

TITLE 3 TAXATION
CHAPTER 2 GROSS RECEIPTS TAXES
PART 211 DEDUCTION - GROSS RECEIPTS TAX - SALE OR LEASE OF REAL PROPERTY AND
LEASE OF MANUFACTURED HOMES

3.2.211.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.
[3.2.211.1 NMAC - Rp, 3.2.211.1 NMAC 9/24/2024]

3.2.211.2 SCOPE: This part applies to each person engaging in business in New Mexico.
[3.2.211.2 NMAC - Rp, 3.2.211.2 NMAC 9/24/2024]

3.2.211.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[3.2.211.3 NMAC - Rp, 3.2.211.3 NMAC 9/24/2024]

3.2.211.4 DURATION: Permanent.
[3.2.211.4 NMAC - Rp, 3.2.211.4 NMAC 9/24/2024]

3.2.211.5 EFFECTIVE DATE: September 24, 2024, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[3.2.211.5 NMAC - Rp, 3.2.211.5 NMAC 9/24/2024]

3.2.211.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
[3.2.211.6 NMAC - Rp, 3.2.211.6 NMAC 9/24/2024]

3.2.211.7 DEFINITIONS: As used in Section 7-9-53 NMSA 1978 and regulations under 3.2.211 NMAC the following terms are defined as such:

A. “Assisted living facility” means a facility that provides dwelling units for residents, and which includes common rooms and other facilities appropriate for the provision of supportive services to residents of the facility, and which makes available to residents supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money, using the telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing and therapy. Assisted living facilities are distinguished from other long-term care facility types, such as skilled nursing facilities, in that they do not provide round-the-clock supervision by nurses or other medically trained personnel.

B. “Fair rental value” means the amount a willing landlord in the marketplace rents the property for and what a reasonable tenant is willing to pay.

C. “Improvement” means a permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable.

D. “Lease or leasing” as defined in Section 7-9-3 NMSA 1978.

E. “Licensing or license” as defined in Section 7-9-3 NMSA 1978.

F. “Manufactured home” means a moveable or portable housing structure constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy.

G. “Month” is a consecutive 30-day period.

H. “Recreational vehicle” means a vehicle defined as a recreational vehicle in Section 66-1-4.15 NMSA 1978 or as a travel trailer in Section 66-1-4.17 NMSA 1978.

I. “Real property” means an estate or interest in, over or under land and other things or interest, including minerals, water, structures and fixtures that by custom, usage or law pass with a transfer of land even if the estate or interest is not described or mentioned in the contract of sale or instrument of conveyance and, if appropriate to the context, the land in which the estate or interest is claimed pursuant to Section 12-2A-3 NMSA 1978;

J. “Rental” means a lease.

K. “Rooming house” means a dwelling with multiple rooms that are rented out individually with shared spaces such as a kitchen and living area. Examples include a hostel, dormitory, fraternity, or sorority house.

L. “Trailer park” means any facility where a manufactured home or recreational vehicle is or may be parked, which facility is operated by a person:

- (1) who offers space for one or more manufactured homes or recreational vehicles, either with or without manufactured homes or recreational vehicles located thereon, for rent or hire; and
- (2) who provides any of the customary services or facilities for those lodgers, guests, roomers or others who occupy manufactured homes, such as: utilities, garbage service, telephone service, cleaning service, protection service or ground keeping.

[3.2.211.7 NMAC - Rp, 3.2.211.7 NMAC 9/24/2024]

3.2.211.8 RECEIPTS FROM PROVIDING ACCOMMODATIONS:

A. Change of name of facility: The nature of the property determines whether the deduction allowed by Section 7-9-53 NMSA 1978 applies. The operator of a hotel, motel, rooming house, campground, guest ranch, trailer park or other facility which operates in a manner similar to the listed facilities may not, by merely changing the name of the facility, qualify for the deduction granted by Section 7-9-53 NMSA 1978.

B. Receipts from leasing of a space for less than one month:

(1) Receipts of a person in the business of operating a trailer park from the rental of a space for a manufactured home or, a recreational vehicle for a period of under one month are subject to the gross receipts tax.

(2) Receipts of a person in the business of operating a trailer park from the rental of a space for a manufactured home or, a recreational vehicle for a period of over one month, qualify for the deduction granted by Section 7-9-53 NMSA 1978.

(3) Example 1: X owns and operates a trailer park located in the state of New Mexico. Y rents a trailer space for Y's manufactured home from X on April 15 on a month-to-month basis. Y pays one-half month's rent at that time and signs an agreement to pay rent in advance for each subsequent calendar month. Y pays May's rent on April 29. X may deduct all the receipts from the rental of trailer space to Y because the receipts are from the rental of a space for a manufactured home for over one month.

(4) Example 2: X owns and operates a trailer park located in New Mexico. X leases a trailer space to Y for Y's manufactured home for one year, taking a month's rent in advance. During the third week of the lease period and prior to 30 consecutive days of the lease term, Y breaks the lease and moves out. X may still deduct the rent received from Y covering the first month's occupancy if X is entitled to keep the rent attributable to the portion of the month in which there was no occupancy and if X does not rent that space to anyone else prior to the expiration of the first month.

(5) Example 3: X owns and operates a trailer park in New Mexico. Y does not enter into a lease with X but places a manufactured home in the trailer space as a tenant at will. After a period of three weeks X tells Y to move from the trailer park. X may not deduct the receipts derived from the rental of a trailer space to Y because the rental was for a period of less than one month, and X has no legal right to receive additional rent from Y.

C. Municipal lodgers and room tax: Receipts of a hotel, motel, rooming house, campground, guest ranch, trailer park or similar facilities subject to the gross receipts tax do not include amounts paid to a municipality which has enacted by local ordinance a municipal lodgers or room tax pursuant to Sections 3-38-13 through 3-38-24 NMSA 1978.

D. Utility sales by landlord: Receipts of lessors of real property from leasing real property when the leases include separately stated amounts for natural gas, electricity or water conveyed as a condition of the lease of the real property to the lessee are deductible under Section 7-9-53 NMSA 1978. Receipts of trailer parks from space rentals which include separately stated amounts for natural gas, electricity or water sold as a condition of the lease to occupants may be deducted under Section 7-9-53 NMSA 1978 only if the rental is for a period of at least one month.

E. Rooming houses: Receipts by operators of rooming houses from lodgers, guests, roomers or occupants are not receipts from leasing real property and, therefore, are subject to the gross receipts tax. A dormitory, fraternity or sorority house is a rooming house.

[3.2.211.8 NMAC - Rp, 3.2.211.8 NMAC 9/24/2024]

3.2.211.9 AMOUNT ATTRIBUTABLE TO IMPROVEMENTS AND THE COST OF LAND:

A. The proportion of the receipts from the sale of real property which is attributable to improvements constructed on the real property is determined by:

- (1) subtracting from the sales price the cost of the land to the seller; or

(2) if there is substantial evidence that the value of the land is not the cost of the land to the seller, by subtracting from the sales price the value of the land as determined by an independent appraisal acceptable to the department, but in no case may the appraised value of the land exceed the difference between the sale price of the real property and the total cost of the improvements constructed on the real property.

B. The cost of the land to the seller is determined by the original cost of the land to the seller plus any amounts attributable to the land being sold which are paid by the seller for offsite improvements such as paving.

C. Example 1: X, a construction company, purchases a lot in 191969 for \$1,000. X builds a house on this lot in 1971. X then sells this real property to Y for \$20,000. On the basis of an F.H.A. appraisal the value of the land is \$5,000; however, the total cost of the improvements constructed on the lot is \$18,000. X would be liable for gross receipts tax on \$18,000. The F.H.A. appraisal, assuming acceptance by the department, is substantial evidence of an increase in the value of the land, but the appraisal value of the land cannot exceed the difference between the sale price of the real property and the total cost of the improvements constructed on the real property.

D. Example 2: X, a construction company, purchases a lot. In order to prepare the lot as a building site, X levels and excavates a portion of the real property. The receipts of X from the sale of real property which are attributable to improvements such as leveling and excavating the lot in preparation of a building site may not be deducted from gross receipts pursuant to Section 7-9-53 NMSA 1978.

E. Example 3: X, a construction company, purchases a lot, makes certain improvements, and then sells the lot in the ordinary course of business. The receipts of X from improvements on real property owned and sold by it in the ordinary course of business do not include amounts retained by financial institutions which loaned the purchase price directly to the purchaser as prepaid finance charges or discounts, if these amounts are not received by the real estate vendor. It is immaterial whether or not such amounts are included in the quoted real estate price. The receipts of X do include all amounts actually paid over to it which are attributable to improvements constructed on real property sold by X in the ordinary course of business. The receipts of such a business also include any amounts deducted by title insurance companies to cover title insurance, legal fees, escrow fees, real estate brokerage commissions, real estate taxes, principal and interest on construction loans, liens and the like. [3.2.211.9 NMAC - Rp, 3.2.211.9 NMAC 9/24/2024]

3.2.211.10 REMODELING OR OTHER IMPROVEMENTS:

A. A buyer who purchases and improves real property, other than the buyer's residence, by either remodeling or constructing additional improvements on the property and who subsequently sells the real property with the improvements is considered to be regularly engaged in the construction business. The receipts attributable to the remodeling or other improvements constructed on the real property are subject to the gross receipts tax. The receipts subject to tax are the sales price less the value of the real property purchased. The value of real property (VRP) purchased is computed through the use of a formula. The formula is the ratio of the cost of the real property (CRP) purchased divided by the cost of the real property (CRP) plus the cost of the remodeling or other improvements (CRI) times the sales price (SP), or:

$$VRP = \left(\frac{CRP}{CRP + CRI} \right) \times SP$$

B. The value of real property (VRP) is then subtracted from the sales price (SP) and the difference is the amount attributable to the value of remodeling or other improvements (VRI), which amount is subject to the gross receipts tax, or:

$$SP - VRP = VRI \text{ (Taxable receipts)}$$

C. Example: C, a Construction Company, purchases a lot and house for \$10,000. C then remodels the interior and exterior of the house at a cost of \$15,000 and adds a concrete driveway, patio and walkway at a cost of \$5,000. Upon completion of the remodeling and construction of the other improvements, C sells the real property with improvements for \$60,000. C should compute its taxable receipts as follows:

- (1) Cost of real property (CRP) = \$10,000
- (2) Cost of remodeling and improvements (CRI) = \$15,000 + \$5,000 or \$20,000
- (3) Sales price = \$60,000
- (4) $VRP = \frac{CRP}{CRP + CRI} \times SP = \frac{\$10,000}{\$10,000 + \$20,000} \times \$60,000 = \$20,000$
- (5) $SP - VRP = VRI \text{ (taxable receipts)} = \$60,000 - \$20,000 = \$40,000 \text{ (taxable receipts)}$

[3.2.211.10 NMAC - Rp, 3.2.211.10 NMAC xx/xx/xxxx]

3.2.211.11 UTILITIES - SALE OF COMPANY FACILITIES: Receipts of an electric utility company from the sale of company facilities such as transformer installations or pole lines in place are receipts from the sale

of real property and may be deducted from gross receipts pursuant to Section 7-9-53 NMSA 1978.
[3.2.211.11 NMAC - Rp, 3.2.211.11 NMAC 9/24/2024]

3.2.211.12 LEASE OF TANGIBLE PERSONAL PROPERTY:

A. Receipts from leasing tangible personal property are not receipts from leasing real property and may not be deducted from taxable gross receipts pursuant to Section 7-9-53 NMSA 1978.

B. Example 1: The receipts from leasing advertising signs which are placed or implanted in real property in the possession of and occupied by the lessee, where the lessor reserves the right to remove the signs, are not receipts from leasing real property and are not deductible from gross receipts pursuant to Section 7-9-53 NMSA 1978. Such advertising signs are tangible personal property and are not real property.

C. Example 2: KR is an automobile manufacturer with dealerships all over the country. Because KR wants its dealerships to be easily recognized it requires them all to display large electric outdoor signs identifying the business as KR dealership. KR leases the signs to the dealerships but reserves the right to remove the signs. KR's receipts from leasing the signs to a New Mexico dealership are subject to the gross receipts tax. KR may not deduct its receipts from leasing these signs from gross receipts pursuant to Section 7-9-53 NMSA 1978 because KR is not leasing real property.

D. Example 3: Receipts attributable to the use by a lessee of equipment, tools and furniture included with the lease of a gasoline service station are not deductible as receipts from leasing real property pursuant to Section 7-9-53 NMSA 1978. Such receipts are from the leasing of tangible personal property.

[3.2.211.12 NMAC - Rp, 3.2.211.12 NMAC 9/24/2024]

3.2.211.13 [RESERVED]

[3.2.211.13 NMAC - Rp, 3.2.211.13 NMAC 9/24/2024]

3.2.211.14 GENERAL EXAMPLES: The following examples illustrate the application of Section 7-9-53 NMSA 1978.

A. Example 1: V, a railroad company, rents motel rooms in X's motel on a permanent basis as lodging for its train crews while they wait for a return trip to their home station. The receipts X receives from V are not deductible under Section 7-9-53 NMSA 1978. If, however, V leases the entire motel from X, X's receipts are deductible under Section 7-9-53 NMSA 1978.

B. Example 2: X is engaged in constructing homes on land that X owns and has subdivided. X then sells them to interested individuals. X's sales are sales of real property, but X must pay gross receipts tax on that portion of the receipts that are attributable to the value of the houses and other improvements that X has constructed on the real property.

C. Example 3: X has lived in P, a motel, for fifteen years. X rents a room from the motel for \$1200 per year, payable in twelve monthly installments. P contends that the rental is a rental of real property and is deductible for the purposes of computing its tax liability under the gross receipts tax. The receipts which P receives from X are not deductible. Receipts from the rental of motel rooms are not deductible.

[3.2.211.14 NMAC - Rp, 3.2.211.14 NMAC 9/24/2024]

3.2.211.15 [RESERVED]

3.2.211.16 LOCKER ROOMS IN A WAREHOUSE/SELF STORAGE WAREHOUSE UNITS:

A. Receipts from providing individual locker rooms inside a warehouse facility where the tenant must rely on the warehouse owner to gain access to the inside of the building, are receipts from granting a license to use and are not deductible as the lease of real property.

B. Receipts from individual, self-contained storage warehouse units where the tenant has exclusive possession, use and access to the unit and pays a specified periodic rental for the unit are receipts from leasing real property and, therefore, are deductible under Section 7-9-53 NMSA 1978.

[3.2.211.16 NMAC - Rp, 3.2.211.16 NMAC 9/24/2024]

3.2.211.17 RECEIPTS FROM LICENSE TO USE REAL PROPERTY:

A. Receipts derived from a license to use real property may not be deducted from gross receipts under Section 7-9-53 NMSA 1978, except that receipts derived from selling or leasing the entirety of the hunting rights with respect to a property for a period of one year or more will be considered the sale or lease of real property for the purposes of this deduction. Receipts from selling a hunting package are subject to gross receipts tax to the extent

that the individual components of the package are not deductible or exempt from the gross receipts tax pursuant to the Gross Receipts and Compensating Tax Act. A person that sells a hunting package that consists of taxable and nontaxable components must reasonably allocate the receipts based on the value of the individual components. For purposes of this section, a "hunting package" may include the following components:

- (1) lodging;
- (2) meals;
- (3) delivery and transportation services;
- (4) guide services;
- (5) license to use the property;
- (6) carcass of the hunted animal; or
- (7) other services or tangible personal property included in the package.

B. Example 1: X owns a ranch in New Mexico and is engaged in the business of ranching. Incidental to X's main business, X permits members of the public to go on X's property to hunt and fish for specified periods. X collects a fee from each person who does so. X's receipts from these fees are subject to the gross receipts tax because X merely granted a license to use. No property is leased or sold. If X sells or leases the entirety of the hunting rights on X's property for one year or more to a single individual or entity, as distinct from permitting several different individuals to hunt for various periods during a year, that constitutes the sale or lease of real property and receipts therefrom may be deducted under Section 7-9-53 NMSA 1978.

C. Example 2: X owns an unlighted dirt parking lot in Albuquerque. Y enters into an agreement with X whereby Y agrees to pay a monthly fee and X agrees to permit Y to park Y's car in an assigned space for a period of one month. Z brings an automobile to X's parking lot and parks it there for a daily fee. Z does so only once. X's receipts from providing the service of supplying parking spaces or selling a license to use parking spaces to Y and Z are not deductible from gross receipts as a lease of real property pursuant to Section 7-9-53 NMSA 1978.

D. Example 3:

(1) S owns a flying service and related facilities. S enters into several types of agreements with its customers:

(a) an agreement with A on a month-to-month basis, permitting A to store an aircraft in an assigned "stall" in one of several hangars each containing eight to twelve such "stalls", in return for a monthly fee. S specifically limits A's use of the premises to storage of the aircraft in the conduct of A's business in an adjacent airport;

(b) an agreement with B, on a month-to-month basis, permitting B to store an aircraft in an assigned "tie-down" space in a large open-span hangar containing spaces for eight such aircraft, in return for a monthly fee;

(c) an agreement with C, a transient customer, on an overnight or day- to-day basis, permitting C to store an aircraft in a specified "tie-down" space in the open-span hangar described above, in return for a daily fee.

(2) S's receipts from providing the service of supplying hangar space and open storage space for aircraft, or of granting a license to use such space, to A, B and C are subject to the gross receipts tax. S's receipts are not deductible from gross receipts as a lease of real property pursuant to Section 7-9-53 NMSA 1978.

E. Example 4: X owns a ranch in New Mexico and sells guided hunting packages. Included in the price for the hunt X guarantees that the hunter will retrieve an animal, lodging at the ranch, meals, experienced hunting guide, retrieval, caping, delivery to local meat processor and taxidermist. Not included in the price are expenses associated with alcohol consumption, meat processing, taxidermy services or gratuities for guides. X receipts from the sale of this type of hunting package includes receipts from providing services, the sale of tangible personal property (meals), the sale of the carcass (possibly livestock) and from granting a license to use the land within the ranch boundaries. X must determine a reasonable method of allocating their receipts between components that are subject to gross receipts tax and those that are exempt from gross receipts tax (sale of livestock).

[3.2.211.17 NMAC - Rp, 3.2.211.17 NMAC 9/24/2024]

3.2.211.18 ASSISTED LIVING FACILITIES:

A. Receipts of an assisted living facility received from its residents are receipts from the leasing of real property, receipts for providing services, and receipts from selling tangible personal property.

(1) The portion of receipts attributable to the lease of real property, including a proportionate share of the square footage of the common areas, is deductible from taxable gross receipts of an assisted living facility pursuant to Section 7-9-53 NMSA 1978.

(2) The portion of receipts attributable to providing services and tangible personal property provided to residents of an assisted living facility are not deductible pursuant to Section 7-9-53 NMSA 1978.

B. For purposes of apportioning the receipts of an assisted living facility between deductible receipts from leasing real property and non-deductible receipts for providing services and tangible personal property to residents of the assisted living facility, a taxpayer may apportion its receipts using a reasonable accounting method.

(1) The use of fair rental value methodology for purposes of determining the portion of its receipts attributable to leasing real property is presumptively reasonable.

(2) While use of the fair rental value methodology is presumptively reasonable, the conclusions of any report or study or other supporting documentation or calculation of fair rental value may be challenged by the department.

[3.2.211.1 NMAC - N, 9/24/2024]

HISTORY OF 3.2.211 NMAC:

Pre-NMAC History:

BOR 67-2, NM Gross Receipts and Compensating Tax Regulations, September 1967, 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 7-9-1980.1 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 7-9-1980.1 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 7-9-1980.1 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 7-9-1980.1 NMSA 1978, filed 11/26/1990.

History of Repealed Material: 3.2.211 NMAC, Deduction - Gross Receipts Tax - Sale or Lease of Real Property and Lease of Manufactured Homes, filed 5/17/2001 Repealed effective 9/24/2024.

NMAC History:

3 NMAC 2.53, Deduction - Gross Receipts Tax - Sale or Lease of Real Property and Lease of Mobile Homes, filed 7/2/1996.

3.2.211 NMAC, Deduction - Gross Receipts Tax - Sale or Lease of Real Property and Lease of Manufactured Homes, filed 5/17/2001, Replaced by 3.2.211 NMAC, Deduction - Gross Receipts Tax - Sale or Lease of Real Property and Lease of Manufactured Homes effective 9/24/2024.