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**REGULATION PERTAINING TO THE
MOTOR VEHICLE EXCISE TAX ACT
SECTIONS 7-14-1 TO 7-14-11 NMSA 1978**

[3.11 NMAC]

Revised February 2009

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Table of Contents
3.11 NMAC

7-14-1. SHORT TITLE

7-14-2. DEFINITIONS

7-14-3. IMPOSITION OF MOTOR VEHICLE EXCISE TAX

7-14-4. DETERMINATION OF AMOUNT OF MOTOR VEHICLE EXCISE TAX

3.11.4.7 – Definitions

3.11.4.8 – Vehicles sold under certain agreements are not trade-ins

3.11.4.9 – Vehicles sold to the United States

3.11.4.10 – Vehicles sold to NATO Force

3.11.4.11 – Vehicles sold to a member of a NATO Force

3.11.4.12 – Responsibility of agents for payment of tax

3.11.4.13 – Trade-ins

3.11.4.14 – Reasonable value

3.11.4.15 – Gifts

3.11.4.16 – Sale of ATV subject to tax

7-14-5. TIME OF PAYMENT OF TAX

7-14-6. EXEMPTIONS FROM TAX

7-14-7. CREDIT AGAINST TAX

7-14-7.1. CREDIT; VEHICLES USED FOR SHORT-TERM LEASING; REQUIREMENTS;
REPORTS

7-14-8. IMPOSITION OF PENALTY FOR FAILURE TO MAKE TIMELY APPLICATION

7-14-9. REFUNDS; PROCEDURES

7-14-9.1. PROTESTS

7-14-9.2. PENALTIES FOR FAILURE TO SUBMIT REPORT OR TO PAY; INTEREST

7-14-10. DISTRIBUTION OF PROCEEDS

7-14-11. ADMINISTRATION BY DEPARTMENT; AUTHORITY OF DEPARTMENT

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7-14-1. SHORT TITLE.--Chapter 7, Article 14 NMSA 1978 may be cited as the "Motor Vehicle Excise Tax Act".

7-14-2. DEFINITIONS.--As used in the Motor Vehicle Excise Tax Act [Chapter 7, Article 14 NMSA 1978]:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or an employee of that department exercising authority lawfully delegated to that employee by the secretary;

B. "manufactured home" means a structure that exceeds either a width of eight feet or a length of thirty-two feet, when equipped for the road;

C. "motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from batteries or from overhead trolley wires but not operated upon rails;

D. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture or syndicate; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or an agency, department or instrumentality thereof;

E. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

F. "tax" means the motor vehicle excise tax imposed under the Motor Vehicle Excise Tax Act; and

G. "vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including any frame, chassis or body of any vehicle or motor vehicle, except devices moved by human power or used exclusively upon stationary rails or tracks.

7-14-3. IMPOSITION OF MOTOR VEHICLE EXCISE TAX.--An excise tax, subject to the credit provided by Section 7-14-7.1, is imposed upon the sale in this state of every vehicle, except as otherwise provided in Section 7-14-7.1 NMSA 1978 and manufactured homes, required under the Motor Vehicle Code [66-1-1 NMSA 1978] to be registered in this state. To prevent evasion of the excise tax imposed by the Motor Vehicle Excise Tax Act [Chapter 7, Article 14 NMSA 1978] and the duty to collect it, it is presumed that the issuance of every original and subsequent certificate of title for vehicles of a type required to be registered under the provisions of the Motor Vehicle Code constitutes a sale for tax purposes, unless specifically exempted by the Motor Vehicle Excise Tax Act or unless there is shown proof satisfactory to the department that the vehicle for which the certificate of title is sought came into the possession of the applicant as a voluntary transfer without consideration or as a transfer by operation of law. The excise tax imposed by this section shall be known as the "motor vehicle excise tax".

7-14-4. DETERMINATION OF AMOUNT OF MOTOR VEHICLE EXCISE TAX.—The rate of motor vehicle excise tax is three percent and is applied to the price paid for the vehicle. If the price paid does not represent the value of the vehicle in the condition that existed at the time it was acquired, the tax rate shall be applied to the reasonable value of the vehicle in such condition at such time. However, allowances granted for vehicle trade-ins may be deducted from the price paid or the reasonable value of the vehicle purchased.
(Laws 1988, Chapter 73, Section 14)

3.11.4.7 - DEFINITIONS

A. “Member of a NATO force” means the military and civilian personnel of the NATO force and their dependents.

B. “NATO force” means any NATO signatory's military unit or force or civilian component thereof present in New Mexico in accordance with the north Atlantic treaty.

C. “NATO signatory” means a nation, other than the United States of America, that is a contracting party to the north Atlantic treaty.

D. “Price paid” is the dollar amount to which the motor vehicle excise tax is applied and (except as provided in Section 7-14-4 NMSA 1978 if the price paid does not represent the value of the vehicle) is the total net purchase price paid by the buyer for the vehicle itself, including any deposit or down payment, at the time of sale. “Price paid” includes any charges to the buyer for accessories, transportation, delivery and dealer preparation. “Price paid” is reduced by the value of any vehicle trade-in and by any discounts or rebates that are applied to the buyer’s balance due at time of sale. “Price paid” is also reduced by the value of any manufacturer’s or other rebate that is contractually guaranteed to the buyer at time of sale, even though the rebate is received by the buyer at a later date.

[3/15/96; 3.11.4.7 NMAC - Rn, 3 NMAC 11.4.7, 12/14/00; A, 2/13/09]

3.11.4.8 - VEHICLES SOLD UNDER CERTAIN AGREEMENTS ARE NOT TRADE-INS

A “factory repurchase agreement” is an agreement under which a person who maintains a fleet of vehicles purchased through one or more dealers sells used vehicles from its fleet directly to the manufacturer. Because two separate transactions with different parties are occurring, the value of the vehicles sold by the fleet owner to the manufacturer under a factory repurchase agreement may not be deducted for purposes of the motor vehicle excise tax as an allowance for vehicles traded in when the fleet owner purchases new vehicles from a dealer.

[12/14/93, 7/31/96; 3.11.4.8 NMAC - Rn, 3 NMAC 11.4.8, 12/14/00]

3.11.4.9 - VEHICLES SOLD TO THE UNITED STATES

Because issuance of a certificate of title is not required with respect to vehicles sold to the United States, the motor vehicle excise tax does not apply to vehicles sold or transferred to the United States. This regulation applies to sales or transfers of vehicles on or after July 1, 1988.

[3/15/96; 3.11.4.9 NMAC - Rn, 3 NMAC 11.4.9, 12/14/00]

3.11.4.10 - VEHICLES SOLD TO NATO FORCE

Because issuance of a certificate of title is not required with respect to vehicles sold or transferred to a NATO force, the motor vehicle excise tax does not apply to vehicles sold or transferred to the NATO force. This regulation applies to sales or transfers of vehicles on or after July 1, 1995.

[3/15/96; 3.11.4.10 NMAC - Rn, 3 NMAC 11.4.10, 12/14/00]

3.11.4.11 - VEHICLES SOLD TO A MEMBER OF A NATO FORCE

The sale or transfer of a vehicle to a member of a NATO force is not subject to the motor vehicle excise tax by operation of the provisions of the North Atlantic Treaty. This regulation is retroactively applicable to sales or transfers of vehicles in New Mexico on or after July 1, 1995.

[7/31/96; 3.11.4.11 NMAC - Rn, 3 NMAC 11.4.11, 12/14/00]

3.11.4.12 - RESPONSIBILITY OF AGENTS FOR PAYMENT OF TAX

A. For the purposes of the motor vehicle excise tax, a “remittance agent” is a person who has contracted with the buyer of a vehicle to collect from the buyer and to report and remit on behalf of the buyer the motor vehicle excise tax due on the purchase. A remittance agent is responsible for correctly reporting the transaction and remitting the full amount of motor vehicle excise tax collected from the buyer.

B. Any excess tax remitted by the remittance agent will be refunded by the department to the buyer. If the remittance agent remits the full amount collected from the buyer but the amount collected and remitted is less than the tax due, the department will assess the buyer for the deficiency. If the remittance agent remits less than the full amount collected from the buyer and the amount remitted is less than the tax due, the remittance agent will be assessed for that part of the deficiency equal to the difference between the amount remitted by the remittance agent and the amount collected by the remittance agent from the buyer; the buyer will be assessed for any remaining amount due.

C. Failure of a remittance agent who is licensed in accordance with Sections 66-4-1 through 66-4-9 NMSA 1978 to remit the full amount of motor vehicle excise tax collected from the buyer is grounds for revocation of the agent’s license.

[3/31/99; 3.11.4.12 NMAC - Rn & A, 3 NMAC 11.4.12, 12/14/00]

3.11.4.13 - TRADE-INS

A. In determining taxable value, Section 7-14-4 NMSA 1978 allows the value of “vehicle trade-ins” to be deducted from the price paid for, or the reasonable value of, a purchased vehicle. Only the value of vehicles may be deducted but, except as provided otherwise in 3.11.4.13 NMAC, the value of any vehicle traded-in on the purchase of any other vehicle may be deducted. For example, the value of a horse traded-in for a vehicle may not be deducted from the price paid for, or reasonable value of, the vehicle. A horse is not a vehicle. As another example, the value of a recreational vehicle traded-in may be deducted in determining the taxable value of a purchased truck. Both are vehicles.

B. Because the motor vehicle excise tax is not imposed on manufactured homes, the value of a manufactured home trade-in on the purchase of a vehicle other than a manufactured home may not be deducted in determining the taxable value of the purchased vehicle. For the same reason, when the owner of a vehicle whose liability for the motor vehicle excise tax was

suspended pursuant to Section 7-14-7.1 NMSA 1978 trades the vehicle in on the purchase of another vehicle, the owner may not deduct the value of the trade-in vehicle in the determining the taxable value of a purchased vehicle.

[10/29/99; 3.11.4.13 NMAC - Rn & A, 3 NMAC 11.4.13, 12/14/00]

3.11.4.14 - REASONABLE VALUE

With respect to transfers in which the parties are related and to other non-arm's-length transfers, the price paid in itself cannot be relied upon to indicate the market value of the vehicle transferred. In such cases the department will presume that the reasonable value of the vehicle transferred is no less than the average trade-in (wholesale) value for the make, model and year of the vehicle reported by the National Automobile Dealers Association (N.A.D.A.) at the time of transfer. For vehicles not covered by the applicable N.A.D.A. guide, the comparable value reported by any comparable guide may be used. The taxpayer may rebut the presumption by presenting evidence sufficient in the opinion of the director, motor vehicle division, to establish a lower value. Evidence that merely establishes or confirms the price paid is not evidence of reasonable value. 3.11.4.14 NMAC does not apply to voluntary transfers without consideration or to transfers by operation of law.

[3/31/00; 3.11.4.14 NMAC - Rn & A, 3 NMAC 11.4.14, 12/14/00]

3.11.4.15 - GIFTS

To establish that a voluntary transfer without consideration has occurred, the department may require the parties to complete affidavits under penalty of perjury that a voluntary transfer without consideration has occurred and to submit such other evidence as is appropriate under the circumstances of the transfer.

[3/31/00; 3.11.4.15 NMAC - Rn, 3 NMAC 11.4.15, 12/14/00]

3.11.4.16 - SALE OF ATV SUBJECT TO TAX

All-terrain vehicles (ATVs) are subject to the registration and titling provisions of the Motor Vehicle Code. Therefore the motor vehicle excise tax and not the gross receipts tax applies to the sale of ATVs.

[3.11.4.16 - N, 5/15/01]

7-14-5. TIME OF PAYMENT OF TAX.--The tax shall be paid to the department by the applicant for the certificate of title at the time of application for issuance of the certificate.

7-14-6. EXEMPTIONS FROM TAX.--

A. A person who acquires a vehicle out of state thirty or more days before establishing a domicile in this state is exempt from the tax if the vehicle was acquired for personal use.

B. A person applying for a certificate of title for a vehicle registered in another state is exempt from the tax if the person has previously registered and titled the vehicle in New Mexico and has owned the vehicle continuously since that time.

C. A vehicle with a certificate of title owned by this state or any political subdivision is exempt from the tax.

D. A person is exempt from the tax if the person has a disability at the time the person purchases a vehicle and can prove to the motor vehicle division of the department or its agent that modifications have been made to the vehicle that are:

(1) due to that person's disability; and

(2) necessary to enable that person to drive that vehicle or be transported in that vehicle.

E. A person is exempt from the tax if the person is a bona fide resident of New Mexico who served in the armed forces of the United States and who suffered, while serving in the armed forces or from a service-connected cause, the loss or complete and total loss of use of:

(1) one or both legs at or above the ankle; or

(2) one or both arms at or above the wrist.

F. A person who acquires a vehicle for subsequent lease shall be exempt from the tax if:

(1) the person does not use the vehicle in any manner other than holding it for lease or sale or leasing or selling it in the ordinary course of business;

(2) the lease is for a term of more than six months;

(3) the receipts from the subsequent lease are subject to the gross receipts tax; and

(4) the vehicle does not have a gross vehicle weight of over twenty-six thousand pounds.

G. From July 1, 2004 through June 30, 2009, vehicles that are gasoline-electric hybrid vehicles with a United States environmental protection agency fuel economy rating of at least twenty-seven and one-half miles per gallon are eligible for a one-time exemption from the tax at the time of the issuance of the original certificate of title for the vehicle.

(Laws 2007, Chapter 319, Section 1)

7-14-7. CREDIT AGAINST TAX.--If a vehicle has been acquired through an out-of-state transaction upon which a gross receipts, sales, compensating or similar tax was levied by another state or political subdivision thereof, the amount of the tax paid may be credited against the tax due this state on the same vehicle.

7-14-7.1. CREDIT; VEHICLES USED FOR SHORT-TERM LEASING; REQUIREMENTS; REPORTS.--

A. Upon application of the owner, the secretary shall suspend payment of the tax and issue a certificate of title without payment of the tax for any vehicle the leasing of which is subject to the Leased Vehicle Gross Receipts Tax Act [Chapter 7, Article 14A NMSA 1978], if:

(1) the vehicle is acquired by the owner on or after July 1, 1991;

(2) the vehicle is required to be registered in this state;

(3) the owner presents proof satisfactory to the secretary that the owner is registered with the department to pay the leased vehicle gross receipts tax; and

(4) the owner declares that the vehicle for which issuance of a certificate of title is being applied will be part of a vehicle fleet of at least five vehicles, will be used primarily as a short-term rental vehicle and that each period of rental or lease will not exceed six months.

B. If an owner has paid the motor vehicle excise tax after July 1, 1991 with respect to a vehicle that qualifies for suspension of the motor vehicle excise tax pursuant to Subsection A of this section, the owner may apply for a refund of the motor vehicle excise tax paid, but the application for refund must be made within one year of the date certificate of title was issued to the owner for the vehicle. If application is made after that time, the claim for refund is not timely and the motor vehicle excise tax paid shall not be refunded.

C. On or before the twenty-fifth day of the month following the close of the calendar year, the owner shall submit to the department in a form prescribed by the secretary a report indicating the total collections of leased vehicle gross receipts tax collected in lieu of the tax. The report shall also indicate the amount of tax that would have been paid in the state of New Mexico for the preceding calendar year.

D. If the total amount of leased vehicle gross receipts tax is less than the amount of tax that would have been collected, the owner shall pay the difference to the department at the time of filing the report required by Subsection B of this section.

E. Once the total amount of leased vehicle gross receipts tax credited with respect to a vehicle for which payment of the motor vehicle excise tax is suspended pursuant to Subsection A of this section equals or exceeds the amount of motor vehicle excise tax due on that vehicle, or the owner has paid the difference pursuant to Subsection D of this section, the secretary shall cause the records of the department to indicate that the motor vehicle excise tax due with respect to that vehicle is paid in full and that payment is no longer suspended.

7-14-8. IMPOSITION OF PENALTY FOR FAILURE TO MAKE TIMELY APPLICATION.-- A penalty of fifty percent of the tax is imposed on any person who is:

A. domiciled in this state and accepts transfer in this state, but fails to apply for a certificate of title within ninety days of the date on which ownership of the vehicle was transferred to the person; or

B. domiciled in this state but accepts transfer outside this state and fails to apply for a certificate of title within ninety days of the date on which the vehicle is brought into this state.

7-14-9. REFUNDS; PROCEDURES.--

A. If any person believes that the person has made payment of any motor vehicle excise tax in excess of that for which the person was liable or has been denied any credit against motor vehicle excise tax, that person may claim a refund by directing to the secretary a claim for refund in accordance with the provisions of Section 7-1-26 NMSA 1978.

B. The department may authorize refunds of the motor vehicle excise tax in accordance with the provisions of Section 7-1-29 NMSA 1978.

7-14-9.1. PROTESTS.--

A. Any person upon whom a penalty is imposed by the Motor Vehicle Excise Tax Act [this article] may protest the imposition of the penalty in accordance with the provisions of Sections 7-1-24 and 7-1-25 NMSA 1978.

B. Any person whose claim for refund of motor vehicle excise tax is denied in whole or in part may protest the denial in accordance with the provisions of Sections 7-1-24 and 7-1-25 NMSA 1978.

7-14-9.2. PENALTIES FOR FAILURE TO SUBMIT REPORT OR TO PAY; INTEREST.--

A. Any person required to submit the report required by Subsection C of Section 7-14-7.1 NMSA 1978 who does not file the report in the manner and by the date required shall pay a penalty in an amount equal to five percent of the total amount of tax suspended pursuant to Subsection A of Section 7-14-7.1 NMSA 1978 for vehicles required to be included in the report.

B. Any person required to pay any amount pursuant to Subsection D of Section 7-14-7.1 NMSA 1978 who fails to pay the amount by the date required is liable for penalty in an amount equal to the greater of five dollars (\$5.00) or two percent per month or any fraction of a month from the date the amount was due multiplied by the amount of tax due but not paid, not to exceed a maximum of ten percent of the tax due but not paid.

C. If any person required to pay any amount pursuant to Subsection D of Section 7-14-7.1 NMSA 1978 fails to pay the amount by the date required, interest shall be paid to the state on such amount in accordance with the provisions of Section 7-1-67 NMSA 1978.

7-14-10. DISTRIBUTION OF PROCEEDS.--The receipts from the tax and any associated interest and penalties shall be deposited in the "motor vehicle suspense fund", hereby created in the state treasury. As of the end of each month, the net receipts attributable to the tax and associated penalties and interest shall be distributed to the general fund.

7-14-11. ADMINISTRATION BY DEPARTMENT; AUTHORITY OF DEPARTMENT.--

A. The department has the authority and duty to administer the Motor Vehicle Excise Tax Act [Chapter 7, Article 14 NMSA 1978] and to impose, collect and enforce the motor vehicle excise tax.

B. The department has the authority to interpret the provisions of the Motor Vehicle Excise Tax Act and to promulgate regulations with respect to that act. The extent to which regulations will have retroactive effect shall be stated and, if no such statement is made, they will be applied prospectively only.
