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# FYI-204

**New Mexico  
Taxation and Revenue Department**

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## FOR YOUR INFORMATION

Tax Information/Policy Office ♦ P.O. Box 630 ♦ Santa Fe, New Mexico 87504-0630

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### **Nontaxable Transaction Certificates (NTTCs)**

This publication provides general information on the issuance of NTTCs by the New Mexico Taxation and Revenue Department (Department) and their appropriate use by taxpayers.

This information is as accurate as possible at time of publication. Subsequent legislation, new state regulations, and court cases may affect its accuracy. For the latest information please check the Department's web site at [www.tax.newmexico.gov](http://www.tax.newmexico.gov).

Statutory citations in this publication are to the New Mexico Statutes Annotated (NMSA 1978).

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## **INTRODUCTION TO NTTCS**

Unlike most states, New Mexico imposes a gross receipts tax rather than a sales tax. Gross receipts tax applies to receipts from property sold in New Mexico, services performed in New Mexico, leases or licenses of property used in this state and granting of rights to use a franchise in New Mexico. Receipts from a research and development service performed outside New Mexico also are subject to gross receipts tax if the product of the service is initially used in this state. All such receipts are subject to New Mexico gross receipts tax unless a statutory exemption or deduction applies to a transaction.

The legal liability for reporting and paying the New Mexico gross receipts tax is always on the seller or lessor, not on the customer. In common business practice, however, the seller or lessor recovers the gross receipts tax from the buyer or lessee by billing the tax to the customer. In transactions where state law allows a gross receipts tax deduction or exemption, the buyer or lessee may give the seller or lessor a New Mexico NTTC to document the seller's or lessor's deduction for those receipts. Deductible receipts are not subject to gross receipts tax because they are subtracted from gross receipts before the tax due is calculated on the **Form CRS-1**. In deductible transactions, the seller or lessor incurs no gross receipts tax to bill to the customer, and the customer makes the purchase "tax free."

*Deductible* receipts, though not subject to gross receipts tax, must be reported to the New Mexico Taxation and Revenue Department on a **Form CRS-1**. *Exempt* receipts are receipts that, under state law, do not need to be reported to this Department. For more information on exemptions and deductions, see **FYI-105, Gross Receipts & Compensating Taxes – An Overview**.

Note: Effective January 1, 2004, the Department no longer issues Type 1, 3, 4, 7, 8, 13, 14 or D NTTCs. However, the Department will continue to recognize those NTTC types in audit situations when the seller or lessee had accepted the NTTCs in good faith, reasonably assured that the buyer executing the NTTC will use the property or service in a nontaxable manner.

## **OBTAINING NTTCS**

To obtain NTTCs, an applicant must have a New Mexico Combined Reporting System (CRS) Identification Number, an 11-digit number also known as a business tax identification number. A taxpayer who has a CRS Identification Number is "registered" with the Department. That number is obtained by submitting a completed **Form ACD-31015, Application for Business Tax Identification Number**, to the Department. The form may be printed from our web site or obtained from the Department by contacting any of the local tax offices see FOR FURTHER ASSISTANCE on page 14. Taxpayers may also register online on our Taxpayer Access Point (TAP) at <https://tap.state.nm.us/tap>.

If your CRS account has been closed with the Department you cannot apply for NTTCs under that CRS number. All of the NTTCs are associated with a CRS number and if that business is closed with the Department those NTTCs are no longer valid for transactions going forward from the date the business is closed.

### **NTTCS WITH SPECIAL APPLICATION REQUIREMENTS**

Making a first-time application for certain NTTC types requires special documentation to be submitted to the Department. An applicant who uses the Department's online Taxpayer Access Point (TAP) can attach the required documentation to the request. If you are unable to attach the additional requirement document for any reason, you can call the Department for assistance or send the paper application and additional requirement document to one of the Departments tax offices listed on page 14. Once your request for NTTCs has been submitted, the Department may contact you for additional information.

If your request is approved, you will be able to execute NTTC's through the TAP system for the type of NTTC and purpose of NTTC applied for.

The NTTCs and their first time additional application requirements are listed below:

**Type 6 NTTC** - Requires a contractor's license verification. Beginning April 1, 2016, the Construction Industries Division of the Regulation and Licensing Department will no longer require licenses for certain specialty classifications of contractors. Applicants who fall into one of those categories must submit a written statement explaining why the contractor is excluded from having to get a contractor's license from the Regulation and Licensing Department.

**Type 9 NTTC** – For a 501(c)(3) nonprofit organizations – requires a copy of the designation letter from the Internal Revenue Service granting the organization its 501(c)(3) status.

**Type 9 NTTC** - A private person acting as an agent for a government entity for an industrial revenue bond (IRB) project may apply for a Type 9 NTTC to execute to sellers of tangible personal property, other than ingredients or components of construction projects (Regulation 3.2.212.22 NMAC). To obtain the NTTCs, the agent must submit a copy of the IRBs contract showing the expiration date and contract number. Note: In this case, the NTTC is project specific. You will need to reapply for each IRB project.

**Type 10 NTTC** - May be executed by a person that holds an interest in a qualified generating facility for the purchase of tangible personal property or services that are eligible generation plant costs. To obtain a Type 10 NTTC an interest owner of a qualified generating facility must provide the Department with a certificate from the New Mexico Environment Department certifying eligibility.

**Type 11 NTTC**- Requires a complete **Form RPD-41378**, *Application for Type 11 or 12 Nontaxable Transaction Certificates*. This NTTC is specific to the seller and purchaser that fill out Form RPD-41378.

**Type 12 NTTC**–Requires a complete **Form RPD-41378**, *Application for Type 11 or 12 Nontaxable Transaction Certificates* and **Form RPD-41377**, *Manufacturing Agreement to Pay Gross Receipts on Behalf of a Utility Company for Certain Utility Sales*.

**Type 15 NTTC** - For Qualified federal contractors – requires a copy of their federal contract. The Type 15 NTTCs are issued by the Department for specific federal contracts only, a federal contract will need to be submitted for each contract.

**Type 16 NTTC** - A qualified film production company must submit proof of registration with the Film Division of the New Mexico Economic Development Department.

**Type 16 NTTC** - Accredited diplomats or missions making initial application must provide identification confirming their diplomatic status.

**Type 17 NTTC** - For government agencies' or 501(c)(3) organizations' purchases of construction material that is tangible personal property under Section 7-9-54(A)(3) NMSA 1978 or Section 7-9-60(B) NMSA 1978, must complete **Form RPD41250**, *Application for Type 17 Nontaxable transaction Certificates*. **Note:** This NTTC is project specific, you will need to reapply for every contract. **Note:** Form ACD 31050, Application for Nontaxable Transaction Certificates must also be submitted to the Department.

#### **APPLYING FOR NTTCS ONLINE THROUGH THE TAXPAYER ACCESS POINT (TAP)**

Registered New Mexico gross receipts taxpayers may obtain, execute and record the use of New Mexico NTTCs through the TAP system on the Department's web site.

The benefits of requesting and executing NTTCs using TAP are:

- NTTCs are executed immediately;
- You do not have to submit a paper application for NTTCs to the Department;
- You can request and execute NTTCs 24 hours a day, seven days a week,
- You may choose to print NTTCs on your local printer, and
- TAP will maintain a log of all issued and executed NTTCs.

To use TAP, go to <https://tap.state.nm.us>. For assistance with using TAP, please call 1-866-285-2996.

To apply for NTTCs if one has never been issued to your business:

1. Log in to TAP.
2. Click the link for the CRS account under which you wish to apply for NTTCs (If you have multiple tax accounts with the Department).
3. Click the **View NTTC Options** link beneath the **I Want To** section. The window will default to the **Authorizations** tab.
4. Click on the **Request Authorization** header link. We advise that you read the **Purpose Window** for important information on the NTTC process.
5. Proceed by clicking the **Next** button.
6. Select the **NTTC Type** drop-down field and select the NTTC type for which you are requesting approval.

**Note:** Depending on the type of NTTC you are requesting, additional information or forms may be required (see NTTCS WITH SPECIAL APPLICATION REQUIREMENTS on page 2).

Click the **Next** button. Review the information on the NTTC Application page and click on the **Submit** button. You will receive a confirmation that your application has been submitted. You can click on the **Print Confirmation Number** or the **OK** button.

Select the **NTTC** tab. Under the Authorizations tab you will be able to view the status of your request. Once your request is approved, you will be authorized to request NTTCs. Taxpayers may use TAP to make both initial and additional applications for NTTCs. If the taxpayer knows the CRS identification number of the seller or lessor the NTTC can be executed online using TAP. If the lessor or seller also has a TAP account, they will be able to locate the certificate in their TAP account so they have a copy for their records. There is no limit on the number of NTTCs a taxpayer may execute through TAP once they have been approved. If a paper copy is needed, a NTTC may be printed on a local printer. However, the NTTC does not need to be printed if executed through TAP. For more information on how to properly execute an NTTC, see "CONTENTSEXECUTING AN NTTC" on page 7.

### **APPLYING FOR NTTCS MANUALLY**

A taxpayer who does not know the CRS identification number of the seller or lessor, or does not have access to a computer, may submit a paper **Form ACD-31050**, *Application for Nontaxable Transaction Certificates*. This application can be used to request up to five paper NTTCs at a time. The application may be printed from our website at [www.tax.newmexico.gov](http://www.tax.newmexico.gov). It also is included in the "CRS-1 Filer's Kit", which the Department mails to registered taxpayers who file a paper return every June and December. Mail the completed application to the address on that form.

Before applying for additional paper NTTCs, the taxpayer must record the executed NTTC information online or on the **Form ACD-31098**, *Nontaxable Transaction Certificate Report*. **Form ACD-31098** also may be printed from our website.

### **USING NTTCS**

A buyer or lessee executes an NTTC by giving it to the seller or lessor to keep in their files as documentation for deductions or exemptions of receipts the seller or lessor takes for qualified transactions. The buyer or lessee does not need to give a seller or lessor an NTTC for every deductible transaction. The seller or lessor can refer an unlimited number of transactions to the one NTTC given by the buyer or lessee.

Deductions from gross receipts are provided by statutes, but the law does not require a seller or lessor to take any deduction. If a seller or lessor chooses to take a deduction, the statute offering the deduction *may require* the buyer or lessee to give the seller or lessor an NTTC or alternative evidence as documentation for the deductible transaction.

Many of the statutes offering deductions from gross receipts neither require NTTCs nor specify them as optional. Such deductions may be taken and documented by using alternative evidence that they were legitimately claimed because the transactions met the statutory requirements. Such forms of evidence include copies of checks submitted in payment, copies of contracts, and invoices identifying the buyer or

lessee. A statute may require specific documentation, such as Section 7-9-58, which requires the seller of, among other items, feed and fertilizers for livestock to receive from the buyer a statement in writing that the buyer is regularly engaged in the business of farming, ranching or raising animals for their hides or pelts.

Effective April 7, 2011, sellers of tangible personal property for resale may support their deductions for the sale with evidence other than an NTTTC, as specified in rule. See Section 7-9-43 for more information on what alternative evidence is acceptable.

Effective March 2, 2018, Section 7-9-43, was amended allowing taxpayers to provide alternative evidence instead of an NTTTC for most deductions. However, NTTTCs are still available and are conclusive evidence that the transaction that took place was deductible if the NTTTC was accepted in good faith and was properly executed by the purchaser. For more information on what can be accepted as alternative evidence see **B.200.32, *Alternative Evidence for Deductions***. **Note: For the deduction provided by Section 7-9-46, the Type 11 or 12 NTTTC is required and alternative evidence may not be used.**

### **DEDUCTIONS THAT USE NTTTCs OR ALTERNATIVE EVIDENCE**

The buyer or lessee **may** give an NTTTC to the seller or lessor to document deductions of receipts from these transactions:

1. Sales, to manufacturers, of tangible personal property that will become an ingredient or component of the manufactured product (Section 7-9-46(A)), **Type 2 NTTTC**;
2. Sales of tangible personal property or licenses for resale by the buyer in the ordinary course of business, either alone or in combination with other tangible personal property or licenses (Section 7-9-47), **Type 2 NTTTC**;
3. Leases of tangible personal property or licenses for subsequent lease by the lessee in the ordinary course of business (Section 7-9-50), **Type 2 NTTTC**. Excepted from this deduction are leases of furniture or appliances, which may be deducted under Section 7-9-53 without execution of an NTTTC, and leases of coin-operated machines and manufactured homes;
4. Sales of tangible personal property or licenses for subsequent lease by the lessee in the ordinary course of business (Section 7-9-49), **Type 2 NTTTC**. Excepted from this deduction are leases of furniture or appliances, which may be deducted under Section 7-9-53 without execution of an NTTTC, and leases of coin-operated machines and manufactured homes;
5. Sale of prosthetic devices by a person who is licensed to practice medicine, osteopathic medicine, dentistry, podiatry, optometry, chiropractic or professional nursing (Section 7-9-73), **Type 2 NTTTC**;
6. Sale of fuel that is loaded or used by a common carrier in a locomotive engine when certain investment requirements have been met (Section 7-9-110.3), **Type 2 NTTTC**;
7. Sale of a service for resale by the buyer in the ordinary course of business, if the resale of the service is subject to gross receipts tax or governmental gross receipts tax (Section 7-9-48), **Type 5 NTTTC**;
8. Sale, to a manufacturer, of a service performed directly upon tangible personal property the manufacturer is manufacturing, or upon ingredients or components of that manufactured property (Section 7-9-75), **Type 5 NTTTC**;
9. Sale of aerospace services for resale by the buyer in the ordinary course of business, if the resale of the service is to a 501(c)(3) organization (other than a national laboratory) or the United States (Section 7-9-54.1), **Type 5 NTTTC**;

10. Sales of construction materials that will become ingredients or components of a construction project that is either subject to gross receipts tax upon completion or that takes place on Indian tribal territory (Section 7-9-51), **Type 6 NTTC**;
11. Sales of construction services to be performed on a construction project that is either subject to gross receipts tax upon completion or that takes place on Indian tribal territory (Section 7-9-52), **Type 6 NTTC**;
12. Leases of construction equipment to a person engaged in the construction business that is used at the construction location of a construction project that is subject to gross receipts tax upon its completion or that takes place on Indian tribal territory (Section 7-9-52.1), **Type 6 NTTC**;
13. Sales of tangible personal property not related to a construction project to 501(c)(3) nonprofit organizations (except as provided in #14 below), (Section 7-9-60(A)) **Type 9 NTTC**;
14. Sales of construction materials to 501(c)(3) nonprofit organizations that are organized for the purpose of providing homeownership opportunities to low-income families, (Section 7-9-60(A)) **Type 9 NTTC**;
15. Sales of tangible personal property or services that are eligible generation plant costs to a person that holds an interest in a qualified generating facility (Section 7-9-114), **Type 10 NTTC**;
16. Sales of tangible personal property (other than utilities) to a manufacturer that are consumed in the manufacturing process (Section 7-9-46(B)), **Type 11 NTTC. Please note; a Type 11 NTTC must be used as alternative evidence is not allowed**;
17. Sales of utilities to a manufacturer that are consumed in the manufacturing process (Section 7-9-46(B)), **Please note: a Type 12 NTTC must be used as other alternative evidence is not allowed**;
18. Sales of property and services, and leases of property, to a qualified film production company (Section 7-9-86), or to a diplomat or mission (Section 7-9-89), **Type 16 NTTC**;
19. A **Type 15 NTTC** may be executed by qualified federal contractors on a contract-by-contract basis (Regulation 3.2.205.11 NMAC). A copy of the federal contract is required;
20. For agencies of United States and New Mexico governments' purchases of construction material that is tangible personal property. (Section 7-9-54 (A)(3)), **Type 17 NTTC**;
21. For 501(c)(3) organizations' purchases of construction material that is tangible personal property.. (Section 7-9-60 (B)), **Type 17 NTTC**;
22. Sales of construction equipment used in the new facility construction of a sole community provider hospital located in a federally designated health professional shortage area by a foundation or a nonprofit organization that has entered into a written agreement with a county to pay at least 95% of the costs of new facility construction of that sole community provider hospital (Section 7-9-100), **Type 2 NTTC**;
23. Sales of engineering and architectural services used in the new facility construction of a sole community provider hospital located in a federally designated health professional shortage area by a foundation or a nonprofit organization that has entered into a written agreement with a county to pay at least 95% of the costs of new facility construction of that sole community provider hospital (Section 7-9-99), **Type 5 NTTC**;
24. Sales of services to an out-of-state buyer when the delivery and initial use of the product of the service occur outside New Mexico (Section 7-9-57), **Type 5 NTTC**;

25. Sales of construction services used in the new facility construction of a sole community provider hospital located in a federally designated health professional shortage area by a foundation or a nonprofit organization that has entered into a written agreement with a county to pay at least 95% of the costs of new facility construction of that sole community provider hospital (Section 7-9-99), **Type 6 NTTC**;
26. Sales of construction material used in the new facility construction of a sole community provider hospital located in a federally designated health professional shortage area by a foundation or a nonprofit organization that has entered into a written agreement with a county to pay at least 95% of the costs of new facility construction of that sole community provider hospital (Section 7-9-100), **Type 6 NTTC**;
27. Sales of tangible personal property, other than construction materials, to agencies of the United States and New Mexico governments (Section 7-9-54), **Type 9 NTTC**;
28. Sales of tangible personal property to Indian tribes, nations or pueblos for use on Indian reservations or pueblo grants (Section 7-9-54), **Type 9 NTTC**; and
29. Sales of tangible personal property to federal or state-chartered credit unions (Sections 7-9-54 and 7-9-61.2) **Type 9 NTTC**.

In limited circumstances, **Type NTTC-OSB** certificates (Regulation 3.2.201.17 NMAC) may be executed by out-of-state buyers for the purchase of tangible personal property that will be resold or become an ingredient or component of a manufactured product, or for services performed on a manufactured product. **Type NTTC-OSBs must be obtained by the seller.** Please see “Type OSB NTTCs for Out-of-State Buyers” on page 11 of this publication.

#### **EXECUTING AN NTTC**

By Department regulation, “execute” means the process by which a taxpayer completes an NTTC form by entering the required information about the vendor to whom the NTTC is to be delivered. “Issuing” an NTTC, on the other hand, is the process by which the Department supplies an NTTC to a requesting taxpayer. An NTTC may not be executed by anyone other than the person to whom the Department has issued it.

A buyer or lessee may execute an NTTC online or by means of a paper NTTC obtained on application to this Department.

Once you have been issued an NTTC type to execute an NTTC online, the buyer or lessee must access TAP at <https://tap.state.nm.us> and:

1. Log in to TAP and select the CRS account that you wish to execute the NTTC under.
2. Under the **I Want To** section, select the **View NTTC Options** link.
3. Click on the **Buyer’s Certificate** tab.
4. Click on the **Execute NTTC** header link.
5. Select the type of certificate you would like to execute from the drop-down field.
6. Enter the Seller/Lessor CRS ID Number and click the **Next** button.
7. Verify the information and click the **Submit** button. You will receive a confirmation number.
8. Click the **OK** button. You will be directed back to the **Buyer’s Certificates** window.
9. Locate the certificate in the list and click the **Print** hyperlink to view and/or print.

A seller or lessor can use TAP to view and confirm records of NTTCs executed online. The Department recognizes the online record of an executed NTTC as sufficient documentation for a deduction, but the buyer or lessee may print an NTTC executed online if the seller or lessor requests a hard copy.

To execute a paper NTTC, the buyer or lessee must enter on the NTTC the seller or lessor’s name, CRS Identification Number and address and the date. Buyers or lessees who do not have Internet access must complete and submit to this Department a **Form ACD-31098, Nontaxable Transaction Certificate Report.**

The Department will then enter into TAP the NTTC execution information provided on that form. A buyer or lessee who **does** have access to our TAP system and has executed a paper NTTC must then enter the execution information into TAP.

The seller or lessor may keep the hard copy NTTC in his or her business records but, as with NTTCs executed online, the record of the executed NTTC in TAP is sufficient documentation for the deduction.

#### **“GOOD FAITH” ACCEPTANCE OF AN NTTC**

A seller or lessor may accept a properly executed NTTC from a customer in good faith that the customer will use the property or service in a nontaxable manner. A seller or lessor who has accepted a properly executed NTTC has conclusive evidence that the proceeds from the transaction are deductible. *An example* for an NTTC that clearly is inappropriate or inapplicable to a transaction would be the acceptance of a Type 5 NTTC that allows the sale of tangible personal property for a buyer who is purchasing services for resale of a service or acceptance of a Type 9 NTTC from a government entity for the purchase of services. Note: If a purchaser executes an NTTC with a seller or lessor and the property or service purchased was not used for the nontaxable purchase as outlined on the certificate type or has provided materially false or inaccurate information, the purchaser is liable for an amount equal to any tax, penalty and interest the seller would have been required to pay at the time of purchase.

Any person who knowingly or willfully provides false or inaccurate information on a NTTC or 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.

#### **EXECUTING AN NTTC RETROACTIVELY**

A taxpayer should possess the proper NTTC at the time the Form CRS-1 is filed for the receipts from which the transaction is due. The taxpayer may, however, accept the NTTC at any time following the transaction (within the statute of limitations).

A taxpayer who has filed a Form CRS-1 and paid gross receipts tax on receipts from transactions that could have originally been deducted had an NTTC or alternative evidence been executed may obtain the NTTC and request a refund (within the statute of limitations) of the overpaid gross receipts tax for the corresponding report period(s). The Form CRS-1 that was filed during the time the transaction took place would have to be amended and the request for refund will need to be submitted to the Department using **Form RPD-41071**, *Application for Tax Refund*.

A taxpayer may not accumulate the allowable deductible receipts for prior report periods and take the entire amount as a deduction for the period in which the proper NTTC or other documentation is received.

Note: The Department may not approve a refund for a prior reporting period, nor should the NTTC be accepted retroactively, if the NTTC executed required a time sensitive or time specific document to allow the deduction associated with the approved NTTC(s). For examples of those types of NTTCs, please see page 2 “NTTCS WITH SPECIAL APPLICATION REQUIREMENTS”.

#### **PHOTOCOPIES OF NTTCs**

An NTTC may be photocopied only:

1. by this Department or, upon this Department’s request, by the person to whom the NTTC has been issued or the seller or lessor who has accepted the NTTC for audit, tax compliance or tax administration purposes;
2. by the person to whom the NTTC has been issued by this Department for internal record-keeping purposes or in response to a request from a seller or lessor to whom the person has delivered an executed NTTC for a duplicate of the executed NTTC; and



3. by the seller or lessor who has accepted in good faith an NTTC executed by a buyer or lessee for internal record-keeping purposes only.

No buyer, lessee, seller or lessor may execute or attempt to execute a photocopy or other reproduction of a previously executed NTTC.

#### **GROSS RECEIPTS TAX LIABILITY FOR MISUSE OF NTTCs**

Property and services purchased with an NTTC must be used in the manner indicated in statute and stated on the NTTC. When the property or services are used otherwise, the person who executed the NTTC is liable for the gross receipts tax **that would have been owed by the seller** on the value of the property or services used inappropriately, plus any applicable penalty and interest.

The *value* of tangible property is the adjusted basis of the property for federal income tax purposes determined as of the time of acquisition or introduction into New Mexico or of conversion to use, whichever is later. If no adjusted basis for federal income tax purposes is established for the property, a reasonable value of the property must be used.

Any gross receipts tax due under this provision is reported, along with normal gross receipts tax and New Mexico withholding tax, on a Form CRS-1. Again, the tax due under this provision is what would have been owed by the seller of the tangible personal property or service, so the receipts must be reported using the business location of the seller, if different from the buyer.

**Personal Use:** A buyer or lessee may execute an NTTC only for purchases related to business. A person may not execute an NTTC to avoid paying a vendors passed-on gross receipts tax on property or services for personal use. When a buyer or lessee executes an NTTC to make a business purchase according to the proper use of that NTTC, but subsequently converts the property or service from a business use to a personal use, the buyer or lessee owes gross receipts tax, penalty and interest, on the value of the property or service used personally.

*Example 1:* Z operates a furniture store in New Mexico. Z executes an NTTC to all of Z's suppliers. Z decides to take a refrigerator out of stock for use in Z's home. Because the gross receipts tax was not paid at the time of the acquisition, Z must now pay the gross receipts tax that would have been owed by the seller on the value of the refrigerator.

*Example 2:* A, a garage operator, has the radiator on A's service truck repaired by B, a radiator repair specialist. A has previously executed an NTTC to B. Therefore, B does not pay gross receipts tax on this transaction. In this case A is not reselling the radiator repair service to one of A's customers, so A must pay the gross receipts tax that would have been owed by the seller on the value of the repair service.

*Example 3:* G owns and operates a grocery store. G bought two dozen brooms for resale and executed an NTTC. G then removed six of these brooms from stock for use in cleaning the store. G must pay the gross receipts tax that would have been owed by the seller on the value of the six brooms removed from stock.

**Promotional Gifts:** Gross receipts tax also applies to the value of merchandise purchased with an NTTC but given away for *advertising or promotional purposes* without a concurrent purchase being required (Regulation 3.2.10.12 NMAC). When a taxpayer requires a concurrent purchase with the "free" merchandise no additional tax is due.

*Example:* Restaurant X gives a free drink to customer Y on Y's birthday. The restaurant is not subject to tax on the value of the free drink if the drink is only given when there is a requirement of a concurrent purchase. If a concurrent purchase is not required, the restaurant is liable for gross receipts tax on the value of the drink if the liquor was acquired by the restaurant in a transaction which was not subject to gross receipts tax because the restaurant executed an NTTC or other alternative evidence to its supplier.

When restaurants or cocktail lounges promote their business by offering one free drink to a customer for every drink purchased, the restaurant or lounge is not subject to the compensating tax on the value of the free drink. In this situation, the drinks are only “given away” when a concurrent purchase is required.

**Construction Materials Used on Nontaxable Projects:** Construction materials purchased with an NTTC are subject to gross receipts tax if they are used on a project not subject to gross receipts tax upon completion (Regulation 3.2.10.15 NMAC). This regulation applies to transactions and uses occurring on or after July 1, 2000, but does not apply to projects located on tribal territory which, under federal law, the state cannot tax.

*Example:* X Construction Company purchases a truckload of lumber from A Lumber Company, with which X has previously executed the appropriate NTTC. X takes delivery of, and title to, the lumber at A’s yard in New Mexico. X then transports the lumber by its own vehicle to a location outside New Mexico and incorporates the lumber into a construction project outside New Mexico. X is subject to pay the gross receipts tax that would have been owed by the seller on the value of the lumber purchased from A Lumber Company since the construction project outside New Mexico is not subject to gross receipts tax upon completion.

**NOTE:** A 501(c)(3) organization that is organized for the purpose of providing home ownership opportunities to low income families may execute a Type 9 NTTC for the purchase of construction materials. If the 501(c)(3) organization delivering the Type 9 NTTC employs the tangible personal property in the conduct of an unrelated trade or business, then the gross receipts tax that would have been owed by the seller tax will be due.

**Construction Projects Occupied or Leased Before Sale:** A person in the construction business may execute NTTCs to purchase construction materials and construction services when the project is subject to gross receipts tax upon completion, or when the project is located on the tribal territory of an Indian nation, tribe or pueblo. The gross receipts tax that would have been owed by the seller is owed on such materials and services when the construction project is initially leased or occupied before being sold (Regulation 3.2.10.13 NMAC).

**Business Expenses:** Business services performed in New Mexico that are deductible by the buyer as ordinary and necessary business expenses under the United States Internal Revenue Code may not be purchased with NTTCs or using alternative evidence. Such use of NTTCs or alternative evidence for such purchases is an inappropriate use.

**Capital Expenditures:** NTTCs may not be executed to purchase services performed in New Mexico which are capitalized under the provisions of the United States Internal Revenue Code. When a taxpayer acquires such services through the execution of an NTTC, the gross receipts tax that would have been owed by the seller is due on the value of the services.

**Dealer Use of Parts for Sale:** An automobile dealer may execute an NTTC to buy parts, motor oil and similar items for use in vehicles held for sale. However, a dealer who uses such items in vehicles used by the dealer in the operation of the dealership, rather than vehicles held for sale, is liable for the gross receipts tax that would have been owed by the seller tax on the value of those items (Regulation 3.2.10.18 NMAC).

## **OTHER ACCEPTABLE CERTIFICATES**

To obtain NTTCs, the applicant must have a New Mexico business tax identification number (CRS Identification Number) issued by this Department. A buyer or lessee who has no gross receipts tax, compensating tax, New Mexico withholding tax or New Mexico corporate income or franchise tax liability and is **not required** to register with this Department may, for certain transactions, execute special certificates in place of standard NTTCs. These certificates, described below, are:

Type OSB NTTCs for out-of-state buyers;  
Multi-jurisdictional Uniform Sales and Use Tax Certificates (MTCs); and  
Border State Uniform Sale for Resale Certificates (BSCs).

### **TYPE OSB NTTCS FOR OUT-OF-STATE BUYERS**

Unlike all other types of certificates, NTTC-OSBs must be obtained by the seller rather than the buyer, using either the paper NTTC application or TAP. Any person who is selling tangible personal property or manufacturing services in New Mexico and is registered with this Department for gross receipts tax purposes may apply for blank NTTC-OSB forms. The seller then gives the NTTC-OSB to the buyer to complete and return to the seller. Like a Type 2 NTTC, the NTTC-OSB documents the seller's deduction of receipts from sales of property for resale or for use as an ingredient or component of a manufactured product. This certificate also may be used to document the deduction of receipts from performing a manufacturing service directly upon tangible personal property that the buyer is in the business of manufacturing.

To qualify to execute an NTTC-OSB, a buyer must:

1. Maintain its principal place of business outside New Mexico;
2. Be registered with, or licensed by, the state or foreign jurisdiction in which the buyer maintains a place of business for sales or similar taxes;
3. Not maintain a business location in New Mexico;
4. Not have receipts that are subject to New Mexico gross receipts tax; and
5. Not be registered as an agent to collect and pay over New Mexico gross receipts tax.

Before the seller gives the buyer an NTTC-OSB the seller must obtain proof that the buyer is registered with, or licensed by, the appropriate taxing agency of another state or foreign jurisdiction for sales tax or similar tax program. The seller must obtain the buyer's license number or other identification number issued by the appropriate agency of the state or foreign jurisdiction in which the buyer engages in business. The seller must also obtain alternative evidence clearly showing that the buyer is engaged in business in that state. That documentation includes business cards, purchase orders or letterhead identifying the buyer, the buyer's business location, type of business and business name. The seller must attach the supporting documents to the seller's copy of the NTTC-OSB and keep it the same way other types of NTTCS are retained by the seller.

The seller's deduction is not valid, and the receipts will be taxable, if the supporting documents are not obtained or if the buyer does not enter all required information on the NTTC-OSB provided by the seller.

### **MULTI-JURISDICTIONAL UNIFORM SALES AND USE TAX CERTIFICATES (MTCs)**

New Mexico sellers may accept the Multijurisdiction Uniform Sales and Use Tax Certificate (MTC) from out-of-state buyers **not required to be registered in New Mexico** as documentation for three types of deductions:

1. Receipts from sales of tangible personal property or licenses for resale (Section 7-9-47);
2. Receipts from sales of tangible personal property to manufacturers who will incorporate the property as an ingredient or component part of the product the manufacturer is in the business of making (Section 7-9-46A); and
3. Receipts from services performed directly upon tangible personal property a manufacturer is in the business of making, or upon ingredient or component parts of that product (Section 7-9-75).

MTCs are issued by the multistate tax commission or a state, other than New Mexico, that is a member of that organization. The certificates may be obtained through the commission's web site at [www.mtc.gov](http://www.mtc.gov).

### **BORDER STATE UNIFORM SALE FOR RESALE CERTIFICATES**

New Mexico sellers may accept the Border State Certificate (BSC) from out-of-state buyers from Arizona, California, Oklahoma, Texas, Utah and the United States of Mexico if the buyers are not required to register with this Department and who:

1. Wish to buy goods for resale or incorporation as ingredients or components of a manufactured product, or
2. Wish to buy a manufacturing service that will be performed on a manufactured product or ingredient or component part thereof, and
3. Will transport the tangible personal property across state or national boundaries.

For further information regarding BSCs, please contact the Border States Caucus. That organization maintains a web site at [www.borderstatescaucus.org](http://www.borderstatescaucus.org).

## **TAXPAYER INFORMATION**

**General Information.** FYIs and Bulletins present general information with minimum technical language. All FYIs and Bulletins are free of charge and available through all local tax offices and on the Taxation and Revenue Department's website at <http://www.tax.newmexico.gov/forms-publications.aspx>

**Regulations.** The Department establishes regulations to interpret and exemplify the various tax acts it administers. Current statutes with regulations can be located on the Department's website for free at <http://www.tax.newmexico.gov/statutes-with-regulations.aspx>. Specific regulations are also available at the State Records Center and Archives or on its web page at <http://www.srca.nm.gov/>

The Taxation and Revenue Department regulation book is available for purchase from the New Mexico Compilation Commission. Order regulation books directly from the New Mexico Compilation Commission at <https://www.nmcompcomm.us/>

**Rulings.** Rulings signed by the Secretary and approved by the Attorney General are written statements that apply to one or a small number of taxpayers. A taxpayer may request a ruling (at no charge) to clarify its tax liability or responsibility under specific circumstances. The Department will not issue a ruling to a taxpayer who is undergoing an audit, who has an outstanding assessment, or who is involved in a protest or litigation with the Department over the subject matter of the request. The Department's rulings are compiled and available on free of charge at <http://www.tax.newmexico.gov/rulings.aspx>.

The request for a ruling must be in writing, include accurate taxpayer identification and the details about the taxpayer's situation, and be addressed to the Secretary of the Taxation and Revenue Department at P.O. Box 630, Santa Fe, NM 87504-0630. The taxpayer's representative, such as an accountant or attorney, may request a ruling on behalf of the taxpayer but must disclose the name of the taxpayer. While the Department is not required to issue a ruling when requested to do so, every request is carefully considered.

The Secretary may modify or withdraw any previously issued ruling and is required to withdraw or modify any ruling when subsequent legislation, regulations, final court decisions or other rulings invalidate a ruling or portions of a ruling.

**Public Decisions & Orders.** All public decisions and orders issued since July 1994 are compiled and available on the Department's web page free of charge at <http://www.tax.newmexico.gov/tax-decisions-orders.aspx>.

*This publication provides general information. It does not constitute a regulation, ruling, or decision issued by the Secretary of the New Mexico Taxation and Revenue Department. The Department is legally bound only by a regulation or a ruling [7-1-60, New Mexico Statutes Annotated, 1978]. In the event of a conflict between FYI and statute, regulation, case law or policy, the information in FYIs is overridden by statutes, regulations and case law. Taxpayers and preparers are responsible for being aware of New Mexico tax laws and rules. Consult the Department directly if you have questions or concerns about information provided in this FYI.*

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**FOR FURTHER ASSISTANCE**

Tax District Field Offices and the Department's call center can provide full service and general information about the Department's taxes, taxpayer access point, programs, classes, and forms. Information specific to your filing situation, payment plans and delinquent accounts.

**TAX DISTRICT FIELD OFFICES**

**ALBUQUERQUE**

10500 Copper Pointe Avenue NE  
Albuquerque, NM 87123

**SANTA FE**

Manuel Lujan Sr. Bldg.  
1200 S. St. Francis Dr.  
Santa Fe, NM 87504

**FARMINGTON**

3501 E. Main St., Suite N  
Farmington, NM 87499

**LAS CRUCES**

2540 S. El Paseo Bldg. #2  
Las Cruces, NM 88004

**ROSWELL**

400 Pennsylvania Ave., Suite 200  
Roswell, NM 8820

For forms and instructions visit the Department's web site at <http://www.tax.newmexico.gov>

**Call Center Number:**

**1-866-285-2996**

**If faxing something to a tax district field office, please fax to:**

**Call Center Fax Number:**

**1-505-841-6327**

**If mailing information to a tax district field office, please mail to:**

Taxation and Revenue Department  
P.O. Box 8485  
Albuquerque, NM 87198-8485

For additional contact information please visit the Department's website at

<http://www.tax.newmexico.gov/contact-us.aspx>

*This information is as accurate as possible as of the date specified on the publication. Subsequent legislation, new state regulations and case law may affect its accuracy. For the latest information please check the Taxation and Revenue Department's web site at [www.tax.newmexico.gov](http://www.tax.newmexico.gov).*

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