



United States Department of State

*Office of Foreign Missions
Washington, D.C. 20520*

March 18, 2019

NOTICE

Diplomatic and Consular Tax Exemption in New Mexico

This notice outlines the procedures that foreign missions and their accredited members must follow in order to receive an exemption from gross receipts tax on purchases in the State of New Mexico.

New Mexico requires vendors to retain a Nontaxable Transaction Certificate (NTTC) for every tax-exempt sale they make. The foreign mission or member must request a “Type 16” NTTC from the New Mexico Taxation and Revenue Department prior to the planned purchase and present it to the vendor at the time of the purchase.

To request a Type 16 NTTC from the New Mexico Taxation and Revenue Department, e-mail William.Wheat@state.nm.us with the following information:

- Name and address of the foreign mission or individual purchaser
- A copy of the purchaser’s valid tax exemption card
- Vendor name and address
- Form ACD-31050 *Application for Nontaxable Transaction Certificates* (enclosed)

The New Mexico Taxation and Revenue Department will send the NTTC to the foreign mission or member by e-mail or U.S. mail. The foreign mission or member must then give the NTTC to the vendor at the time of purchase in order to receive tax exemption.

The purchaser may request a maximum of 5 certificates at one time. However, only 1 blank certificate will be issued.

For questions or concerns about this information, please contact the Office of Foreign Missions at 202-895-3500 ext. 2, by email at OFMTaxCustoms@state.gov, or the nearest OFM regional office.

New Mexico Taxation and Revenue Department
P.O. Box 5557
Santa Fe, New Mexico 87502-5557
www.tax.newmexico.gov/



INSTRUCTIONS FOR NONTAXABLE TRANSACTION CERTIFICATES

REQUIREMENTS: All New Mexico buyers/lessees who wish to execute Nontaxable Transaction Certificates (NTTCs) are required to register with the Taxation and Revenue Department using **FORM ACD-31015, Application for Business Tax Identification Number**. Once the registration process has been completed and a New Mexico business tax identification number (CRS number) has been issued for your business you can complete the *Application for Nontaxable Transaction Certificates* below and submit it to your closest district office.

CAUTION: Fraudulent statements made to obtain certificates, or fraudulent use of certificates received pursuant to this application with intent to evade or defeat the tax may subject the person or business to a fine of not more than ten thousand dollars (\$10,000) or imprisonment for not more than five (5) years or both (Sections 7-1-72 NMSA 1978 and 7-1-73 NMSA 1978).

NTTC DESCRIPTIONS AND AUTHORIZED USES: See reverse for complete descriptions of NTTC types.

- ◆ Type 2: for tangibles for resale, lease or re-lease, or for purchase by manufacturer
- ◆ Type 5: for services for resale, for export, or for services performed on manufactured products
- ◆ Type 6: for construction contractor's purchase of construction materials, construction services, construction-related services or for the lease of construction equipment
- ◆ Type 9: for purchase of tangible personal property by New Mexico or United States governments, 501(c)(3) organization, or credit unions
- ◆ Type 10: for purchase or lease of tangible personal property or services by a person who holds an interest in a qualified generating facility
- ◆ Type 11: for purchase of tangible personal property that is consumed in the manufacturing process¹
- ◆ Type 12: for purchase of utilities that are consumed in the manufacturing process¹
- ◆ Type 15: for tangible personal property purchased by qualified federal contractors
- ◆ Type 16: for sales of property, services and leases to qualified film production companies, accredited foreign missions, and their accredited members
- ◆ Type OSB NTTCs are issued to registered New Mexico sellers/lessors to execute to Out-of-State Buyers who are not registered with the Department, but who will resell tangible personal property outside of New Mexico

¹ An alternative application form must be completed to request the Type 11 and 12 NTTCs: Please complete **Form RPD-41378, Application for Type 11 or 12 Nontaxable Transaction Certificates**, available online at www.tax.newmexico.gov or from your local district office.

Taxpayer Access Point (TAP) for NTTCs: The Department encourages all taxpayers to use TAP to apply for, execute, record, print and request additional NTTCs online. If you know the seller's/lessor's CRS identification number to whom you wish to execute a NTTC, you may immediately execute the NTTC online. When the recipient's CRS identification number is known, there is no limit to executing NTTCs on TAP, but you may request up to five (5) NTTCs to be executed at a later date if the seller's/lessor's name and CRS identification number is not known. You must first record executed NTTC information before applying for additional NTTCs to be executed at a later date. Please note that on the TAP system third parties (e.g., CPAs, accountants, bookkeepers, etc.) cannot request or execute NTTC's on behalf of their clients/employers. For instructions on how to obtain NTTCs online, go to <https://tap.state.nm.us>.

IF YOU DO NOT HAVE INTERNET ACCESS COMPLETE THE APPLICATION FORM BELOW

HOW TO APPLY OR REORDER: If you do not yet have the name and CRS identification number of the vendor to whom you wish to execute the NTTC, complete the application below, providing all information requested. Mail the application to the New Mexico Taxation and Revenue Department, P.O. Box 5557, Santa Fe, New Mexico 87502-5557, or you may deliver it to your local district office.

NOTE: You may reorder additional NTTCs *ONLY* after your executed NTTCs have been recorded with the Department. To record your executed NTTCs, submit the Nontaxable Transaction Certificate Report or record them online. **The Department will only issue a maximum of five (5) NTTCs to be executed at a later date.**

APPLICATION FOR NONTAXABLE TRANSACTION CERTIFICATES

To be executed at a later date
(All information below must be completed)

<p>BUSINESS INFORMATION OF APPLICANT</p> <p>Name: _____</p> <p>Mailing Address: _____</p> <p>City: _____ State: _____ Zip: _____</p> <p>Date: _____ Phone No: _____</p> <p>Print Name: _____</p> <p>Authorized Signature: _____</p>	<p>NM CRS IDENTIFICATION NUMBER OF APPLICANT</p> <p>0 - - - - - 00 - - -</p> <p><input type="checkbox"/> New Application CONTRACTORS LICENSE NUMBER (if applicable)</p> <p><input type="checkbox"/> Reorder</p> <hr/> <p>Type of NTTC Quantity Requested: 5 combined maximum (circle number)</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 20%;">_____</td> <td style="width: 10%; text-align: center;">1</td> <td style="width: 10%; text-align: center;">2</td> <td style="width: 10%; text-align: center;">3</td> <td style="width: 10%; text-align: center;">4</td> <td style="width: 10%; text-align: center;">5</td> </tr> <tr> <td>_____</td> <td style="text-align: center;">1</td> <td style="text-align: center;">2</td> <td style="text-align: center;">3</td> <td style="text-align: center;">4</td> <td style="text-align: center;">5</td> </tr> </table>	_____	1	2	3	4	5	_____	1	2	3	4	5
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NTTC TYPE DESCRIPTIONS ¹

TYPE 2 certificates may be executed:

- 1) By manufacturers for the purchase of tangible personal property that will become an ingredient or component of the manufactured product. (7-9-46)
- 2) For the purchase of tangible personal property or licenses for resale either alone or in combination with other tangible personal property or licenses in the ordinary course of business. (7-9-47)
- 3) By a lessee for the lease of tangible personal property or licenses for subsequent lease in the ordinary course of business, except for the lease of furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53, the lease of coin-operated machines, and for the purchase of manufactured homes as defined in Section 7-9-3(G). (7-9-50)
- 4) For the purchase of tangible personal property or licenses for subsequent lease in the ordinary course of business, except for the lease of furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53; the lease of coin-operated machines, and for the purchase of manufactured homes as defined in Section 7-9-3(G). (7-9-49)
- 5) By a person who is licensed to practice medicine, osteopathic medicine, dentistry, podiatry, optometry, chiropractic or professional nursing for the purchase of prosthetic devices. (7-9-73)
- 6) By a common carrier for the purchase of fuel that is to be loaded or used in a locomotive engine. (7-9-110.1 & 7-9-110.3)

TYPE 5 certificates may be executed:

- 1) For the purchase of services for resale if the subsequent sale by the buyer is in the ordinary course of business and the subsequent sale of the service is subject to gross receipts tax or governmental gross receipts tax. (7-9-48)
- 2) For the purchase of services for export when sold to an out-of-state buyer **and** delivery and initial use of the product of the service occurs outside New Mexico. (7-9-57)
- 3) By manufacturers for the purchase of services performed directly upon tangible personal property they are in the business of manufacturing or upon ingredient or component parts thereof. (7-9-75)
- 4) For the purchase of aerospace services for resale if the subsequent sale by the buyer is in the ordinary course of business and the services are sold to a 501(c)(3) organization, other than a national laboratory, or to the United States. (7-9-54.1)

TYPE 6 certificates may be executed by a construction contractor:

- 1) For the purchase 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. (7-9-51) Enter your contractor's license number on the application or submit proof that such a number is not required.²
- 2) For the purchase of construction services that are directly contracted for or billed to a construction project that is either subject to gross receipts tax upon completion, upon the sale in the ordinary course of business of the real property upon which the project is constructed or that takes place on Indian tribal territory. (7-9-52) Enter your contractor's license number on the application or submit proof that such a number is not required.²
- 3) For the purchase of construction-related services that are directly contracted for or billed to a construction project that is either subject to gross receipts tax upon completion, upon the sale in the ordinary course of business of the real property upon which the project is constructed or that takes place on Indian tribal territory. (7-9-52) Enter your contractor's license number on the application or submit proof that such a number is not required.²
- 4) For the lease of construction equipment that is used at the construction location of a construction project that is either subject to gross receipts tax upon completion, upon the sale in the ordinary course of business of the real property upon which the project is constructed or that takes place on Indian tribal territory. (7-9-52.1) Enter your contractor's license number on the application or submit proof that such a number is not required.²

TYPE 9 certificates may be executed for the purchase of tangible personal property only and may **not** be used for the purchase of services, the purchase of a license or other intangible property, for the lease of property or to purchase construction materials for use in construction projects (except as provided in #2 below). The following may execute Type 9 NTTCs:

- 1) Governmental agencies. (7-9-54)
- 2) 501(c)(3) organizations. (7-9-60) These organizations register with the Taxation and Revenue Department and submit proof of Internal Revenue Service 501(c)(3) nonprofit determination before they may execute Type 9 NTTCs. Those 501(c)(3) organizations that are organized for the purpose of providing homeownership opportunities to low-income families may purchase construction materials incorporated into these construction projects.
- 3) Federal or state-chartered credit unions. (7-9-54 and 7-9-61.2)
- 4) Indian tribes, nations or pueblos when purchasing tangible personal property for use on Indian reservations or pueblo grants. (7-9-54)

TYPE 10 certificates may be executed by a person that holds an interest in a qualified generating facility for the purchase or lease of tangible personal property or services that are eligible generation plant costs. In addition to required reporting on the CRS-1 Form, sellers who accept this certificate for a qualified purchase must also report this deduction on form RPD-41349 Advanced Energy Deduction. (7-9-114)

TYPE 11 certificates may be executed by manufactures for the purchase of tangible personal property that will be consumed in the manufacturing process and may not be used to purchase tools or equipment that may be used to create the manufactured product. The Type 11 NTTC is not to be used for the purchase of utilities. (7-9-46B)³

TYPE 12 certificates may be executed by manufactures for the purchase of utilities that will be consumed in the manufacturing process. (7-9-46B)³

TYPE 15 certificates may be executed by qualified federal contractors on a contract-by-contract basis. A copy of the federal contract is required. The Taxation and Revenue Department may contact you for additional information.

TYPE 16 certificates may be executed by:

- 1) Qualified film production companies to purchase property, lease property or purchase services. A qualified production company must submit proof of registration with the New Mexico Film Division of the Economic Development Department. (7-9-86)
- 2) Accredited diplomats or missions for the purchase of property or services or the leasing of property. (7-9-89)

TYPE NTTC-OSB certificates 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.**

¹ For more information on the use of different types of NTTCs and special reporting requirements please see publication FYI-204: Nontaxable Transaction Certificates online at <http://www.tax.newmexico.gov/SiteCollectionDocuments/Publications> or request it from your local district tax office.

² Proof that a construction contractor's license is not required includes a detailed written statement explaining the circumstances that exclude the contractor from the jurisdiction or application of New Mexico statutes which provide for construction contractor's licensing and regulation of construction activity.

³ Type 11 and 12 NTTCs require the completion of an alternative application, Form RPD-41378, *Application for Type 11 or 12 Nontaxable Transaction Certificates*, available online at www.tax.newmexico.gov or from your local district office.

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 nontaxable transaction certificates (NTTCs) by the New Mexico Taxation and Revenue 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 Taxation and Revenue Department's web site at www.tax.newmexico.gov.

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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 for which state law provides gross receipts tax deductions, the buyer or lessee may give the seller or lessor a New Mexico nontaxable transaction certificate (NTTC) to document the seller's or lessor's deduction of their receipts. Deductible receipts are not subject to gross receipts tax because they are subtracted from gross receipts before the tax is calculated. 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 CRS-1 Form. *Exempt* receipts are receipts which, under state law, need not be reported to this Department.

OBTAINING NTTCS

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

NTTCs with Special Application Requirements

Making a first-time application for some NTTC types may require special documentation. An applicant who uses the Department's online tax center, Taxpayer Access Point (TAP) to make such NTTCs requests will receive an online message to call the Department for further instructions on how to supply the required documentation.

An application for a 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 documentation in place of a contractor's license indicating one of those specialty classifications as their primary business and indicating that they are entitled to the deductions claimed.

Initial requests for Type 9 NTTCs by 501(c)(3) nonprofit organizations must be accompanied with a copy of the letter from the Internal Revenue Service granting the organization its 501(c)(3) status.

A private person acting as an agent for a government entity for an industrial revenue bond project may apply for Type 9 NTTCs 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 industrial revenue bonds contract showing the expiration date and contract number.

Type 10 certificates 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.

Qualified federal contractors must submit a copy of their federal contract upon the initial request for Type 15 NTTCs. The Type 15 NTTCs are issued by the Department for specific federal contracts only. New federal contracts must be submitted upon request for the Type 15 NTTCs. The Department may contact the applicant for additional information.

A qualified film production company must submit proof of registration with the Film Division of the New Mexico Economic Development Department upon the initial request for Type 16 NTTCs.

Accredited diplomats or missions making initial application for Type 16 NTTCs must provide identification confirming their diplomatic status.

Businesses wishing to obtain a Type 11 or 12 NTTC must complete an alternative application Form RPD-41378, *Application for Type 11 or 12 Nontaxable Transaction Certificates*.

Applying for NTTCs through Your Computer

Registered New Mexico gross receipts taxpayers may obtain¹, execute and record the use of New Mexico nontaxable transaction certificates (NTTCs) through the TAP system on the Taxation and Revenue Department's web site. To use TAP, go to <https://tap.state.nm.us>. For assistance with using this online program, please call (505) 827-0951 in Santa Fe, New Mexico.

¹ The TAP system can not be used to obtain Type 11 or 12 NTTCs. Instead, a paper Form RPD-41378, *Application for Type 11 or 12 Nontaxable Transaction Certificates* must be completed.

Taxpayers may use TAP to make both initial and additional applications for NTTCs, and, if the taxpayer knows the CRS identification number of the seller or lessor, he or she may use this paperless program to execute an NTTC online. If the NTTC recipient's CRS identification number is known, there is no limit on the number of NTTCs a taxpayer may execute online. An NTTC also may be printed on a local printer, though the taxpayer need not print the NTTC to execute it.

Because, to obtain NTTCs for the first time a 501(c)(3) nonprofit organization must submit a copy of its 501(c)(3) designation letter from the Internal Revenue Service, if the applicant uses TAP he or she will receive the online message to call the Department for further instructions. Once approved by the Department to use NTTCs, a 501(c)(3) nonprofit organization may use TAP without contacting the Department further.

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 use a paper ACD-31050, *Application for Nontaxable Transaction Certificates* to request up to five paper NTTCs. The application may be printed from our website at 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 shown on that form.

Before applying for additional paper NTTCs, the taxpayer must record the executed NTTC information online or on a paper 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 retain as documentation for deductions of receipts the seller or lessor takes for qualified transactions. The buyer or lessee does not need to give the 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 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 7-9-58², 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 NTTC, as specified in rule. See Section 7-9-43 NMSA 1978 for more information on what alternative evidence is acceptable.

Deductions that Require 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 7-9-46A), **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**;

² Statutory citations in this publication are to the New Mexico Statutes Annotated (NMSA 1978).

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. 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 other than construction materials to 501(c)(3) nonprofit organizations (except as provided in #13 below), (Section 7-9-60) **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) **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 7-9-46B), **Type 11 NTTC**;
17. Sales of utilities to a manufacturer that are consumed in the manufacturing process (Section 7-9-46B), **Please note: a Type 12 NTTC must be used as other alternative evidence is not allowed**, and
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.

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 13 of this publication.

Deductions for which NTTCs are Optional

Statutes allow, *but do not require*, an NTTC to be executed for these transactions:

1. 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**;
2. 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**;
3. 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**;
4. 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**;
5. 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**;
6. 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**;
7. 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
8. Sales of tangible personal property to federal or state-chartered credit unions

(Sections 7-9-54 and 7-9-61.2) **Type 9 NTTC.**

Effective January 1, 2004, the types of NTTCs were consolidated as follows:

The Type 2 NTTC is good for transactions formerly requiring a Type 1, 2, 3 or 4 NTTC;
The Type 5 NTTC is good for transactions formerly requiring a Type 5, 8 or 13 NTTC;
The Type 6 NTTC is good for transactions formerly requiring a Type 6 or 7 NTTC;
The Type 9 NTTC is good for transactions formerly requiring a Type 9 or 14 NTTC;
The Type 15 NTTC remains as is;
The Type 16 is good for transactions formerly requiring a Type 16 or Type D NTTC;
and
The Type NTTC-OSB remains as is.

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 has accepted the NTTCs in good faith, reasonably assured that the buyer executing the NTTC will use the property or service in a nontaxable manner.

Effective March 2, 2018, Section 7-9-43 NMSA 1978 was amended to allow for alternative evidence to be provided instead of an NTTC for most deductions.

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.

To execute an NTTC online, the buyer or lessee must access TAP at <https://tap.state.nm.us> and follow the instructions displayed on the screen. A seller or lessor should 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 an 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 takes a deduction based on acceptance of an NTTC that clearly is inappropriate or inapplicable to a transaction remains liable for gross receipts tax. For example, a seller may not deduct receipts from the sale of tangible personal property to a buyer who gives the seller a Type 5 NTTC for resale of a service. Nor, for instance, should a seller of construction services deduct receipts based on receiving a Type 9 NTTC from a government entity as documentation of a sale of construction services for resale.

Executing an NTTC Retroactively

A taxpayer should possess the proper NTTC at the time the CRS-1 Form for the receipts from the transaction is due. The taxpayer may, however, accept the NTTC at any time following the transaction. A taxpayer who has paid gross receipts tax on receipts from transactions that could have originally been deducted had an NTTC 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). Any request for refund should be submitted to the Taxation and Revenue 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 3, “NTTC’s 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

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 CRS-1 Form. 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's 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 (Regulation 3.2.10.9 NMAC).

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.

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

The Department offers a variety of taxpayer information. Some information is free and other information must be purchased.

General Information. FYIs and Bulletins present general information with a minimum of technical language. All FYIs and Bulletins are free and available through all local tax offices, the Tax Information and Policy Office, and on the Internet. The Taxation and Revenue Department's Internet address is:

<http://www.tax.newmexico.gov>

Regulations. The Department establishes regulations to interpret and exemplify the various tax acts it administers. The Taxation and Revenue Department regulation book is available from the New Mexico Compilation Commission on a prepaid basis. The Compilation Commission also has a compact disk of all statutes and regulations. Specific regulations are also available at the State Records Center or on its web page at www.nmcpr.state.nm.us/nmac.

Order regulation books directly from:

New Mexico Compilation Commission

<http://www.nmcompcomm.us/index.html>

Rulings. Rulings signed by the Secretary 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 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 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 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. Taxation and Revenue Department rulings are compiled and available on the department's web page free of charge at <http://www.tax.newmexico.gov/rulings.aspx>.

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>.

FOR FURTHER ASSISTANCE

Local tax offices can provide full service and information about the department's taxes, programs, and forms as well as specific information about your filing situation.

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LAS CRUCES

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SANTA FE

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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.