

TITLE 3 TAXATION
CHAPTER 2 GROSS RECEIPTS TAXES
PART 116 EXEMPTION - GROSS RECEIPTS TAX - OCCASIONAL SALE OF PROPERTY OR SERVICES

3.2.116.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.
[3.2.116.1 NMAC - Rp, 3.2.116.1 NMAC 9/24/2024]

3.2.116.2 SCOPE: This part applies to each person occasionally selling or leasing property or performing service but who is not regularly engaged in business of selling or leasing that type of property or performing that type of service.
[3.2.116.2 NMAC - Rp, 3.2.116.2 NMAC 9/24/2024]

3.2.116.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[3.2.116.3 NMAC - Rp, 3.2.116.3 NMAC 9/24/2024]

3.2.116.4 DURATION: Permanent.
[3.2.116.4 NMAC - Rp, 3.2.116.4 NMAC 9/24/2024]

3.2.116.5 EFFECTIVE DATE: September 24, 2024, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[3.2.116.5 NMAC - Rp, 3.2.116.5 NMAC 9/24/2024]

3.2.116.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
[3.2.116.6 NMAC - Rp, 3.2.116.6 NMAC 9/24/2024]

3.2.116.7 DEFINITIONS: [RESERVED]
[3.2.116.7 NMAC - Rp, 3.2.116.7 NMAC 9/24/2024]

3.2.116.8 CRITERIA USED IN DETERMINING ISOLATED OR OCCASIONAL SALES: The department will use the following criteria, but not exclusively, in determining whether or not a transaction involves only an “isolated or occasional” sale or lease:

- A.** the nature of the service or property;
- B.** the nature of the market for the service or property sold or leased;
- C.** the frequency of the service or property sold or leased;
- D.** any promotional activity such as advertising for the type of sale, business listing on a website, or in any media, physical or otherwise;
- E.** any holding themselves out as or representing as being in business by the seller or lessor; and
- F.** if found to be engaging in business pursuant to Section 7-9-3.3 NMSA 1978, the type of sale in relation to the transaction in question.

[3.2.116.8 NMAC - Rp, 3.2.116.8 NMAC 9/24/2024]

3.2.116.9 LICENSE TO DO BUSINESS OR HOLDING OUT TO DO BUSINESS:

A. Any person who holds a license to sell or lease property or to carry on services or who regularly advertises similar property or services for lease or sale, is engaged in the business of selling or leasing the same or similar property or services and is not entitled to the exemption under Section 7-9-28 NMSA 1978 for the transaction in question.

B. The following general categories illustrate the correct application of Section 7-9-28 NMSA 1978 for a business that is selling property or services that is not related to their business. To determine the taxability of the examples below the criteria in 3.2.116.8 NMAC were used.

(1) Receipts from the sale of equipment and other tangible personal property that has been employed in private and personal use are exempt from gross receipts tax pursuant to Section 7-9-28 NMSA 1978, unless the seller is regularly engaged in the activity of selling private tangible personal property.

(2) Receipts from garage sales and yard sales and similar types of sales events are exempt from gross receipts tax under Section 7-9-28 NMSA 1978, unless the seller is regularly engaged in the activity of holding such sales, as determined by the frequency of such sales, advertising of such sales, and other criteria set out in 3.2.116.8 NMAC.

(3) Receipts from services performed by a person for someone other than in a capacity as an employee as defined pursuant to 3.2.105.7 NMAC are not exempt from the gross receipts tax if the services are of the same or similar nature as those performed for an employer.

(4) Receipts from the sale of a person's principal residence, including receipts attributable to improvements to that residence as defined pursuant to Section 7-9-53 NMSA 1978, are exempt from gross receipts pursuant to Section 7-9-28 NMSA 1978. Receipts from the sale of real property and improvements that are not exempt from gross receipts tax pursuant to Section 7-9-28 NMSA 1978 may be deductible pursuant to Section 7-9-53 NMSA 1978 and Sections 3.2.211.9 and 3.2.211.10 NMAC.

[3.2.116.9 NMAC - Rp, 3.2.116.9 NMAC 9/24/2024]

3.2.116.10 PERSONS HAVING RENTAL UNITS:

A. Any person who rents or leases rental units of real property may qualify for the deduction under Section 7-9-53 NMSA 1978. Taxpayers should review that statute and its regulations under Chapter 2 Part 211 of NMAC to determine if they qualify for this deduction. If the deduction applies, the person must register with the department and report the associated gross receipts and any applicable deductions.

B. If a person is engaging in the business of short-term rentals, the individual is subject to gross receipts tax. This person may also owe lodger's taxes to the specific county or municipality in which the rental unit of real property is located. Lodger's tax is not a tax administered by the taxation and revenue department.

C. For purposes of this section, a "short term rental" is defined as a rental of real property for fewer than thirty days at a time.

[3.2.116.10 NMAC - Rp, 3.2.116.10 NMAC 9/24/2024]

3.2.116.11 SALE OR LEASING THE SAME OR SIMILAR PROPERTY:

A. Receipts from an isolated or occasional sale are exempt pursuant to Section 7-9-28 NMSA 1978 only when the seller of the property is not engaged in the business of selling or leasing the same or similar property.

B. If the taxpayer is engaged in the business of selling or leasing property and they decide to terminate their business and plan on selling the property, those receipts would not qualify for the exemption under Section 7-9-28 NMSA 1978 because the line of business is the same or similar.

[3.2.116.11 NMAC - Rp, 3.2.116.11 NMAC 9/24/2024]

3.2.116.12 EXECUTORS' AND ADMINISTRATORS' FEES:

A. The receipts of any person appointed as administrator or executor of an estate who advertises this service as part of their business and satisfies the requirements of 3.2.116.8 NMAC are subject to the gross receipts tax.

B. If the person appointed as an administrator or executor is not regularly engaged in this business and does not satisfy the requirements of 3.2.116.8 NMAC, any receipts the person receives for performing executor or administrator services are exempt under Section 7-9-28 NMSA 1978.

C. Where an administrator or executor effectively waives the right to receive statutory fees or commissions within a reasonable time after commencing to serve as the executor and all other actions by that person with respect to the estate are consistent with the intention to render a gratuitous service, the administrator or executor is not subject to the gross receipts tax on the value of the services rendered.

[3.2.116.12 NMAC - Rp, 3.2.116.12 NMAC 9/24/2024]

3.2.116.13 TRUSTEE FEES:

The receipts of a person appointed as trustee, who is not an employee of the trust, court or other appointing authority, are not exempt from gross receipts tax under the provisions of Section 7-9-28 NMSA 1978.

[3.2.116.13 NMAC - Rp, 3.2.116.13 NMAC 9/24/2024]

3.2.116.14 SAFE HARBOR LEASE - SELLER/LESSEE: A seller/lessee who enters into a qualified "safe

harbor lease” transaction as defined in Section 168 of the Internal Revenue Code and who is not in the business of selling or leasing the same type of property being sold under the “safe harbor lease” will not be subject to the gross receipts tax on the sale and subsequent receipts derived from such transaction since those receipts are exempt under Section 7-9-28 NMSA 1978. A seller/lessee may not issue a nontaxable transaction certificate to purchase the property from a vendor.

[3.2.116.14 NMAC - Rp, 3.2.116.14 NMAC 9/24/2024]

HISTORY OF 3.2.116 NMAC:

Pre-NMAC History:

BOR 1967-2, NM Gross Receipts and Compensating Tax Regulations, September 11991967, filed 9/29/1967.

BOR 1969-4, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 12-5-1969, filed 12/5/1969.

BOR 1972-4, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 3/9/1972, filed 3/9/1972.

BOR 1974-2, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 12/15/73, filed 3/20/1974.

BOR 1976-1, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 7/26/1976, filed 7/26/1976.

R.D.1979-1, Gross Receipts and Compensating Tax Act Regulations, filed 6/18/1979.

R.D. Rule No. 1982, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 4/7/1982.

R.D. Rule No. 1984, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 5/4/1984.

TRD Rule No. 9-1986, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 4/2/1986.

TRD Rule GR-1990, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 11/26/1990.

History of Repealed Material: 3.2.116 NMAC, Exemption - Gross Receipts Tax - Occasional Sale of Property or Services, filed 4/30/2001, Repealed effective 9/24/2024.

3.2.116 NMAC, Exemption - Gross Receipts Tax - Occasional Sale of Property or Services, filed 4/30/2001 Repealed effective 9/24/2024.

NMAC History:

3 NMAC 2.28, Exemption - Gross Receipts Tax - Occasional Sale of Property or Services, filed 11/4/1996.

3.2.116 NMAC, Exemption - Gross Receipts Tax - Occasional Sale of Property or Services, filed 4/30/2001,

Replaced by 3.2.116 NMAC, Exemption - Gross Receipts Tax - Occasional Sale of Property or Services, effective 9/24/2024.