as provided otherwise in Subsection D of this section, the value of tangible personal property that is removed from inventory and contributed to organizations that have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, may be deducted in computing the compensating tax due, provided that the contribution is deductible for federal income tax purposes by the person from whose inventory the property was withdrawn or, if the person from whose inventory the property was withdrawn is a pass-through entity as that term is defined in Section 7-3-2 NMSA 1978, the contribution is deductible by the owner or owners of the pass-through entity.

B. Except as provided otherwise in Subsection D of this section, the value of tangible personal property that is removed from inventory and contributed to the United States or New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof may be deducted in computing the compensating tax due.

C. Except as provided otherwise in Subsection D of this section, the value of tangible personal property that is removed from inventory and contributed to an Indian tribe, nation or pueblo or any governmental subdivision, agency, department or instrumentality thereof for use on that Indian reservation or pueblo grant may be deducted in computing the compensating tax due.

D. Unless contrary to federal law, the deduction provided by this section does not apply to:

(1) a contribution of metalliferous mineral ore;

(2) a contribution of tangible personal property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978];

(3) a contribution of tangible personal property that will become an ingredient or component part of a construction project; or

(4) a contribution of tangible personal property utilized or produced in the performance of a service.

E. For purposes of this section:

(1) "inventory" means tangible personal property held for sale or lease in the ordinary course of business; and

(2) "contributed" or "contribution" means a transfer of ownership without consideration. Public acknowledgment of the contribution does not constitute consideration for the purpose of this section.

**History:** Laws 2001, ch. 135, § 1.

**ANNOTATIONS**

**Cross references.** — For Section 501(c)(3) of the Internal Revenue Code of 1986, *see* 26 U.S.C.S. § 501(c)(3).

**Effective dates.** — Laws 2001, ch. 135, § 2 made Laws 2001, ch. 135, § 1 effective July 1, 2001.

## 7-9-92. Deduction; gross receipts; sale of food at retail food store.

A. Receipts from the sale of food by a retail food store that are not exempt from gross receipts taxation and are not deductible pursuant to another provision of the Gross Receipts and Compensating Tax Act may be deducted from gross receipts. The deduction provided by this section shall be separately stated by the taxpayer.

B. For the purposes of this section:

(1) "food" means any food or food product for home consumption that meets the definition of food in 7 USCA 2012(k)(1) for purposes of the federal supplemental nutrition assistance program; and

(2) "retail food store" means an establishment that sells food for home preparation and consumption and that meets the definition of retail food store in 7 USCA 2012(o)(1) for purposes of the federal supplemental nutrition assistance program, whether or not the establishment participates in the supplemental nutrition assistance program.

**History:** Laws 2004, ch. 116, § 5; 2021, ch. 65, § 26.

**ANNOTATIONS**

**The 2021 amendment,** effective July 1, 2021, provided that the existing gross receipts tax deduction for receipts from the sale of food for home consumption is available for food sold by a retail food store and not at a retail food store, and revised the definitions of "food" and "retail food store" for purposes of this section; in Subsection A, after "the

sale of food", deleted "at" and added "by"; and in Subsection B, Paragraph B(1), after "7 USCA", changed "2012(g)(1) to "2012(k)(1), and after "federal", deleted "food stamp" and added "supplemental nutrition assistance", and in Paragraph B(2), after "7 USCA", changed "2012(k)(1)" to "2012(o)(1)", and changed each occurrences of "food stamp" to "supplemental nutrition assistance".

## 7-9-93. Deduction; gross receipts; certain receipts for services provided by health care practitioner or association of health care practitioners.

A. Receipts of a health care practitioner or an association of health care practitioners for commercial contract services or medicare part C services paid by a managed care organization or health care insurer may be deducted from gross receipts if the services are within the scope of practice of the health care practitioner providing the service. Receipts from fee-for-service payments by a health care insurer may not be deducted from gross receipts.

B. Prior to July 1, 2028, receipts from a copayment or deductible paid by an insured or enrollee to a health care practitioner or an association of health care practitioners for commercial contract services pursuant to the terms of the insured's health insurance plan or enrollee's managed care health plan may be deducted from gross receipts.

C. The deductions provided by this section shall be applied only to gross receipts remaining after all other allowable deductions available under the Gross Receipts and Compensating Tax Act have been taken.

D. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

E. The department shall compile an annual report on the deductions provided by this section that shall include the number of taxpayers that claimed the deductions, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deductions. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the deductions.

F. As used in this section:

(1) "association of health care practitioners" means a corporation, unincorporated business entity or other legal entity organized by, owned by or employing one or more health care practitioners; provided that the entity is not:

(a) an organization granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as that section may be amended or renumbered; or

(b) a health maintenance organization, hospital, hospice, nursing home or an entity that is solely an outpatient facility or intermediate care facility licensed pursuant to the Public Health Act [Chapter 24, Article 1 NMSA 1978];

(2) "commercial contract services" means health care services performed by a health care practitioner pursuant to a contract with a managed care organization or health care insurer other than those health care services provided for medicare patients pursuant to Title 18 of the federal Social Security Act or for medicaid patients pursuant to Title 19 or Title 21 of the federal Social Security Act;

(3) "copayment or deductible" means the amount of covered charges an insured or enrollee is required to pay in a plan year for commercial contract services before the insured's health insurance plan or enrollee's managed care health plan begins to pay for applicable covered charges;

(4) "fee-for-service" means payment for health care services by a health care insurer for covered charges under an indemnity insurance plan;

(5) "health care insurer" means a person that:

(a) has a valid certificate of authority in good standing pursuant to the New Mexico Insurance Code [59A-1-1 NMSA 1978] to act as an insurer, health maintenance organization or nonprofit health care plan or prepaid dental plan; and

(b) contracts to reimburse licensed health care practitioners for providing basic health services to enrollees at negotiated fee rates;

(6) "health care practitioner" means:

(a) a chiropractic physician licensed pursuant to the provisions of the Chiropractic Physician Practice Act [Chapter 61, Article 4 NMSA 1978];

(b) a dentist or dental hygienist licensed pursuant to the Dental Health Care Act [Chapter 61, Article 5A NMSA 1978];

(c) a doctor of oriental medicine licensed pursuant to the provisions of the Acupuncture and Oriental Medicine Practice Act [Chapter 61, Article 14A NMSA 1978];

(d) an optometrist licensed pursuant to the provisions of the Optometry Act [Chapter 61, Article 2 NMSA 1978];

(e) an osteopathic physician licensed pursuant to the provisions of the Medical Practice Act [Chapter 61, Article 6 NMSA 1978];

(f) a physical therapist licensed pursuant to the provisions of the Physical Therapy Act [61-12D-1 through 61-12D-19 NMSA 1978];

(g) a physician or physician assistant licensed pursuant to the provisions of the Medical Practice Act [Chapter 61, Article 6 NMSA 1978];

(h) a podiatrist licensed pursuant to the provisions of the Podiatry Act [Chapter 61, Article 8 NMSA 1978];

(i) a psychologist licensed pursuant to the provisions of the Professional Psychologist Act [Chapter 61, Article 9 NMSA 1978];

(j) a registered lay midwife registered by the department of health;

(k) a registered nurse or licensed practical nurse licensed pursuant to the provisions of the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978];

(l) a registered occupational therapist licensed pursuant to the provisions of the Occupational Therapy Act [Chapter 61, Article 12A NMSA 1978];

(m)a respiratory care practitioner licensed pursuant to the provisions of the Respiratory Care Act [Chapter 61, Article 12B NMSA 1978];

(n) a speech-language pathologist or audiologist licensed pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act [Chapter 61, Article 14B NMSA 1978];

(o) a professional clinical mental health counselor, marriage and family therapist or professional art therapist licensed pursuant to the provisions of the Counseling and Therapy Practice Act [Chapter 61, Article 9A NMSA 1978] who has obtained a master's degree or a doctorate;

(p) an independent social worker licensed pursuant to the provisions of the Social Work Practice Act [Chapter 61, Article 31 NMSA 1978]; and

(q) a clinical laboratory that is accredited pursuant to 42 U.S.C. Section 263a but that is not a laboratory in a physician's office or in a hospital defined pursuant to 42 U.S.C. Section 1395x;

(7) "managed care health plan" means a health care plan offered by a managed care organization that provides for the delivery of comprehensive basic health care services and medically necessary services to individuals enrolled in the plan other than those services provided to medicare patients pursuant to Title 18 of the federal Social Security Act or to medicaid patients pursuant to Title 19 or Title 21 of the federal Social Security Act;

(8) "managed care organization" means a person that provides for the delivery of comprehensive basic health care services and medically necessary services to individuals enrolled in a plan through its own employed health care providers or by

contracting with selected or participating health care providers. "Managed care organization" includes only those persons that provide comprehensive basic health care services to enrollees on a contract basis, including the following:

(a) health maintenance organizations;

(b) preferred provider organizations;

(c) individual practice associations;

(d) competitive medical plans;

(e) exclusive provider organizations;

(f) integrated delivery systems;

(g) independent physician-provider organizations;

(h) physician hospital-provider organizations; and

(i) managed care services organizations; and

(9) "medicare part C services" means services performed pursuant to a contract with a managed health care provider for medicare patients pursuant to Title 18 of the federal Social Security Act.

**History:** Laws 2004, ch. 116, § 6; 2006, ch. 36, § 1; 2007, ch. 361, § 5; 2016 (2nd S.S.), ch. 3, § 5; 2021, ch. 65, § 27; 2023, ch. 211, § 36.

## ANNOTATIONS

**The 2023 amendment,** effective July 1, 2023, expanded the medical services gross receipts tax deduction to include all receipts from a copayment or deductible paid by an insured to a healthcare practitioner for commercial contract services provided under health insurance; in Subsection A, after "managed", deleted "health", and after the next occurrence of "care", deleted "provider" and added "organization"; added a new Subsection B; redesignated former Subsection B as Subsection C; in Subsection C, after "have been taken", deleted "and shall be separately stated by the taxpayer"; added new Subsections D and E; redesignated former Subsection C as Subsection F; in Subsection F, in the introductory clause, deleted "For the purposes of" and added "As used in"; in Paragraph F(2), after "managed", deleted "health", and after the next occurrence of "care", deleted "provider" and added "organization"; added new Paragraphs F(3) and F(4); redesignated former Paragraphs C(3) and C(4) as Paragraphs F(5) and F(6), respectively; in Subparagraph F(6)(e), after "osteopathic physician", deleted "or an osteopathic physician assistant", and after "provisions of the", deleted "Osteopathic Medicine" and added "Medical Practice Act"; added a new

Paragraph F(7); redesignated former Paragraphs C(5) and C(6) as Paragraphs F(8) and F(9), respectively; and in Paragraph F(8), in the introductory paragraph, after "managed", deleted "health", after the next occurrence of "care", deleted "provider" and added "organization", after "Managed", deleted "health", and after the next occurrence of "care", deleted "provider" and added "organization".

**The 2021 amendment,** effective July 1, 2021, provided that associations of health care practitioners are eligible to claim certain gross receipts tax deductions, and defined "association of health care practitioners" for purposes of this section; in Subsection A, after "Receipts of a health care practitioner", added "or an association of health care practitioners"; and in Subsection C, added new Paragraph C(1) and redesignated former Paragraphs C(1) through C(5) as Paragraphs C(2) through C(6), respectively.

**The 2016 (2nd S.S.) amendment,** effective November 1, 2016, clarified the types of receipts of a health care practitioner that may be deducted from gross receipts; in Subsection A, after "Receipts", deleted "from payments by a managed health care provider or health care insurer" and added "of a health care practitioner", after "medicare Part C services", deleted "provided by a health care practitioner that are not otherwise deductible pursuant to another provision of the Gross Receipts and Compensating Tax Act" and added "paid by a managed health care provider or health care insurer", after "deducted from gross receipts", deleted "provided that" and added "if", after "scope of practice of the", deleted "person" and added "health care practitioner"; added a new subsection designation "B" and redesignated former Subsection B as Subsection C; in Subsection B, after "The deduction provided by this section shall be", added "applied only to gross receipts remaining after all other allowable deductions available under the Gross Receipts and Compensating Tax Act have been taken and shall be"; in Subparagraph C(3)(e), after "osteopathic physician", deleted "licensed pursuant to the provisions of Chapter 61, Article 10 NMSA 1978", and after "Osteopathic", deleted "Physicians' Assistants" and added "Medicine"; and in Subparagraph C(3)(g), after "pursuant to the provisions of", deleted "Chapter 61, Article 6 NMSA 1978" and added "the Medical Practice Act".

**The 2007 amendment,** effective July 1, 2007, added Subparagraph (q) of Paragraph (3) of Subsection B.

**The 2006 amendment,** effective July 1, 2006, added Subparagraphs (o) and (p) of Paragraph (3) of Subsection B to provide that the definition of "health care practitioner" includes licensed professional clinical mental health counselors, marriage and family therapists and professional art therapists and licensed independent social workers.

## 7-9-94. Deduction; gross receipts; military transformational acquisition programs.

A. Receipts from transformational acquisition programs performing research and development, test and evaluation at New Mexico major range and test facility bases

pursuant to contracts entered into with the United States department of defense may be deducted from gross receipts through June 30, 2025.

B. As used in this section, "transformational acquisition program" means a military acquisition program authorized by the office of the secretary of defense force transformation and not physically tested in New Mexico on or before July 1, 2005.

C. The deduction provided in this section does not apply to receipts of a prime contractor operating facilities designated as a national laboratory by act of congress and is not applicable to current force programs as of July 1, 2005.

D. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deduction. No later than December 1 of each year that the deduction is in effect, the department shall compile and present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost and benefit to the state of the deduction.

**History:** Laws 2005, ch. 104, § 23; 2006, ch. 72, § 1; 2015, ch. 18, § 1.

**ANNOTATIONS**

**The 2015 amendment,** effective June 19, 2015, amended the Gross Receipts and Compensating Tax Act by deferring the expiration date of the deduction from gross receipts for certain military acquisition programs and required the taxation and revenue department to compile an annual report on the deduction provided by this section; in Subsection A, deleted "2016" and added "2025"; and added Subsection D.

**The 2006 amendment,** effective May 17, 2006, changed the expiration date from June 30, 2008 to June 30, 2016.

## 7-9-95. Deduction; gross receipts tax; sales of certain tangible personal property; limited period.

Receipts from the sale at retail of the following types of tangible personal property may be deducted if the sale of the property occurs during the period beginning at 12:01 a.m. on the first Friday in August and ending at midnight on the following Sunday:

A. an article of clothing or footwear designed to be worn on or about the human body if the sales price of the article is less than one hundred dollars ($100) except:

(1) any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed; and

(2) accessories, including jewelry, handbags, luggage, umbrellas, wallets, watches and similar items worn or carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing;

B. a desktop, laptop or notebook computer if the sales price of the computer does not exceed one thousand dollars ($1,000) and any associated monitor, speaker or set of speakers, printer, keyboard, microphone or mouse if the sales price of the device does not exceed five hundred dollars ($500); and

C. school supplies that are items normally used by students in a standard classroom for educational purposes, including notebooks, paper, writing instruments, crayons, art supplies, rulers, book bags, backpacks, handheld calculators, maps and globes, but not including watches, radios, compact disc players, headphones, sporting equipment, portable or desktop telephones, copiers, office equipment, furniture or fixtures.

**History:** Laws 2005, ch. 104, § 25.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 104, § 29 made Laws 2005, ch. 104, § 25 effective July 1, 2005.

## 7-9-96. Repealed.

**History:** Laws 2005, ch. 104, § 26; repealed by Laws 2020, ch. 80, § 14.

**ANNOTATIONS**

**Repeals.** — Laws 2020, ch. 80, § 14 repealed 7-9-96 NMSA 1978, as enacted by Laws 2005, ch. 104, § 26, relating to credit, gross receipts tax, governmental gross receipts tax, certain sales for resale, effective July 1, 2020. For provisions of former section, *see* the 2019 NMSA 1978 on *NMOneSource.com*.

## 7-9-96.1. Repealed.

**History:** Laws 2007, ch. 361, § 7; repealed by Laws 2019, ch. 270, § 56.

**ANNOTATIONS**

**Repeals.** — Laws 2019, ch. 270, § 56 repealed 7-9-96.1 NMSA 1978, as enacted by Laws 2007, ch. 361, § 7, relating to credit, gross receipts tax, receipts of certain hospitals, effective July 1, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

## 7-9-96.2. Credit; gross receipts tax; unpaid charges for services provided in a hospital.

A. A licensed medical doctor, licensed osteopathic physician or association of licensed medical doctors or osteopathic physicians may claim a credit against gross receipts taxes due in an amount equal to the value of unpaid qualified health care services.

B. As used in this section:

(1) "association of licensed medical doctors or osteopathic physicians" means a corporation, unincorporated business entity or other legal entity organized by, owned by or employing one or more licensed medical doctors or osteopathic physicians; provided that the entity is not:

(a) an organization granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as that section may be amended or renumbered; or

(b) a health maintenance organization, hospital, hospice, nursing home or an entity that is solely an outpatient facility or intermediate care facility licensed pursuant to the Public Health Act [Chapter 24, Article 1 NMSA 1978];

(2) "qualified health care services" means medical care services provided by a licensed medical doctor or licensed osteopathic physician while on call to a hospital; and

(3) "value of unpaid qualified health care services" means the amount that is charged for qualified health care services, not to exceed one hundred thirty percent of the reimbursement rate for the services under the medicaid program administered by the human services department [health care authority department], that remains unpaid one year after the date of billing and that the licensed medical doctor or licensed osteopathic physician has reason to believe will not be paid because:

(a) at the time the services were provided, the person receiving the services had no health insurance or had health insurance that did not cover the services provided;

(b) at the time the services were provided, the person receiving the services was not eligible for medicaid; and

(c) the charges are not reimbursable under a program established pursuant to the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978].

**History:** Laws 2007, ch. 361, § 8; 2021, ch. 65, § 28.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

**The 2021 amendment,** effective July 1, 2021, provided that associations of licensed medical doctors or osteopathic physicians are eligible to claim certain gross receipts tax deductions, and defined "association of licensed medical doctors or osteopathic physicians", as used in this section; in Subsection A, after "licensed osteopathic physician", added "or association of licensed medical doctors or osteopathic physicians", and after "taxes due in", deleted "the following amounts", deleted former Paragraphs A(1) and A(2), and deleted former paragraph designation "(3)" and the language "on and after July 1, 2009, one hundred percent of" and added "an amount equal to"; and in Subsection B, added new Paragraph B(1) and redesignated former Paragraphs B(1) and B(2) as Paragraphs B(2) and B(3), respectively.

# 7-9-96.3. Technology readiness gross receipts tax credit.

A. Prior to July 1, 2027, a taxpayer that is a national laboratory that provides technology readiness assistance to a business that is registered to do business in New Mexico and has licensed a technology from the national laboratory or is a participant in a cooperative research and development agreement with the national laboratory may claim a tax credit against the taxpayer's gross receipts tax liability imposed pursuant to the Gross Receipts and Compensating Tax Act, excluding any local option gross receipts tax liability. The tax credit provided by this section may be referred to as the "technology readiness gross receipts tax credit".

B. The purpose of the technology readiness gross receipts tax credit is to help businesses in New Mexico achieve technology maturation of the businesses' technologies developed at New Mexico national laboratories and increase economic development in the state.

C. The amount of a technology readiness gross receipts tax credit shall equal the amount of qualified expenditures incurred by a national laboratory to provide technology readiness assistance to a business, not to exceed one hundred fifty thousand dollars ($150,000) in a fiscal year per business; provided that the annual aggregate amount of credits allowed per national laboratory per fiscal year shall be limited to one million dollars ($1,000,000).

D. A taxpayer may claim a technology readiness gross receipts tax credit for the taxable period in which the taxpayer provides technology assistance pursuant to this section. That portion of a technology readiness gross receipts tax credit that exceeds a taxpayer's tax liability in the taxable period in which the credit is claimed may be carried forward to succeeding taxable periods.

E. To receive a technology readiness gross receipts tax credit, a taxpayer shall apply to the department on forms and in the manner required by the department. The application shall include the following:

(1) certification from each business that received technology readiness assistance that:

(a) the assistance was made in good faith to help the business demonstrate the feasibility of real-world application of the business's technology; and

(b) the assistance was not otherwise available to the business at a reasonable cost through private industry;

(2) evidence that the business that received the technology readiness assistance is registered to do business in New Mexico; and

(3) evidence that the business's technology is a licensed technology from the national laboratory or the business is a participant in a cooperative research and development agreement with the national laboratory.

F. In addition to the requirements in Subsection E of this section, a national laboratory shall:

(1) create forms for technology readiness assistance requests and completion of technology maturation;

(2) establish a technology readiness assistance program that will assist businesses to reach technology maturation;

(3) consult with the secretary of economic development to seek advice on improvements in the operation of the technology readiness assistance program; and

(4) establish a methodology to use state educational institutions that have demonstrated the capability to provide technology readiness assistance.

G. A taxpayer shall not claim both a technology readiness gross receipts tax credit and a credit pursuant to the Laboratory Partnership with Small Business Tax Credit Act [Chapter 7, Article 9E NMSA 1978] for assistance provided to the same business in the same taxable period.

H. If more than one national laboratory provides technology readiness assistance to a business, the national laboratories shall not claim a technology readiness gross receipts tax credit until coordination is developed between the national laboratories providing the assistance that generates a joint operational plan to ensure that:

(1) the assistance provided by each national laboratory suits the business's needs and challenges; and

(2) the combined claims for a technology readiness gross receipts tax credit will not exceed the limitations provided in Subsection C of this section.

I. A national laboratory that claims a technology readiness gross receipts tax credit shall submit an annual report in writing to the department, the economic development department and an appropriate legislative interim committee. If more than one national laboratory claims a technology readiness gross receipts tax credit, those laboratories shall jointly submit an annual report. The annual report shall summarize activities related to and the results of the technology readiness assistance programs created by the national laboratories and shall include:

(1) a description of each business's technology that has received technology readiness assistance, including progress toward technology maturation and whether, and to what extent, the business is still doing business in New Mexico;

(2) results of surveys of businesses to which technology readiness assistance is provided;

(3) the total amount of the technology readiness gross receipts tax credits received in the previous fiscal year; and

(4) an economic impact study performed by an uninterested third party.

J. At any time after receipt of an annual report required pursuant to this section, the department or the economic development department may provide written instructions to a national laboratory identifying future improvements in the national laboratory's technology readiness assistance program for which it receives a technology readiness gross receipts tax credit.

K. As used in this section:

(1) "cooperative research and development agreement" means any agreement between a national laboratory and a non-federal party under which the laboratory provides personnel, services, facilities, equipment, intellectual property or other resources and a non-federal party provides funds, personnel, services, facilities, equipment, intellectual property or other resources toward the conduct of specified research or development efforts that are consistent with the missions of the laboratory;

(2) "national laboratory" means a prime contractor designated as a national laboratory by act of congress that is operating a facility in New Mexico;

(3) "qualified expenditure" means an expenditure by a national laboratory in providing technology readiness assistance and is limited to the following:

(a) employee salaries, wages, benefits and employer payroll taxes;

(b) administrative costs related directly to the provision of technology readiness assistance;

(c) in-state travel expenses, including per diem and mileage at the internal revenue service standard rate; and

(d) supplies and services of contractors that are related to the provision of technology readiness assistance;

(4) "state educational institution" means a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

(5) "technology maturation" means technology that has been developed to a stage that results in a prototype or demonstration of the feasibility of real-world application of the technology; and

(6) "technology readiness assistance" means assistance provided to a business by a national laboratory with the intent to help the business's technology achieve technology maturation.

**History:** Laws 2020, ch. 22, § 1; 2022, ch. 45, § 1.

## ANNOTATIONS

**Repeals.** — Laws 2022, ch. 45, § 3(B) repealed Laws 2020, ch. 22, § 3 that would have repealed 7-9-96.3 NMSA 1978 effective July 1, 2024.

**The 2022 amendment,** effective July 1, 2022, extended the technology readiness gross receipts tax credit, and replaced the current funding structure with a standard tax credit capped at $1,000,000 per national laboratory per year; in the section heading, deleted "technology readiness gross receipts tax credit fund"; in Subsection A, deleted "For taxable periods beginning July 1, 2020 and prior to July 1, 2023" and added "Prior to July 1, 2027"; deleted former Subsection C and redesignated former Subsections D through L as Subsections C through K, respectively; in Subsection C, after the subsection designation, deleted "Subject to the availability of funds in the technology readiness gross receipts tax credit fund", after "shall be limited", deleted "as follows", deleted former Paragraphs (1) and (2), former paragraph designation "(3)" and the language "beginning on July 1, 2022 and prior to July 1, 2023" and added "to"; and in Subsection F, after "requirements in Subsection", changed "F" to "E".

**Temporary provisions.** — Laws 2022, ch. 45, § 2 provided that money in the technology readiness gross receipts tax credit fund shall be transferred to the general fund.

## 7-9-97. Deduction; gross receipts tax; receipts from certain purchases by or on behalf of the state.

Receipts from the sale of property or services purchased by or on behalf of the state from funds obtained from the forfeiture of financial assurance pursuant to the New Mexico Mining Act [Chapter 69, Article 36 NMSA 1978] or the forfeiture of financial responsibility pursuant to the Water Quality Act [Chapter 74, Article 6 NMSA 1978] may be deducted from gross receipts.

**History:** Laws 2005, ch. 169, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 169 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 7-9-98. Deduction; compensating tax; biomass-related equipment; biomass materials.

A. The value of a biomass boiler, gasifier, furnace, turbine-generator, storage facility, feedstock processing or drying equipment, feedstock trailer or interconnection transformer may be deducted in computing the compensating tax due.

B. The value of biomass materials used for processing into biopower, biofuels or biobased products may be deducted in computing the compensating tax due.

C. As used in this section:

(1) "biobased products" means products created from plant- or crop-based resources such as agricultural crops and crop residues, forestry, pastures and rangelands that are normally made from petroleum

(2) "biofuels" means biomass converted to liquid or gaseous fuels such as ethanol, methanol, methane and hydrogen;

(3) "biomass material" means organic material that is available on a renewable or recurring basis, including:

(a) forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low commercial value materials or undesirable species, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;

(b) agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws and stover, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey and lactose;

(c) animal waste, including manure and slaughterhouse and other processing waste;

(d) solid woody waste materials, including landscape or right-of-way tree trimmings, range land maintenance residues, waste pallets, crates and manufacturing, construction and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;

(e) crops and trees planted for the purpose of being used to produce energy;

(f) landfill gas, wastewater treatment gas and biosolids, including organic waste byproducts generated during the wastewater treatment process; and

(g) segregated municipal solid waste, excluding tires and medical and hazardous waste; and

(4) "biopower" means biomass converted to produce electrical and thermal energy.

**History:** Laws 2005, ch. 179, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 179 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 7-9-99. Deduction; gross receipts tax; sale of engineering, architectural and new facility construction services used in construction of certain public health care facilities.

Receipts from selling an engineering, architectural or construction service used in the new facility construction of a sole community provider hospital [qualifying hospital] that is located in a federally designated health professional shortage area may be deducted from gross receipts if the sale of the engineering, architectural or construction service is made to a foundation or a nonprofit organization that:

A. has entered into a written agreement with a county to pay at least ninety-five percent of the costs of new facility construction of that sole community provider hospital [qualifying hospital]; and

B. delivers to the seller of the engineering, architectural or construction service either an appropriate nontaxable transaction certificate or other evidence acceptable to the secretary of a written agreement made in accordance with Subsection A of this section.

**History:** Laws 2006, ch. 35, § 1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2014, ch. 79, § 18 provided that all references in law to a sole community provider hospital shall be deemed to be references to a qualifying hospital pursuant to the Indigent Hospital and County Health Care Act, effective March 12, 2014.

**Effective dates.** — Laws 2006, ch. 35, § 3 made Laws 2006, ch. 35, § 1 effective July 1, 2006.

## 7-9-100. Deduction; gross receipts tax; sale of construction equipment and construction materials used in new facility construction of a sole community provider hospital [qualifying hospital] that is located in a federally designated health professional shortage area.

Receipts from selling construction equipment or construction materials used in the new facility construction of a sole community provider hospital [qualifying hospital] that is located in a federally designated health professional shortage area may be deducted from gross receipts if the sale of the construction equipment or construction materials is made to a foundation or a nonprofit organization that:

A. has entered into a written agreement with a county to pay at least ninety-five percent of the costs of new facility construction of that sole community provider hospital [qualifying hospital]; and

B. delivers to the seller either an appropriate nontaxable transaction certificate or other evidence acceptable to the secretary of a written agreement made in accordance with Subsection A of this section.

**History:** Laws 2006, ch. 35, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2014, ch. 79, § 18 provided that all references in law to a sole community provider hospital shall be deemed to be references to a qualifying hospital pursuant to the Indigent Hospital and County Health Care Act, effective March 12, 2014.

**Effective dates.** — Laws 2006, ch. 35, § 3 made Laws 2006, ch. 35, § 2 effective July 1, 2006.

## 7-9-101. Deduction; gross receipts; equipment for certain electric transmission or storage facilities.

Receipts from selling equipment to the New Mexico renewable energy transmission authority or an agent or lessee of the authority may be deducted from gross receipts if the equipment is installed as part of an electric transmission facility or an interconnected storage facility acquired by the authority pursuant to the New Mexico Renewable Energy Transmission Authority Act [Chapter 62, Article 16A NMSA 1978].

**History:** Laws 2007, ch. 3, § 16.

**ANNOTATIONS**

**Effective date.** — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 16 effective July 1, 2007.

## 7-9-102. Deduction; compensating tax; equipment for certain electric transmission or storage facilities.

The value of equipment installed as part of an electric transmission facility or an interconnected storage facility acquired by the New Mexico renewable energy transmission authority pursuant to the New Mexico Renewable Energy Transmission Authority Act [Chapter 62, Article 16A NMSA 1978] may be deducted in computing compensating tax due.

**History:** Laws 2007, ch. 3, § 17.

**ANNOTATIONS**

**Effective date.** — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 17 effective July 1, 2007.

## 7-9-103. Deduction; gross receipts; services provided for certain electric transmission and storage facilities.

Receipts from providing services to the New Mexico renewable energy transmission authority or an agent or lessee of the authority for the planning, installation, repair, maintenance or operation of an electric transmission facility or an interconnected storage facility acquired by the authority pursuant to the New Mexico Renewable Energy Transmission Authority Act [Chapter 62, Article 16A NMSA 1978] may be deducted from gross receipts.

**History:** Laws 2007, ch. 3, § 18.

**ANNOTATIONS**

**Effective date.** — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 18 effective July 1, 2007.

## 7-9-103.1. Deduction; gross receipts tax; converting electricity.

A. Receipts from the transmission of electricity where voltage source conversion technology is employed to provide such services and from ancillary services may be deducted from gross receipts.

B. The department shall report annually to the interim revenue stabilization and tax policy committee on the expansion of voltage source conversion technology use in the transmission of electricity in New Mexico and the use of the deduction provided in this section.

C. As used in this section, "ancillary services" means services that are supplied from or in connection with facilities employing voltage source conversion technology and that are used to support or enhance the efficient and reliable operation of the electric system.

**History:** Laws 2012, ch. 12, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2012, ch. 12, § 4 made Laws 2012, ch. 12, § 2 effective July 1, 2012.

## 7-9-103.2. Deduction; gross receipts; electricity exchange.

A. Receipts from operating a market or exchange for the sale or trading of electricity, rights to electricity and derivative products and from providing ancillary services may be deducted from gross receipts.

B. The department shall report annually to the interim revenue stabilization and tax policy committee on use of the deduction provided in this section.

C. As used in this section, "ancillary services" means services that are supplied from or in connection with facilities employing voltage source conversion technology and that are used to support or enhance the efficient and reliable operation of the electric system.

**History:** Laws 2012, ch. 12, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2012, ch. 12, § 4 made Laws 2012, ch. 12, § 3 effective July 1, 2012.

## 7-9-104. Deduction; gross receipts; nonathletic special event at post-secondary educational institution.

Prior to July 1, 2027, receipts from admissions to a nonathletic special event held at a venue that is located on the campus of a post-secondary educational institution within fifty miles of the New Mexico border and that accommodates at least ten thousand persons may be deducted from gross receipts or from governmental gross receipts.

**History:** Laws 2007, ch. 33, § 1; 2012, ch. 22, § 1; 2017, ch. 46, § 1; 2022, ch. 50, § 1.

**ANNOTATIONS**

**The 2022 amendment,** effective July 1, 2022, extended the deduction from gross receipts and governmental gross receipts for nonathletic special events at post-secondary educational institutions; and added "Prior to July 1, 2027", and after the next occurrence of "receipts", deleted "received from July 1, 2007 through June 30, 2022".

**The 2017 amendment,** effective June 16, 2017, expanded the deduction from gross receipts tax to both gross receipts tax and governmental gross receipts tax, and extended the expiration date of the gross receipts and governmental gross receipts tax deduction for nonathletic special events at certain post-secondary educational institutions; after "June 30", changed "2017" to "2022", and after "may be deducted from gross receipts", added "or from governmental gross receipts".

**The 2012 amendment,** effective May 16, 2012, extended the deduction for an additional five years and after "June 30", changed "2012" to "2017".

## 7-9-105. Repealed.

**History:** Laws 2007, ch. 45, § 6; repealed by Laws 2023, ch. 85, § 28.

**ANNOTATIONS**

**Repeals.** — Laws 2023, ch. 85, § 28 repealed 7-9-105 NMSA 1978, as enacted by Laws 2007, ch. 45, § 6, relating to credit for penalty pursuant to Section 7-1-71.2 NMSA 1978, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

## 7-9-106. Repealed.

**History:** Laws 2007, ch. 172, § 8; repealed and reenacted by Laws 2018, ch. 62, § 1; repealed by Laws 2023, ch. 85, § 28.

**ANNOTATIONS**

**Repeals.** — Laws 2023, ch. 85, § 28 repealed 7-9-106 NMSA 1978, as enacted by Laws 2007, ch. 172, § 8, relating to deduction, construction services and equipment, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

## 7-9-107. Deduction; gross receipts tax; production or staging of professional contests.

Receipts from producing or staging a professional boxing, wrestling or martial arts contest that occurs in New Mexico, including receipts from ticket sales and broadcasting, may be deducted from gross receipts.

**History:** Laws 2007, ch. 172, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 172, § 30 made Laws 2007, ch. 172, § 9 effective July 1, 2007.

## 7-9-108. Deduction; gross receipts; receipts from performing management or investment advisory services for mutual funds, hedge funds or real estate investment trusts.

A. Receipts from fees received for performing management or investment advisory services for a mutual fund, hedge fund or real estate investment trust may be deducted from gross receipts.

B. As used in this section:

(1) "hedge fund" means a private investment fund or pool, the assets of which are managed by a professional management firm, that:

(a) trades or invests, through public market or private transactions, in securities, commodities, currency, derivatives or similar classes of financial assets; or

(b) is not an investment company pursuant to the provisions of 15 U.S.C. 80a-3(c)(1) or 15 U.S.C. 80a-3(c)(7);

(2) "mutual fund" means an entity registered pursuant to the federal Investment Company Act of 1940, as amended; and

(3) "real estate investment trust" means an entity described in Section 856(a) of the Internal Revenue Code of 1986, as amended, the investments of which are limited to interests in mortgages on real property and shares of or transferable certificates of beneficial interest in an entity described in Section 856(a) of the Internal Revenue Code of 1986, as amended.

**History:** Laws 2007, ch. 172, § 10.

**ANNOTATIONS**

**Cross references.** — For the federal Investment Company Act of 1940, *see* 15 U.S.C., § 80(a).

For the Internal Revenue Code of 1986, *see* 26 U.S.C. § 1.

**Effective dates.** — Laws 2007, ch. 172, § 30 made Laws 2007, ch. 172, § 10 effective July 1, 2007.

## 7-9-109. Deduction; gross receipts tax; veterinary medical services, medicine or medical supplies used in medical treatment of cattle.

A. Receipts from sales of veterinary medical services, medicine or medical supplies used in the medical treatment of cattle may be deducted from gross receipts if the sale is made to a person who states in writing that the person is regularly engaged in the business of ranching or farming, including dairy farming, in New Mexico or if the sale is made to a veterinarian who holds a valid license pursuant to the Veterinary Practice Act [Chapter 61, Article 14 NMSA 1978] and who is providing veterinary medical services, medicine or medical supplies in the treatment of cattle owned by that person.

B. As used in this section, "cattle" means animals of the genus bos, including dairy cattle, and does not include any other kind of livestock.

**History:** Laws 2007, ch. 172, § 11.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 172, § 30 made Laws 2007, ch. 172, § 11 effective July 1, 2007.

## 7-9-110. Deleted.

**History:** Laws 2007, ch. 172, § 12.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2008, ch. 11, § 1, amended Laws 2007, ch. 172, § 29, to provide that if the requirements of Subsection A of Laws 2007, ch. 172, § 29 were not fulfilled, the effective date of this section would be July 1, 2010, provided that prior to January 1, 2010, the economic development department certify to the taxation and revenue department that construction of a railroad locomotive refueling facility project in Doña Ana county had commenced, including the land acquisition, acquisition of all necessary permits and commencement of actual construction. On February 16, 2010, the New Mexico compilation commission received a letter from the economic development department dated February 12, 2010, notifying the compilation commission that while Union Pacific had made the land acquisition, construction of a railroad locomotive refueling facility project in Doña Ana county had not commenced as required by Laws 2007, ch. 172, § 29. Therefore, Section 7-9-110 NMSA 1978 failed to become effective and was deleted by the compiler. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

## 7-9-110.1. Deduction; gross receipts tax; locomotive engine fuel.

Receipts from the sale of fuel to a common carrier to be loaded or used in a locomotive engine may be deducted from gross receipts. 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.

**History:** Laws 2011, ch. 60, § 1 and Laws 2011, ch. 61, § 1.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2011, ch. 61, § 5 made the effective date of Laws 2011, ch. 61, §§ 1, 2 and 3 July 1, 2013, provided that prior to July 1, 2012, the economic development department certifies to the taxation and revenue department that construction of a railroad locomotive refueling facility project in Doña Ana county has commenced, including land acquisition, acquisition of all necessary permits and commencement of actual construction and directed the taxation and revenue department to notify the New Mexico compilation commission and the director of the legislative council service prior to July 1, 2013 as to whether the certification from the economic development department has been received.

Pursuant to the provisions of Laws 2011, ch. 61, § 5, on March 7, 2012, the economic development department certified to the taxation and revenue department that construction of a railroad locomotive refueling facility project in Doña Ana county had commenced, including land acquisition, acquisition of all necessary permits and commencement of actual construction, and directed the taxation and revenue department to notify the New Mexico compilation commission and the director of the legislative council service prior to July 1, 2013, that the certification was received. Therefore, Laws 2011, ch. 61, §§ 1, 2 and 3 become effective July 1, 2013.

**Duplicate laws.** — Laws 2011, ch. 60, § 1 and Laws 2011, ch. 61, § 1 enacted identical new sections. The section was set out as enacted by Laws 2011, ch. 61, § 1. *See* 12-1-8 NMSA 1978.

## 7-9-110.2. Deduction; compensating tax; locomotive engine fuel.

The value of fuel to be loaded or used by a common carrier in a locomotive engine may be deducted in computing the compensating tax due. 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.

**History:** Laws 2011, ch. 60, § 2 and Laws 2011, ch. 61, § 2.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2011, ch. 61, § 5 made the effective date of Laws 2011, ch. 61, §§ 1, 2 and 3 July 1, 2013, provided that prior to July 1, 2012, the economic development department certifies to the taxation and revenue department that construction of a railroad locomotive refueling facility project in Doña Ana county has commenced, including land acquisition, acquisition of all necessary permits and commencement of actual construction and directed the taxation and revenue department to notify the New Mexico compilation commission and the director of the legislative council service prior to July 1, 2013 as to whether the certification from the economic development department has been received.

Pursuant to the provisions of Laws 2011, ch. 61, § 5, on March 7, 2012, the economic development department certified to the taxation and revenue department that construction of a railroad locomotive refueling facility project in Doña Ana county had commenced, including land acquisition, acquisition of all necessary permits and commencement of actual construction, and directed the taxation and revenue department to notify the New Mexico compilation commission and the director of the legislative council service prior to July 1, 2013, that the certification was received. Therefore, Laws 2011, ch. 61, §§ 1, 2 and 3 become effective July 1, 2013.

**Duplicate laws.** — Laws 2011, ch. 60, § 2 and Laws 2011, ch. 61, § 2 enacted identical new sections. The section was set out as enacted by Laws 2011, ch. 61, § 2. *See* 12-1-8 NMSA 1978.

## 7-9-110.3. Purpose and requirements of locomotive fuel deduction.

A. The purpose of the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax is to encourage the construction, renovation, maintenance and operation of railroad locomotive refueling facilities and other railroad capital investments in New Mexico.

B. To be eligible for the deduction on fuel loaded or used by a common carrier in a locomotive engine from compensating tax, the fuel shall be used or loaded by a common carrier that:

(1) 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; or

(2) on or after July 1, 2012, made a capital investment of fifty million dollars ($50,000,000) or more in new railroad infrastructure improvements, including railroad facilities, track, signals and supporting railroad network, located in New Mexico; provided that the new railroad infrastructure improvements are not required by a regulatory agency to correct problems, such as regular or preventive maintenance, specifically identified by that agency as requiring necessary corrective action.

C. To be eligible for the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts, a common carrier shall deliver an appropriate nontaxable transaction certificate to the seller and the sale shall be made to a common carrier that:

(1) 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; or

(2) on or after July 1, 2012, made a capital investment of fifty million dollars ($50,000,000) or more in new railroad infrastructure improvements, including railroad facilities, track, signals and supporting railroad network, located in New Mexico; provided that the new railroad infrastructure improvements are not required by a regulatory agency to correct problems, such as regular or preventative maintenance, specifically identified by that agency as requiring necessary corrective action.

D. The economic development department shall promulgate rules for the issuance of a certificate of eligibility for the purposes of claiming a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or compensating tax. 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 on fuel loaded or used by a common carrier in a locomotive engine from gross receipts. The taxation and revenue department shall issue nontaxable transaction certificates to a common carrier upon the presentation of a certificate of eligibility obtained from the economic development department pursuant to this subsection.

E. The economic development department shall keep a record of temporary and permanent jobs from all railroad activity where a capital investment is made by a common carrier that claims a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or from compensating tax. The economic

development department and the taxation and revenue department shall estimate the amount of state revenue that is attributable to all railroad activity where a capital investment is made by a common carrier that claims a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or from compensating tax.

F. The economic development department and the taxation and revenue department shall compile an annual report with the number of taxpayers who claim the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax, the number of jobs created as a result of that deduction, the amount of that deduction approved, the net revenue to the state as a result of that deduction and any other information required by the legislature to aid in evaluating the effectiveness of that deduction. A taxpayer who claims a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or from compensating tax shall provide the economic development department and the taxation and revenue department with the information required to compile that report. The economic development department and the taxation and revenue department shall present that report before the legislative interim revenue stabilization and tax policy committee and the legislative finance committee by November of each year. Notwithstanding any other section of law to the contrary, the economic development department and the taxation and revenue department may disclose the number of applicants for the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax, the amount of the deduction approved, the number of employees of the taxpayer and any other information required by the legislature or the taxation and revenue department to aid in evaluating the effectiveness of that deduction.

G. An appropriate legislative committee shall review the effectiveness of the deduction for each taxpayer who claims the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax every six years beginning in 2019.

**History:** Laws 2011, ch. 60, § 3; 2011, ch. 61, § 3; 2013, ch. 123, § 1.

## ANNOTATIONS

**Repeals.** — Laws 2013, ch. 123, § 2 repealed Laws 2011, ch. 60, §§ 4 and 5 and Laws 2011, ch. 61, §§ 4 and 5, effective July 1, 2013.

**The 2013 amendment,** effective July 1, 2013, expanded the deduction for locomotive fuel from gross receipts and compensating tax; in Subsection A, after "refueling facilities and", deleted "related activities" and added "other railroad capital investments"; added Paragraph (1) of Subsection B; in Subsection C, in the introductory sentence, after "gross receipts", added "a common carrier shall deliver an appropriate nontaxable transaction certificate to the seller and"; in Paragraph (1) of Subsection B, after "the fuel is sold", deleted "and the common carrier shall deliver an appropriate nontaxable

transaction certificate to the seller"; added Paragraph (2) of Subsection C; in Subsection E, after "from all railroad activity", deleted "at each railroad locomotive refueling facility" and added "where a capital investment is made by a common carrier" and after "attributable to all railroad activity", deleted "occurring at each locomotive refueling facility" and added "where a capital investment is made by a common carrier"; and in Subsection G, after "deduction", added "for each taxpayer who claims the deduction".

**Severability.** — Laws 2013, ch. 123, § 3 provided that if any part or application of Laws 2013, ch. 123, § 1 is held invalid, the remainder or its application to other situations or persons shall not be affected.

**Applicability.** — Laws 2013, ch. 123, § 4 provided that deductions provided in Laws 2013, ch. 123, § 1 apply to gross receipts tax and compensating tax reporting periods beginning on or after July 1, 2013.

## 7-9-111. Deduction; gross receipts; hearing aids and vision aids and related services.

A. Receipts that are not exempt from gross receipts taxation and are not deductible pursuant to another provision of the Gross Receipts and Compensating Tax Act that are from the sale of vision aids or hearing aids or related services may be deducted from gross receipts.

B. As used in this section:

(1) "hearing aid" means a small electronic prescription device that amplifies sound and is usually worn in or behind the ear of a person that compensates for impaired hearing, including cochlear implants, amplification systems or other devices that are:

(a) specifically designed for use by and marketed to persons with hearing loss; and

(b) not normally used by a person who does not have a hearing loss;

(2) "low vision" means impaired vision with a significant reduction in visual function that cannot be corrected with conventional glasses or contact lenses;

(3) "related services" means services required to fit or dispense hearing aids or vision aids;

(4) "vision aid" means closed circuit television systems, monoculars, magnification systems, speech output devices or other systems that are:

(a) specifically designed for use by and marketed to persons with low vision or visual impairments; and

(b) not normally used by a person who does not have low vision or a visual impairment; and

(5) "visual impairment" means a central visual acuity of 20/200 or less in the better eye with the use of a correcting lens or a limitation in the fields of vision so that the widest diameter of the visual field subtends an angle of twenty degrees or less.

**History:** Laws 2007, ch. 361, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 361, § 11 made Laws 2007, ch. 361, § 6 effective July 1, 2007.

## 7-9-112. Deduction; gross receipts; solar energy systems.

A. Receipts from the sale and installation of solar energy systems may be deducted from gross receipts.

B. As used in this section, "solar energy system" means an installation that is used to provide space heat, hot water or electricity to the property in which it is installed and is:

(1) an installation that utilizes solar panels that are not also windows, including the solar panels and all equipment necessary for the installation and operation of the solar panels;

(2) a dark-colored water tank exposed to sunlight, including all equipment necessary for the installation and operation of the water tank as a part of the overall water system of the property; or

(3) a non-vented trombe wall, including all equipment necessary for the installation and operation of the trombe wall.

**History:** Laws 2007, ch. 204, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 7-9-113. Repealed.

**History:** Laws 2009, ch. 99, § 1; repealed by Laws 2009, ch. 99, § 4.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 99, § 4 repealed 7-9-113 NMSA 1978, as enacted by Laws 2009, ch. 99, § 1, relating to gross receipts deduction for special fuel, dyed diesel, effective July 1, 2014. For provisions of former section, *see* the 2013 NMSA 1978 on *NMOneSource.com*.

## 7-9-114. Repealed.

**History:** Laws 2010, ch. 77, § 1; 2010, ch. 78, § 1; 2011, ch. 115, § 1; repealed by Laws 2023, ch. 85, § 28.

**ANNOTATIONS**

**Repeals.** — Laws 2023, ch. 85, § 28 repealed 7-9-114 NMSA 1978, as enacted by Laws 2010, ch. 77, § 1, relating to advanced energy deduction, gross receipts and compensating taxes, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

## 7-9-115. Deduction; gross receipts tax; goods and services for the department of defense related to directed energy and satellites.

A. Prior to January 1, 2031, receipts from the sale by a qualified contractor of qualified research and development services and qualified directed energy and satellite-related inputs may be deducted from gross receipts when sold pursuant to a contract with the United States department of defense.

B. The purposes of the deduction allowed in this section are to promote new and sophisticated technology, enhance the viability of directed energy and satellite projects, attract new projects and employers to New Mexico and increase high-technology employment opportunities in New Mexico.

C. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

D. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deduction. Beginning in 2017 and each year thereafter that the deduction is in effect, the department and the economic development department shall present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction and whether the deduction is performing the purpose for which it was created.

E. As used in this section:

(1) "directed energy" means a system, including related services, that enables the use of the frequency spectrum, including radio waves, light and x-rays;

(2) "inputs" means systems, subsystems, components, prototypes and demonstrators or products and services involving optics, photonics, electronics, advanced materials, nanoelectromechanical and microelectromechanical systems, fabrication materials and test evaluation and computer control systems related to directed energy or satellites;

(3) "qualified contractor" means a person other than an organization designated as a national laboratory by act of congress or an operator of national laboratory facilities in New Mexico; provided that the operator may be a qualified contractor with respect to the operator's receipts not connected with operating the national laboratory;

(4) "qualified directed energy and satellite-related inputs" means inputs supplied to the department of defense pursuant to a contract with that department entered into on or after January 1, 2016;

(5) "qualified research and development services" means research and development services related to directed energy or satellites provided to the department of defense pursuant to a contract with that department entered into on or after January 1, 2016; and

(6) "satellite" means composite systems assembled and packaged for use in space, including launch vehicles and related products and services.

**History:** Laws 2015 (1st S.S.), ch. 2, § 9; 2019, ch. 186, § 1.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, extended the gross receipts tax deduction for certain receipts derived from the sale of goods and services to the United States department of defense related to qualified directed energy and satellite-related inputs; and in Subsection A, after "January 1", changed "2021" to "2031".

## 7-9-116. Deduction; gross receipts tax; retail sales by certain businesses.

A. Prior to July 1, 2025, receipts from the sale at retail of the following types of tangible personal property may be deducted if the sales price of the property is less than five hundred dollars ($500) and:

(1) the sale occurs during the period beginning at 12:01 a.m. on the first Saturday after Thanksgiving and ending at midnight on the same Saturday;

(2) the sale is for:

(a) an article of clothing or footwear designed to be worn on or about the human body;

(b) accessories, including jewelry, handbags, book bags, backpacks, luggage, wallets, watches and similar items worn or carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing;

(c) sporting goods and camping equipment;

(d) tools used for home improvement, gardening and automotive maintenance and repair;

(e) books, journals, paper, writing instruments, art supplies, greeting cards and postcards;

(f) works of art, including any painting, drawing, print, photograph, sculpture, pottery or ceramics, carving, textile, basketry, artifact, natural specimen, rare book, authors' papers, objects of historical or technical interest or other article of intrinsic cultural value;

(g) floral arrangements and indoor plants;

(h) cosmetics and personal grooming items;

(i) musical instruments;

(j) cookware and small home appliances for residential use;

(k) bedding, towels and bath accessories;

(l) furniture;

(m)a toy or game that is a physical item, product or object clearly intended and designed to be used by children or families in play;

(n) a video game or video game console and any associated accessories for the video game console; or

(o) home electronics such as computers, phones, tablets, stereo equipment and related electronics accessories; and

(3) the sale is made by a seller that carries on a trade or business in New Mexico, maintains its primary place of business in New Mexico, as determined by the

department, and employed no more than ten employees at any one time during the previous fiscal year.

B. Receipts for sales made by a business that operates under a franchise agreement may not be deducted pursuant to this section.

C. The purpose of the deduction provided by this section is to increase sales at small local businesses.

D. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

E. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deduction. The department shall present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction and whether the deduction is performing the purpose for which it was created.

**History:** Laws 2018, ch. 46, § 1; 2020, ch. 29, § 1.

**ANNOTATIONS**

**The 2020 amendment,** effective May 20, 2020, in Subsection A, changed "July 1, 2020", to "July 1, 2025".

## 7-9-117. Deduction; gross receipts; governmental gross receipts; marketplace seller.

A. A marketplace seller may deduct receipts for sales, leases and licenses of tangible personal property, sales of licenses and sales of services or licenses for use of real property that are facilitated by a marketplace provider from gross receipts and governmental gross receipts; provided that the marketplace seller obtains documentation from the marketplace provider indicating that the marketplace provider is registered with the department and has remitted or will remit the taxes due on the gross receipts from those transactions.

B. The deduction provided by this section shall not apply if the marketplace provider is determined not to owe the tax due to the marketplace provider's reliance on information provided by the seller as determined pursuant to Subsection C of Section 7-9-5 NMSA 1978.

**History:** Laws 2019, ch.270, § 36; 2020, ch. 80, § 6.

**ANNOTATIONS**

**The 2020 amendment,** effective July 1, 2020, expanded the marketplace sellers gross receipts tax deduction to include both gross receipts tax and governmental gross receipts tax; in the section heading, added "governmental gross receipts"; and in Subsection A, after "marketplace provider", added "from gross receipts and governmental gross receipts".

## 7-9-118. Deduction; gross receipts; food or beverage establishments.

A. Beginning March 1, 2021 and prior to July 1, 2021, receipts of a food or beverage establishment from the sale of prepared food or non-packaged beverages that are served or picked up at the food or beverage establishment by or delivered to customers for immediate consumption may be deducted from gross receipts.

B. The deduction provided by this section shall be applied only to gross receipts remaining after all other allowable deductions available under the Gross Receipts and Compensating Tax Act have been taken and shall be separately stated by the taxpayer.

C. As used in this section:

(1) "craft distiller" means an establishment owned or managed by person issued a craft distiller's license pursuant to Section 60-6A-6.1 NMSA 1978 that is in good standing;

(2) "dispenser" means an establishment that is held out to the public as a place where alcoholic beverages are prepared and served for on-premises consumption to the general public in consideration of payment and that has the facilities and employees necessary for preparing and serving alcoholic beverages; provided that the dispenser has been issued a license pursuant to the Liquor Control Act [60-3A-1 NMSA 1978] as a dispenser;

(3) "food or beverage establishment" means a craft distiller; dispenser; mobile food service establishment; restaurant; small brewer; or winegrower;

(4) "mobile food service establishment" means a mobile establishment where meals are prepared for sale to or consumption by the general public either on or off the premises and has been issued a permit pursuant to Section 25-1-7 NMSA 1978 that is in good standing;

(5) "restaurant" means an establishment that is held out to the public as a place where meals and beverages are prepared and primarily intended to be served for on-premises consumption to the general public in consideration of payment and that has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals; provided the restaurant has been issued a permit pursuant to Section 25-1-7 NMSA 1978 that is in good standing and, if the restaurant serves alcoholic beverages, has been issued a license pursuant to Section 60-6A-4 NMSA 1978.

"Restaurant" does not include an establishment commonly known as a fast food restaurant that dispenses food intended to be ordered, prepared and served quickly, with minimal or no table service, and prepared in quantity by a standardized method for consumption on and off premises, and that tends to have any of the following characteristics:

(a) a menu consisting primarily of pre-cooked items or items prepared in advance and heated quickly;

(b) placement of orders at a fast serve drive-through or walk-up window;

(c) service of food solely in disposable wrapping or containers; or

(d) a menu that exclusively sells hamburgers, sandwiches, salads and other fast foods;

(6) "small brewer" means an establishment owned or managed by a person issued a small brewer's license pursuant to Section 60-6A-26.1 NMSA 1978 that is in good standing; and

(7) "winegrower" means an establishment owned or managed by a person issued a winegrower's license pursuant to Section 60-6A-11 NMSA 1978 that is in good standing.

**History:** Laws 2021, ch. 4, § 3.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2021, ch. 4, § 6 contained an emergency clause and was approved March 3, 2021.

**Temporary provisions.** — Laws 2021, ch. 4, § 4, provided that any amount passed on to a customer in lieu of a gross receipts tax on receipts for which a food or beverage establishment may deduct pursuant to 7-9-118 NMSA 1978, shall not be considered gross receipts.

## 7-9-119. Deduction; sales made by dispenser's license holder.

A. Prior to January 1, 2026, a liquor license holder who held the license on June 30, 2021 may deduct from gross receipts the following receipts, for each dispenser's license for which sales of alcoholic beverages for consumption off premises are less than fifty percent of total alcoholic beverage sales, up to fifty thousand dollars ($50,000) of receipts from the sale of alcoholic beverages for taxable years 2022 through 2025.

B. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

C. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deduction. The department shall compile and present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the deduction.

D. As used in this section:

(1) "alcoholic beverage" means alcoholic beverage as defined in the Liquor Control Act;

(2) "dispenser's license" means a license issued pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] allowing the licensee to sell, offer for sale or have in the person's possession with the intent to sell alcoholic beverages both by the drink for consumption on the licensed premises and in unbroken packages, including growlers, for consumption and not for resale off the licensed premises;

(3) "growler" means a clean, refillable, resealable container that has a liquid capacity that does not exceed one gallon and that is intended and used for the sale of beer, wine or cider; and

(4) "liquor license holder" means a person that holds a retailer's license issued pursuant to Section 60-6A-2 NMSA 1978, a dispenser's license issued pursuant to Section 60-6A-3 NMSA 1978 or a dispenser's license issued pursuant to Section 60-6A-12 NMSA 1978 issued prior to July 1, 2021.

**History:** Laws 2021, ch. 7, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2021, ch. 7, § 37 made Laws 2021, ch. 7, § 3 effective July 1, 2021.

## 7-9-120. Deduction; gross receipts and governmental gross receipts; feminine hygiene products.

A. Receipts from the sale of feminine hygiene products may be deducted from gross receipts and governmental gross receipts.

B. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

C. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to