
FYI-204

New Mexico
Taxation and Revenue Department

FOR YOUR INFORMATION

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

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.

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

Contents

Introduction to NTTCs	2
Obtaining NTTCs	2
NTTCs with Special Application Requirements	3
Applying for NTTCs Online through the Taxpayer Access Point (TAP)	4
Applying for NTTCs Manually	4
Using NTTCs.....	5
Alternative Evidence	5
Deductions that Use NTTCs or Alternative Evidence	6
Executing an NTTC.....	8
“Good Faith” Acceptance of an NTTC	9
Executing an NTTC Retroactively.....	9
Photocopies of NTTCs.....	9
Gross Receipts TAX Liability for Misuse of NTTCs	10
Other Acceptable Certificates	12
Type OSB NTTCs for Out-of-State Buyers	12
Multi-Jurisdictional Uniform Sales and Use Tax Certificates (MTCs).....	12
Border State Uniform Sale for Resale Certificates	13
Taxpayer Information	14
For Further Assistance.....	15

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 and reported on the tax return. Gross receipts tax is reported on **Form TRD-41413, Gross Receipts Tax Return (prior to July 1, 2021, on Form CRS-1)**. In deductible transactions, the seller or lessor incurs no gross receipts tax to bill to the buyer or lessee, and the buyer or lessee 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 (Department) on a **Form TRD-41413, Gross Receipts Tax Return** (Prior to July 1, 2021, **Form CRS-1**). This is important because the information that is reported is used to communicate to legislators which deductions are being utilized in New Mexico. *Exempt* receipts are receipts that, under state law, do not need to be reported to the Department on a tax return. For more information on exemptions and deductions, see **FYI-105, Gross Receipts & Compensating Taxes – An Overview**.

Sellers or lessors, depending on a deduction or exemption may be able to request a Nontaxable Transaction Certification (NTTC) from the buyer or lessee. This FYI describes the NTTCs that are available from the Department and what other documentation can be used in place of an NTTC. Please note, not all deductions have an NTTC associated with them, and alternative evidence will need to be used. For more information on alternative evidence, see ALTERNATIVE EVIDENCE on page 5, below.

OBTAINING NTTCS

To obtain NTTCs, an applicant must have a New Mexico Business Tax Identification Number (NMBTIN), previously known as a CRS Identification Number. This is an 11-digit number issued to a business by the Department. A taxpayer who has a NMBTIN is "registered" with the Department. A NMBTIN is obtained online on the Taxpayer Access Point (TAP) or by submitting a completed **Form ACD-31015, Business Tax Registration Application and Update Form** to the Department. The Taxpayer Access Point (TAP) may be accessed here: <https://tap.state.nm.us/tap>. In a TAP account you will be able to complete, submit, and view prior returns, make payments, execute NTTCs, submit applications for refund, and much more.

If your business account has been closed with the Department you cannot apply for NTTCs under that NMBTIN. In the past, NTTCs were located in the CRS account. Starting July 1, 2021, all NTTCs both prior and future can be accessed in the gross receipts tax account. All the NTTCs are associated with a NMBTIN 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.

Once you are registered with the Department and you have your NMBTIN number in order to access NTTC's you will need fill out **Form ACD-31050, Application for Nontaxable Transaction Certificate (NTTC)**. All forms may be printed from our web site <https://www.tax.newmexico.gov/forms-publications/> or obtained from the Department by contacting any of the local tax district offices listed on page 15.

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 when applying for the NTTC. 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 15. 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 NTTCs through the TAP system for the type of NTTC approved.

The NTTC types and their additional application requirements are listed below:

Type 6 NTTC – Requires a contractor's license verification. The Construction Industries Division of the Regulation and Licensing Department no longer requires 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 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 – Deduction available prior to July 1, 2023. 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. (Section 7-9-114 NMSA 1978 repealed effective July 1, 2023.)

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 Tax 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 – Available prior to July 1, 2023. A qualified film production company must submit proof of registration with the Film Division of the New Mexico Economic Development Department. (Section 7-9-86 NMSA 1978, applying to qualified film production companies, repealed effective July 1, 2023.)

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 RPD-41250**, *Application for Type 17 Nontaxable transaction Certificates*. **Note:** This NTTC is project specific, you will need to reapply for every contract. **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:

- You do not have to mail or take in a paper application to a district tax office for NTTCs;
- You can request and execute NTTCs 24 hours a day, seven days a week,
- NTTCs are executed immediately and can be viewed by both the seller and the buyer;
- You may choose to print NTTCs on your local printer or access executed NTTCs on your account, 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 gross receipts tax 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. The Department advises 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 3).

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 NMBTIN 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. However, only one NTTC type needs to be issued to each seller by a buyer unless the NTTC is project specific. All NTTCs can be accessed online in the future and are not required to be printed but if a paper copy is needed, a NTTC may be printed on a local printer from TAP. For more information on how to properly execute an NTTC, see "EXECUTING AN NTTC" on page 8.

APPLYING FOR NTTCS MANUALLY

A taxpayer who does not know the NMBTIN 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. It also is included in the "GRT Filer's Kit", which the Department mails to registered taxpayers who file a paper return every June and December.

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. If the NTTC is executed in TAP, both the buyer or lessee and the seller or lessor are able to see the NTTC in their TAP account. The buyer or lessee does not need to give a seller or lessor an NTTC for every deductible transaction that is covered by one NTTC type. The seller or lessor can refer an unlimited number of transactions to the one NTTC given by the buyer or lessee. For example, if the buyer or lessee can provide one Type 2 and one Type 5 NTTC to the seller or lessor.

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.

ALTERNATIVE EVIDENCE

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 March 2, 2018, Section 7-9-43, was amended allowing taxpayers to provide alternative evidence instead of an NTTC for most deductions. However, NTTCs are still available and are conclusive evidence that the transaction that took place was deductible if the NTTC was accepted in good faith and was properly executed by the purchaser. **Note:** For the deduction provided by Section 7-9-46(B), if the deduction is being claimed by sellers of utilities, an agreement with the Department pursuant to Section 7-1-21.1 NMSA 1978 and the Type 12 NTTC is required, and alternative evidence may not be used.

Alternative evidence includes:

- Invoices or contracts that identify the nature of the transaction;
- Documentation as to the purchaser's use or disposition of the property or service;
- A statement from the purchaser indicating that the purchaser sold or intends to resell the property or service purchased from the seller, either by itself or in combination with other property or services, in the ordinary course of business. The statement from the purchaser shall include:
 - the seller's name;
 - the date of the invoice or date of the transaction;
 - the invoice number or a copy of the invoice;
 - a copy of the purchase order, if available;
 - the amount of purchase; and
 - a description of the property or service purchased or leased; or
- Any other evidence that demonstrates the facts necessary to establish entitlement to the deduction.

DEDUCTIONS THAT USE NTTCS OR ALTERNATIVE EVIDENCE

The buyer or lessee **may** give an NTTC 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 NTTC**;
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 NTTC**;
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 NTTC**. Excepted from this deduction are leases of furniture or appliances, which may be deducted under Section 7-9-53 without execution of an NTTC, 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 NTTC**. Excepted from this deduction are leases of furniture or appliances, which may be deducted under Section 7-9-53 without execution of an NTTC, 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 NTTC**;
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 NTTC**;
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 NTTC**;
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 NTTC**;
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 NTTC**;
10. Sale of professional services to a person engaged in the business of manufacturing that is related to the product that the buyer is in the business of manufacturing. "Professional services" mean accounting services, architectural services, engineering services, information technology services and legal services (Section 7-9-46.1), **Type 5 NTTC**;
11. 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**;
12. 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**;
13. 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**;

14. Sales of tangible personal property not related to a construction project to 501(c)(3) nonprofit organizations (except as provided in #15 below), (Section 7-9-60(A)) **Type 9 NTTC**;
15. 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**;
16. 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** (Section 7-9-114 NMSA 1978 repealed effective July 1, 2023);
17. Sales of tangible personal property that is a manufacturing consumable (other than a utility) to a manufacturer or manufacturing service provider that is consumed in the manufacturing process (Section 7-9-46(B)), **Type 11 NTTC**;
18. Sales of utilities that are manufacturing consumables to a manufacturer or manufacturing service provider (Section 7-9-46(B)), **Please note: a Type 12 NTTC must be used if the deduction is being claimed by sellers of utilities that are parties to an agreement with the Department pursuant to Section 7-1-21.1 NMSA 1978, as alternative evidence is not allowed**;
19. Sale or lease of qualified equipment made or entered into with a person engaged in the business of manufacturing or a manufacturing service provider (Section 7-9-46(C)), **Type 11 NTTC**. The Manufacturer or manufacturing service provider shall not claim an investment credit for that same equipment.
20. Sales of property and services, and leases of property, to a diplomat or mission (Section 7-9-89), **Type 16 NTTC** (Section 7-9-86 NMSA 1978, applying to qualified film production companies, repealed effective July 1, 2023);
21. 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;
22. For agencies of United States and New Mexico governments for purchases of tangible property and only construction material that, whether removable or non-removable, is classified for depreciation purposes as three-year, five-year, seven-year or ten-year property, under Section 168 of the Internal Revenue Code of 1986. (Section 7-9-54(A)(3)); **Type 17 NTTC**;
23. For 501(c)(3) organizations for purchases tangible personal property and only construction material that, whether removable or non-movable, is classified for depreciation purposes as three-year property, five-year property, seven-year property or ten-year property, by Section 168 of the Internal Revenue Code of 1986. (Section 7-9-60(B)); **Type 17 NTTC**;
24. 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**;
25. 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**;
26. 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**;

27. 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**;
28. 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**;
29. Sales of tangible personal property, other than construction materials, or sales of licenses to use digital goods for the purpose of loaning those digital goods to the public, to agencies of the United States and New Mexico governments (Section 7-9-54), **Type 9 NTTC**;
30. Sales of tangible personal property, or sales of licenses to use digital goods for the purpose of loaning those digital goods to the public, to Indian tribes, nations, or pueblos for use on Indian reservations or pueblo grants (Section 7-9-54), **Type 9 NTTC**; and
31. 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 12 of this publication.

EXECUTING AN NTTC

By Department regulation, “**execute**” means the process by which a buyer or lessee completes an NTTC form by entering the required information about the vendor (seller or lessor) 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 taxpayer that has applied to be able to execute them. An NTTC may not be executed by anyone other than the person to whom the Department has issued the NTTC.

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

To execute an NTTC online to a seller or lessor that has been issued to you as a buyer or lessee, access TAP at <https://tap.state.nm.us>, and follow the steps below:

1. Log in to TAP and select the gross receipts tax account under which you wish to execute the NTTC.
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 NMBTIN 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, NMBTIN 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 the executed NTTC's 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* of 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.

EXECUTING AN NTTC RETROACTIVELY

A taxpayer should possess the proper NTTC at the time the **Form TRD-41413, Gross Receipts Tax Return** (Prior to July 1, 2021, **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 TRD-41413, Gross Receipts Tax Return** (Prior to July 1, 2021 **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 reporting period(s). The **Form TRD-41413, Gross Receipts Tax Return** (Prior to July 1, 2021, **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 reporting 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 3, “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 TRD-41413, Gross Receipts Tax Return** (Prior to July 1, 2021, **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 vendor 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 (NMBTIN) (previously known as 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.

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.

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>.

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 <https://www.tax.newmexico.gov/all-nm-taxes/statutes-with-regulations/>. 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 <https://www.tax.newmexico.gov/all-nm-taxes/rulings/>.

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/all-nm-taxes/tax-decisions-orders/>.

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.

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>.

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.

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.