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Office of the Secretary

May 21, 2024

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Enclosed is the following proposal:

The New Mexico Taxation and Revenue Department hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to amend/repeal/replace and enact certain rules and regulations pertaining to the Gross Receipts and Compensating Tax Act. The State Records Center and Archives Administrative Law Division is requiring a repeal and replace of the entire regulation part Title 3: Taxation, Chapter 2: Gross Receipts Taxes, Part 116 Exemption - Gross Receipts Tax - Occasional Sale of Property or Services & 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. - Applicability in order to make this amendment, citing Regulation Subsection C of 1.24.11.9 NMAC:

Summary of Proposed Changes:

The New Mexico Taxation and Revenue Department proposes to amend and enact the following rule(s):

Imposition of Gross Receipts and Compensating Tax Act

For ease of reference these changes are shown as amendments, see below on where to locate copies of the proposed rules:

Section 7-9-28 NMSA 1978

- 3.2.116.8 - *Criteria Used In Determining Isolated Or Occasional Sales*
- 3.2.116.9 - *License To Do Business Or Holding Out To Do Business*
- 3.2.116.10 - ~~*[Persons Having Three Or Fewer Rental Units]*~~ *Persons Having Rental Units*
- 3.2.116.11 - *Sale Or Leasing The Same Or Similar Property:*
- 3.2.116.12 - *Executors' And Administrators' Fees:*
- 3.2.116.13 - *Trustee Fees:*
- 3.2.116.14 - *Safe Harbor Lease - Seller/Lessee:*

Section 7-9-53 NMSA 1978

- 3.2.211.7 - *Definitions:*
- 3.2.211.8 - *Receipts From Providing Accommodations:*
- 3.2.211.9 - *Amount Attributable To Improvements And The Cost Of Land:*
- 3.2.211.10 - *Remodeling Or Other Improvements:*
- 3.2.211.11 - *Utilities - Sale Of Company Facilities:*
- 3.2.211.12 - *Lease Of ~~[Advertising Signs]~~ Tangible Personal Property:*
- 3.2.211.13 - ~~*[Gasoline Service Station Equipment Lease Receipts:]*~~
- 3.2.211.14 - *General Examples:*
- 3.2.211.16 - *Locker Rooms In A Warehouse/Self Storage Warehouse Units:*
- 3.2.211.17 - *Receipts From License To Use Real Property:*
- New - 3.2.211.18 - *Assisted Living Facilities:*

Section 7-9-58.1 NMSA 1978

- New - 7.3.30X.7 - Definition*
- New - 7.3.30X.8 - Claiming*

Section 7-9-121 NMSA 1978

- New - 7.3.30X.7 - Definition*

New - 7.3.30X.8 - Claiming

Technical Information: No technical information was consulted in drafting these proposed rule changes.

Purpose of Proposed Rule: The proposed repeal and replace is in accordance with the SRCA requirements. The regulation changes to Section 7-9-28 NMSA 1978 are to update the exemption language to clarify that short-term rentals that are similar to hotels and motels do not qualify for the isolated and occasional exemption from gross receipts tax. It also clarifies for certain types of transactions why a person would not be seen as engaging in business in New Mexico and would therefore qualify for the isolated and occasional exemption. These regulations are also updated to make them more general focusing on the language of the statute rather than a specific industry. The regulation under Section 7-9-53 NMSA 1978 is updated to address assisted living facilities and make examples more general where possible. The new regulation parts are to address the two new gross receipts tax credits that will be effective July 1, 2024, in HB-252 from the 2024 legislative session, Section 14: Credit - gross receipts tax - legal services for wildfire compensation recovery, and Section 15: credit - gross receipts tax - sale of dyed special fuel used for agricultural purposes.

Notice of Public Rule Hearing: A public hearing will be held on the proposed rule changes on Thursday, June 20, 2024, from 1 PM to 2 PM at the 3rd floor in the Montoya Building, 1100 South St. Francis Drive, Santa Fe, New Mexico 87504. The hearing will be recorded, and oral comments can be made during the public hearing. Written comments can be submitted as outlined at the end of this notice.

Virtual meeting access also available using Join Zoom Meeting:

<https://us02web.zoom.us/j/6586491797?pwd=eHl6YlVtYtJlZVNIenZOS3VUV2Nudz09&omn=86021613310>

Meeting ID: 658 649 1797 Passcode: 062024

The rule proposals were placed on file in the Office of the Secretary on May 6, 2024. Pursuant to Regulation 3.1.2.9 NMAC under Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about July 16, 2024.

Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Bobbie Marquez at BobbieJ.Marquez@tax.nm.gov. The Taxation and Revenue Department will make every effort to accommodate all reasonable requests but cannot guarantee accommodation of a request that is not received at least ten calendar days prior to the scheduled hearing.

Copies of the proposed rules may be found at: <https://www.tax.newmexico.gov/all-nm-taxes/proposed-regulations-hearing-notices/> or are available upon request by contacting the Tax Policy Office at policy.office@tax.nm.gov.

Notice of Acceptance of Written Public Comment: Written comments on the proposals can be submitted by email to policy.office@tax.nm.gov or by mail to the Taxation and Revenue Department, Tax Information and Policy Office, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or by 5PM on Thursday, June 20, 2024. All written comments received by the agency will be posted on <https://www.tax.newmexico.gov/all-nm-taxes/proposed-regulations-hearing-notices/> no more than 3 business days following receipt to allow for public review.

Stephanie Schardin Clarke
Cabinet Secretary

Reviewed for legal sufficiency:

Donnitta “Dee” Wald
Chief Legal Counsel
New Mexico Taxation and Revenue Department

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
[11/15/96; 3.2.116.1 NMAC - Rn, 3 NMAC 2.28.1, 5/15/01; Rp xx/xx/xxxx]

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.
[11/15/96; 3.2.116.2 NMAC - Rn, 3 NMAC 2.28.2, 5/15/01; Rp xx/xx/xxxx]

3.2.116.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[11/15/96; 3.2.116.3 NMAC - Rn, 3 NMAC 2.28.3, 5/15/01; Rp xx/xx/xxxx]

3.2.116.4 DURATION: Permanent.
[11/15/96; 3.2.116.4 NMAC - Rn, 3 NMAC 2.28.4, 5/15/01; Rp xx/xx/xxxx]

3.2.116.5 EFFECTIVE DATE: 11/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[11/15/96; 3.2.116.5 NMAC - Rn, 3 NMAC 2.28.5 & A, 5/15/01; Rp xx/xx/xxxx]

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.
[11/15/96; 3.2.116.6 NMAC - Rn, 3 NMAC 2.28.6, 5/15/01; Rp xx/xx/xxxx]

3.2.116.7 DEFINITIONS: [Reserved.]
[11/15/96; 3.2.116.7 NMAC - Rn, 3 NMAC 2.28.7, 5/15/01; Rp xx/xx/xxxx]

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 number of sales or leases made within a given period;~~
- ~~D. the regularity of the sales~~
- ~~E. the duration of the sales or leasing activity;~~
- ~~F. any promotional activity such as advertising or telephone yellow page listings; and~~
- ~~G. any holding out as being in business by the seller or lessor.]~~
- 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.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.116.8 NMAC - Rn, 3 NMAC 2.28.8, 5/15/01; Rp xx/xx/xxxx]

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 ~~holding out as~~ 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 ~~examples~~ 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) — Example 1: D is a doctor who pumps water for private use from a well. D purchases a new pump for the well and sells the old pump to B. D does not have to pay the gross receipts tax on the sale to B. D is not in the business of selling pumps. This is an isolated or occasional transaction by one who is not engaged in the business of selling pumps.

(2) — Example 2: The T club is a nonprofit association which is not exempted from the federal income tax pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986. In order to raise money for its other activities, it sponsors a matched roping contest once each year. The T club is not organized for the purpose of conducting roping contests. The very nature of the roping contest requires that it be conducted for only a short time each year, but the roping contest is not isolated or occasional within the meaning of the statute, and the receipts of the T club from the roping contest are subject to the gross receipts tax.

(3) — Example 3: G, a homeowner, holds a garage sale every Wednesday for neighbors as consignee of the goods to be sold and claims that the receipts are not subject to gross receipts tax. G is regularly engaged in business and the sales are not isolated or occasional. Therefore G is subject to gross receipt tax.

(4) — Example 4: L, an attorney, is a member of the bar of New Mexico. L maintains an office in Albuquerque, but L's main source of income is derived from a salaried position as house counsel for a large industrial firm. L takes one or two criminal cases a year to maintain abilities as a trial lawyer. While L is not regularly engaged in business as a criminal lawyer, L is holding out as licensed to practice law in New Mexico and, therefore, L's receipts from the cases taken are taxable gross receipts.

(5) — Example 5: K purchases vacant land, builds a home, lives in it for a few months, sells it, and then repeats this process three months later. K's activity is not an isolated or occasional transaction. K is regularly engaged in the business of selling homes because of the frequency of the sales. Therefore, K's receipts from the sale of the improvements are subject to gross receipts tax.

(6) — Example 6: Z ski club is a nonprofit organization which is sponsoring a ski swap and sale. X, a disenchanted skier, has decided to sell all of X's ski equipment at the club's ski swap and sale. The sale is an isolated or occasional sale, because X is neither regularly engaged nor holding out as engaged in the business of selling or leasing skis, ski equipment, or similar property. Therefore, X's receipts from the sale are exempt from the gross receipts tax. The receipts of the ski club are not subject to the gross receipts tax, because the ski club is merely providing the opportunity for its members to sell or trade their ski equipment. The club retains no receipts from this activity.

(7) — Example 7: T is an auctioneer who sells property on a commission or fee basis. X, an individual not engaged in business, takes an old lawn mower to T in order for T to auction it off at the weekly auction. The receipts X derived from such sale are exempted from the gross receipts tax because the sale is isolated and occasional and X is neither regularly engaged nor holding out as engaged in the business of selling or leasing the same or similar property.]

(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.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.116.9 NMAC - Rn, 3 NMAC 2.28.9 & A, 5/15/01; Rp xx/xx/xxxx]

3.2.116.10 ~~**[PERSONS HAVING THREE OR FEWER RENTAL UNITS:** Any person who rents or leases three or fewer rental units of real property is not regularly engaged in the business of leasing real property for the purposes of Sections 7-9-28 and 7-9-53 NMSA 1978. Such a person need not register with the taxation and revenue department for gross receipts tax purposes nor report the receipts if there are no other receipts, but the person may be required to register to report another tax.]~~ **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.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.116.10 NMAC - Rn, 3 NMAC 2.28.10 & A, 5/15/01; Rp xx/xx/xxxx]

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. [Example: T is regularly engaged in the business of leasing construction and paving equipment to third parties. T contemplates terminating its leasing business and plans on having all equipment sold at public auction by a third party. Since T is regularly engaged in the business of leasing property which is the same as or similar to the property to be sold, the receipts from the sale are not exempt pursuant to Section 7-9-28 NMSA 1978 as isolated or occasional.]~~ 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.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.116.11 NMAC - Rn, 3 NMAC 2.28.11 & A, 5/15/01; Rp xx/xx/xxxx]

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 are subject to the gross receipts tax and are not exempt from the gross receipts tax pursuant to Section 7-9-28 NMSA 1978. ~~[The duration of the person's activity in performing the service, usually a minimum of eight (8) months, indicates that the person is regularly engaged in the business of selling services as an executor or administrator.]~~

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

~~[B]~~ 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.

~~[C.—— Example: E, an individual appointed executor of an estate by a court order, performs the duties of executor for a period of approximately eight (8) months. E is not otherwise engaged in the business of performing services as an executor or fiduciary and is not an attorney or certified public accountant or anyone who customarily receives fees for the performance of professional services. E is not an employee of a bank, trust department, or financial institution. Receipts of E are subject to the gross receipts tax because the duration of E's activity in performing the service indicates that E is regularly in the business of selling services as an executor.]~~
~~[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.116.12 NMAC - Rn, 3 NMAC 2.28.12 & A, 5/15/01; Rp xx/xx/xxxx]~~

3.2.116.13 TRUSTEE FEES:

~~[A.]~~ 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 ~~[if the appointment exceeds a term of more than 30 days.~~

~~—— B.—— Example: Q, an individual appointed trustee by a court order, performs the duties of a trustee for a period of approximately eighteen (18) months at a specified monthly rate of compensation. Q is not otherwise engaged in the business of performing as a fiduciary, is not an attorney or a certified public accountant or anyone who customarily receives fees for the performance of personal services. Q is not an employee of a bank, trust department or other financial institution. Receipts of Q are subject to the gross receipts tax because the duration of Q's activity in performing the service indicates that Q is regularly engaged in the business of selling services as trustee.]~~
~~[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.116.13 NMAC - Rn, 3 NMAC 2.28.13 & A, 5/15/01; Rp xx/xx/xxxx]~~

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.
[2/23/83, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.116.14 NMAC - Rn, 3 NMAC 2.28.14 & A, 5/15/01; Rp xx/xx/xxxx]

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
[7/15/96; 3.2.211.1 NMAC – Rn, 3 NMAC 2.53.1, 5/31/01; Rp xx/xx/xxxx]

3.2.211.2 SCOPE: This part applies to each person engaging in business in New Mexico. [7/15/96, 11/15/96; 3.2.211.2 NMAC - Rn, 3 NMAC 2.53.2, 5/31/01; Rp xx/xx/xxxx]

3.2.211.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[7/15/96; 3.2.211.3 NMAC - Rn, 3 NMAC 2.53.3, 5/31/01; Rp xx/xx/xxxx]

3.2.211.4 DURATION: Permanent.
[7/15/96; 3.2.211.4 NMAC - Rn, 3 NMAC 2.53.4, 5/31/01; Rp xx/xx/xxxx]

3.2.211.5 EFFECTIVE DATE: 7/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[7/15/96, 11/15/96; 3.2.211.5 NMAC - Rn, 3 NMAC 2.53.5 & A, 5/31/01; Rp xx/xx/xxxx]

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.
[7/15/96; 3.2.211.6 NMAC - Rn, 3 NMAC 2.53.6, 5/31/01; Rp xx/xx/xxxx]

3.2.211.7 DEFINITIONS:

~~A. “Trailer park” defined: As used in Section 7-9-53 NMSA 1978 and regulations thereunder, a “trailer park” is 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.~~

~~B. “Month” defined: As used in Section 7-9-53 NMSA 1978 and regulations thereunder, a “month” includes any consecutive 30 day period.~~

~~C. “Recreational vehicle” defined: As used in Section 7-9-53 NMSA 1978, the term “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.~~

~~D. Subsection A of Section 3.2.211.7 NMAC is retroactively applicable to transactions occurring or receipts received on or after July 1, 1998. Subsection C of Section 3.2.211.7 NMAC is retroactively effective on July 1, 1998.]~~

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 7-9-3.5 NMSA 1978;

E. "Licensing or license" as defined in Section 7-9-3.5 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.

[11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 3/19/92, 11/15/96, 12/15/98, 4/30/99; NMAC – Rn, 3 NMAC 2.53.7 & A, 5/31/01; Rp xx/xx/xxxx]

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. ~~**[Rental of space for less than one month:]**~~ **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 ~~[, on or after July 1, 1998,]~~ 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 ~~[, on or after July 1, 1998,]~~ a recreational vehicle for a period of over one month ~~[are deductible from gross receipts],~~ 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.]~~ **Rental of a house trailer:**

~~[This version of Paragraph (1) of Subsection C of Section 3.2.211.8 NMAC is applicable to transactions occurring or receipts received on or after July 1, 1998.~~

~~This version of Paragraph (2) of Subsection C of Section 3.2.211.8 NMAC is applicable to transactions occurring or receipts received on or after July 1, 1998.~~

~~This version of Paragraph (3) of Subsection C of Section 3.2.211.8 NMAC is applicable to transactions occurring or receipts received on or after July 1, 1998.]~~

~~[D.]~~ **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.

~~[E.]~~ **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.

~~[F.]~~ **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.

~~[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 3/16/79, 6/18/79, 5/3/80, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 3/19/92, 11/15/96, 12/15/98, 7/30/99; 3.2.211.8 NMAC - Rn, 3 NMAC 2.53.8 & A, 5/31/01; Rp xx/xx/xxxx]~~

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 ~~[s]~~ which are paid by the seller for offsite improvements such as paving.

C. Example 1: X, a construction company, purchases a lot in 1969 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.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.211.9 NMAC - Rn, 3 NMAC 2.53.9 & A, 5/31/01; A, 11/30/05; Rp xx/xx/xxxx]

3.2.211.10 REMODELING OR OTHER IMPROVEMENTS:

A. A ~~[person possessing a valid contractor's license]~~ 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:

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

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) $SP - VRP = VRI \text{ (taxable receipts)} = \$60,000 - \$20,000 = \$40,000 \text{ (taxable receipts)}$

[5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.211.10 NMAC - Rn, 3 NMAC 2.53.10 & A, 5/31/01; Rp 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. [3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.211.11 NMAC - Rn, 3 NMAC 2.53.11 & A, 5/31/01; Rp xx/xx/xxxx]

3.2.211.12 LEASE OF [ADVERTISING SIGNS] 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.

Examples:

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.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.211.12 NMAC - Rn, 3 NMAC 2.53.12 & A, 5/31/01; Rp xx/xx/xxxx]

3.2.211.13 ~~[GASOLINE SERVICE STATION EQUIPMENT LEASE RECEIPTS: 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. Where the receipts attributable to the leasing of tangible personal property are not shown on the lessor's books and records, the amount to be reported is the reasonable value of the tangible personal property leased prorated over the term of the lease, but in no event shall the reasonable value be less than the depreciated value of the tangible personal property at the beginning of the lease term.]~~ **RESERVED**

[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.211.13 NMAC - Rn, 3 NMAC 2.53.13 & A, 5/31/01; Rp xx/xx/xxxx]

3.2.211.14 GENERAL EXAMPLES:

A. The following examples illustrate the application of Section 7-9-53 NMSA 1978.

~~[B. Example 1: Y owns a home in Tatum, New Mexico. Y is transferred from Tatum to Aztec and must sell the home. Y sells it to Z. Y does not have to register with the department or report the receipts from the sale of the house because Y is neither engaged in the business of selling houses nor holding out as being engaged in this business. This transaction is exempt from the gross receipts tax as an isolated and occasional sale pursuant to Section 7-9-28 NMSA 1978. However, if Y's house is sold by a real estate broker, the real estate broker's commission is taxable.]~~

~~[B. Example 2] 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.~~

~~[C. Example 3] 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.~~

~~[D. Example 4] 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.~~

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.211.14 NMAC - Rn, 3 NMAC 2.53.14 & A, 5/31/01]

3.2.211.15 REPEALED

[3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, Rp, 4/30/99; 3.2.211.5 NMAC - Rn, 3 NMAC 2.53.15, 5/31/01; Rp xx/xx/xxxx]

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.

[3/16/79, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.211.16 NMAC - Rn, 3 NMAC 2.53.16 & A, 5/31/01; Rp xx/xx/xxxx]

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).

[1/30/78, 6/17/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 7/15/96; 3.2.211.17 NMAC – Rn, 3 NMAC 2.53.17 & A, 5/31/01; A, 8/15/12; Rp xx/xx/xxxx]

3.2.211.18 ASSISTED LIVING FACILITIES

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

(1) The portion of receipts attributable to the lease of real property 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 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 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.

TITLE 7 TAXATION
CHAPTER 3 GROSS RECEIPTS TAXES
PART 30X CREDIT – GROSS RECEIPTS TAX – LEGAL SERVICES FOR WILDFIRE
COMPENSATION RECOVERY

7.3.30X.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
[xx/xx/xxxx]

7.3.30X.2 SCOPE: This part applies to each person engaging in business in New Mexico.
[xx/xx/xxxx]

7.3.30X.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.

7.3.30X.4 DURATION: Permanent.
[xx/xx/xxxx]

7.3.30X.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[xx/xx/xxxx]

7.3.30X.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
[xx/xx/xxxx]

7.3.30X.7 DEFINITIONS:

A. Taxable Period: A “taxable period” for the purposes of Section 7-9-121 NMSA 1978 is one month. The month starts on the first day of a calendar month and ends on the last day of that calendar month.
[xx/xx/xxxx]

7.3.30X.8 CLAIMING

A. The credit pursuant to Section 7-9-121 NMSA 1978, shall be claimed on the gross receipts tax return for the month that the qualifying transaction occurred. Taxpayers who have been authorized to report and pay gross receipts taxes at an interval other than monthly pursuant to Section 7-1-15 NMSA 1978 shall claim the credit on their return for the next authorized reporting and payment date after the qualifying transaction occurred.

B. Any portion of the tax credit that exceeds the taxpayer’s gross receipts tax liability can be carried forward for 36 consecutive months or three years from the month that the qualifying transaction occurred. The 36 consecutive month deadline applies to all taxpayers, including those who have been authorized to report and pay gross receipts taxes at an interval other than monthly pursuant to Section 7-1-15 NMSA 1978.

TITLE 7 TAXATION
CHAPTER 3 GROSS RECEIPTS TAXES
PART 30X CREDIT – GROSS RECEIPTS TAX – SALE OF DYED SPECIAL FUEL USED FOR
AGRICULTURAL PURPOSES

7.3.30X.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
[xx/xx/xxxx]

7.3.30X.2 SCOPE: This part applies to each person engaging in business in New Mexico.
[xx/xx/xxxx]

7.3.30X.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.

7.3.30X.4 DURATION: Permanent.
[xx/xx/xxxx]

7.3.30X.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[xx/xx/xxxx]

7.3.30X.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
[xx/xx/xxxx]

7.3.30X.7 DEFINITIONS:

A. Taxable Period: A “taxable period” for the purposes of Section 7-9-58.1 NMSA 1978 is one month. The month starts on the first day of a calendar month and ends on the last day of that calendar month.
[xx/xx/xxxx]

7.3.30X.8 CLAIMING

A. The credit pursuant to Section 7-9-58.1 NMSA 1978, shall be claimed on the gross receipts tax return for the month that the qualifying transaction occurred. Taxpayers who have been authorized to report and pay gross receipts taxes at an interval other than monthly pursuant to Section 7-1-15 NMSA 1978 shall claim the credit on their return for the next authorized reporting period and payment date after the qualifying transaction occurred.

B. Any portion of the tax credit that exceeds the taxpayer’s gross receipts tax liability can be carried forward for 36 consecutive months or three years from the month that the qualifying transaction occurred. The 36 consecutive month deadline applies to all taxpayers, including those who have been authorized to report and pay gross receipts taxes at an interval other than monthly pursuant to Section 7-1-15 NMSA 1978.