

TITLE 3: TAXATION
CHAPTER 4: CORPORATE INCOME TAXES
PART 1: GENERAL PROVISIONS

3.4.1.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.
[3.4.1.1 NMAC - Rp, 3. 4.1.1 NMAC, 3/23/2021]

3.4.1.2 SCOPE: This part applies to every domestic corporation and to every foreign corporation employed or engaged in the transaction of business in, into or from New Mexico or deriving any income from any property or employment in New Mexico.
[3.4.1.2 NMAC - Rp, 3. 4.1.2 NMAC, 3/23/2021]

3.4.1.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[3.4.1.3 NMAC - Rp, 3. 4.1.3 NMAC, 3/23/2021]

3.4.1.4 DURATION: Permanent.
[3.4.1.4 NMAC - Rp, 3. 4.1.4 NMAC, 3/23/2021]

3.4.1.5 EFFECTIVE DATE: March 23, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[3.4.1.5 NMAC - Rp, 3. 4.1.5 NMAC, 3/23/2021]

3.4.1.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Corporate Income and Franchise Tax Act.
[3.4.1.6 NMAC - Rp, 3. 4.1.6 NMAC, 3/23/2021]

3.4.1.7 DEFINITIONS: [RESERVED]
[3.4.1.7 NMAC - Repealed, 3/23/2021]

3.4.1.8 CITATION OF REGULATIONS: Unless otherwise stated, all citations of statutes in Title 3, Chapter 4 NMAC pertaining to the Corporate Income and Franchise Tax Act are to the New Mexico Statutes Annotated, 1978 (NMSA 1978).
[3.4.1.8 NMAC - Rp, 3. 4.1.8 NMAC, 3/23/2021]

3.4.1.9 [RESERVED]
[3.4.1.9 NMAC - Repealed, 3/23/2021]

3.4.1.10 INCOME FROM OBLIGATIONS OF GOVERNMENTS:

- A.** Income from United States government obligations.
- (1)** Income from obligations issued by the United States are not includable in net income.
 - (2)** Because they are not obligations of the United States, income from investment in the following is includable in net income:
 - (a)** financial instruments guaranteed by the federal national mortgage association ("Fannie Maes"), the government national mortgage association ("Ginnie Maes"), the federal national home loan association ("Freddie Macs") and any similar organization whose income states are not prohibited by federal law from subjecting to income taxation;
 - (b)** financial instruments issued by the college construction loan insurance corporation or the national consumer cooperative bank;
 - (c)** agreements ("repo's") to sell and repurchase United States government obligations; and
 - (d)** agreements ("reverse repo's") to purchase and resell United States government obligations.

B. Income from obligations of Puerto Rico and territories and possessions of the United States. Income from obligations of the commonwealth of Puerto Rico and of Guam, the Virgin Islands, American Samoa, Northern Mariana Islands and other territories or possessions of the United States are includable in net income only to the extent that inclusion is not prohibited by federal law. Income from such obligations which New Mexico is prohibited from taxing by the laws of the United States may be deducted from net income.

C. Exclusion of certain income from mutual funds or trusts.

(1) Income from investments in mutual funds, unit investment trusts or simple trusts which are invested in obligations of the United States, obligations of the state of New Mexico or its agencies, institutions, instrumentalities or political subdivisions or obligations of the commonwealth of Puerto Rico or territories or possessions of the United States may be deducted from net income to the extent that such investment income is nontaxable income provided that:

(a) for the purposes of Subsection C of 3.4.1.10C NMAC, "nontaxable income" means income from investments in obligations of:

(i) the United States;
(ii) the state of New Mexico or any of its agencies, institutions, instrumentalities or political subdivisions;
(iii) the commonwealth of Puerto Rico, the income from which obligations states are prohibited from taxing by the laws of the United States; and
(iv) Guam, the Virgin Islands, American Samoa, Northern Mariana Islands or other territories or possessions of the United States, the income from which obligations states are prohibited from taxing by the laws of the United States; and

(b) the mutual fund, unit investment trust or simple trust provides to the investor an annual statement of the income, by source, which was distributed to the individual investor.

(2) Only that amount of income may be deducted which is shown on the statement as flowing through to the investor from obligations of the United States, of the commonwealth of Puerto Rico, of Guam, the Virgin Islands, American Samoa, Northern Mariana Islands or other territories or possessions of the United States or of the state of New Mexico or any of its agencies, institutions, instrumentalities or political subdivisions.

D. Expenses related to certain investment income.

(1) Because this investment income is exempt from income taxation by New Mexico, expenses of the taxpayer related to the earning of income from investments, directly or through mutual funds, unit investment trusts or simple trusts, in obligations of the United States, obligations of the state of New Mexico or its agencies, institutions, instrumentalities or political subdivisions or obligations of the commonwealth of Puerto Rico or territories or possessions of the United States may not be deducted from net income. To the extent that such expenses have been deducted in determining federal taxable income, the amount must be added back to net income.

(2) Income from investment in state and local bonds is subject to New Mexico income taxation. Expenses of the taxpayer related to the earning of income from investments, directly or through mutual funds, unit investment trusts or simple trusts, in state or local bonds are deductible in determining net income. To the extent that such expenses have not been deducted in determining federal taxable income, these amounts may be subtracted from net income.

E. Income earned on "state or local bonds".

(1) Not included in the term "state or local bond" is any obligation of the commonwealth of Puerto Rico or of territories or possessions of the United States the income from which New Mexico is prohibited from taxing by the laws of the United States.

(2) For taxable years beginning on or after January 1, 1991, income from investing in any state or local bond, as that term is defined in Section 7-2A-2 NMSA 1978, is includable in base income.

(3) Income from investing in state or local bonds is to be included in base income in the year it is actually received without regard to federal tax treatment of the income, except that:

(a) the taxpayer may elect to report this income for New Mexico purposes on an accrual basis; and

(b) income from investing in state or local bonds earned or accrued before the first taxable year beginning on or after January 1, 1991, but which is received after that date is not includable in base income. Income is earned or accrued ratably, by assigning an equal amount of income to each day of the accrual period.

(4) Example 1: A, a New Mexico corporation, purchases a state of California municipal bond in 20X0 and receives semi-annual interest payments. A does not elect to report to New Mexico on an accrual

basis. All income from this bond is included in base income. This income is included only as the interest payments are received.

(5) Example 2: B, a New Mexico corporation and calendar year filer, purchases a city of Los Angeles municipal bond in 20X0. This bond pays interest semi-annually on April 1 and October 1. B does not elect to report to New Mexico on an accrual basis. On April 10, 20X1, B receives \$1,000 of interest. Since this payment includes interest earned or accrued before January 1, 20X1, this income is to be allocated between the period prior to the taxable year and the period following December 31, 20X0. The income accrual period is 182 days in length (October 1, 20X0, through March 31, 20X1), of which 90 days are in B's first taxable year beginning on or after January 1, 20X1. B's 20X1 base income includes \$494.51 ($\$1,000 \times 90/182$). The remaining \$505.49 is not subject to New Mexico corporate income tax.

(6) Example 3: C, a New Mexico corporation and calendar year filer, purchased a city of San Francisco municipal bond on January 1, 1981 for \$1,400. C does not elect to report accrued income on this bond for New Mexico corporate income tax purposes. Although this bond pays interest semi-annually, C bought it stripped and at a discount, C has no right to the interest. On January 1, 1995, C receives the bond principal of \$5,000. This is C's first and only payment on the bond. Since this payment includes income earned or accrued before January 1, 1991, the income is allocated between the period prior to January 1, 1991, and the period following December 31, 1990. The income accrual period is 5112 days, of which 1461 are after December 31, 1990. C's 1995 base income includes \$1,028.87 ($((1461/5112) \times (\$5,000 - \$1,400))$). The remaining \$2,571.13 of income is not subject to New Mexico corporate income tax.

[3.4.1.10 NMAC - Rp, 3. 4.1.10 NMAC, 3/23/2021]

3.4.1.11 BASE INCOME FOR FILING AS A SEPARATE CORPORATE ENTITY: For a corporation filing a separate return for taxable years beginning before January 1, 2020 and for a corporation that is not part of a unitary group or is required to file a separate return under Regulation 3.4.10.16 for taxable years beginning on or after January 1, 2020, that corporation's base income shall be determined by completing a simulated federal corporate income tax return for the separate corporation. In completing the simulated federal return, only the income and expenses of the separate corporation will be allowed. The simulated return shall be prepared as if the corporate entity were filing a federal return as a separate corporation and not as a corporation included in a consolidated return. All provisions of the Internal Revenue Code which would apply to the filing as a separate corporation shall apply to the completion of the simulated return. Procedures and adjustments allowed by the Internal Revenue Code which apply to the filing of a federal consolidated return concerning the elimination of intercompany transactions or the sale or dissolution of one of the corporations within the federal consolidated group shall not be allowed when completing the simulated federal return for New Mexico income tax purposes. In no case shall a net operating loss established for the corporation reporting on a separate corporation basis be excluded from the base income of any other corporation or from the base income reported on any combined or consolidated return for any group of corporations except as a net operation loss carryover deduction to the extent allowable under Section 7-2A-2 NMSA 1978, and applicable federal limitations.

[3.4.1.11 NMAC - Rp, 3. 4.1.11 NMAC, 3/23/2021]

3.4.1.12 FOREIGN SOURCE DIVIDENDS - PRIOR TO JANUARY 1, 2020:

A. Foreign source dividends, as the term is used under federal law, received by a corporation reporting to New Mexico as a separate entity are wholly or partially excludable from the corporation's base income as follows:

(1) Seventy percent of the dividends included on lines 13 and 14, schedule C, federal form 1120 received from corporations owned less than twenty percent by the reporting corporation but only if those dividends would have been subject to the seventy percent deduction under 26 U.S.C. Section 243(a)(1) had the payor of the dividends been a domestic corporation.

(2) Eighty percent of the dividends included on lines 13 and 14, schedule C, federal form 1120 received from corporations owned twenty percent to eighty percent by the reporting corporation but only if those dividends would have been subject to the eighty percent deduction under 26 U.S.C. Section 243(c) had the payor of the dividends been a domestic corporation.

(3) One hundred percent of the dividends included on lines 13 and 14, schedule C, federal form 1120 received from corporations owned more than eighty percent by the reporting corporation but only if those dividends would have been subject to the one hundred percent deduction under 26 U.S.C. Section 243(a)(3) had the payor of the dividends been a domestic corporation.

B. The exclusion of foreign source dividends set forth in 3.4.1.12 NMAC applies only so long as New Mexico's method of taxing foreign source dividends is unconstitutional.

C. Section 3.4.1.12 NMAC applies to taxable years beginning on or after January 1, 1997 but prior to January 1, 2020.
[3.4.1.12 NMAC - Rp, 3. 4.1.12 NMAC, 3/23/2021]

3.4.1.13 FOREIGN SOURCE DIVIDENDS AFTER JANUARY 1, 2020: For tax years beginning on or after January 1, 2020, “base income” under Section 7-2A-2 NMSA 1978 includes special deductions allowed under the Internal Revenue Code Sections 241 through 249 including the deduction for foreign source dividends under Section 245A.
[3.4.1.13 NMAC - N, 3/23/2021]

3.4.1.14 UNITARY BUSINESS: The definition of a “unitary group” under Section 7-2A-2 NMA1978 rests on the underlying concept of “unitary business”, which reflects the general constitutional principles that have been set out by the U.S. Supreme Court and is meant to be applied consistent with those constitutional principals. See, in particular, *Mobil Oil Corp. v. Comm’r of Taxes of Vt.*, 455 U.S. 425, 438 (1980) where the court noted that a “separate accounting, while it purports to isolate portions of income received in various states, may fail to account for contributions to income resulting from functional integration, centralization of management, and economies of scale.” The court then characterized these as “factors of profitability” which “arise from the operation of the business as a whole.” See also, *MeadWestvaco Corp. v. Ill. Dep’t of Revenue*, 553 U.S. 16, 18 (2008). There, the court reiterated past holdings that the unitary business principle as articulated applies generally to entities, not assets, and that “an asset can be a part of a taxpayer’s unitary business even without a ‘unitary relationship’ between the ‘payor and payee.’” The court went on to review its precedent saying, “where the asset is another business, a unitary relationship’s ‘hallmarks’ are functional integration, centralized management, and economies of scale.” When a portion of a unitary business is conducted in New Mexico, the state has the constitutional authority to impose tax on that portion of the income derived from that business, provided that the tax is not discriminatory and is fairly apportioned. The primary factors indicating an economically interdependent business include centralized management, functional integration, and economies of scale, which may be demonstrated by substantial flows of value between components of the business as well as other similar indicia.
[3.4.1.14 NMAC - N, 3/23/2021]

HISTORY OF 3.4.1 NMAC:

Pre-NMAC History: The material in this part was derived from that previously files with the State Records Center: R.D.-C.I.T. Regulations 14:1, 14:2, Regulations Pertaining to Corporate Supported Child Care; Credits Allowed Corporation Income Tax Act Section 7-24A-14 NMSA 1978, filed 10/16/1984.

R.D.-C.I.T. Regulation 8.6:1, 8.6:2, 8.6:3, Regulations Pertaining to the Corporate Income Tax Act Section 7-2A-8.6 NMSA 1978, filed 5/17/1985.

R.D.-C.I.T. Regulations 8:1/8:2, Regulation Pertaining to Separate Accounting Defined Corporation Income Tax Act Section 7-2A-8 NMSA 1978, filed 5/12/1986.

R.D.-C.I.T. Regulation 5.1:1/2, Regulation Pertaining to Corporation Income Tax Act Section 7-2A-5.1 NMSA 1978, filed 11/18/1986.

R.D.-C.I.T. Regulation 9.1:1, Regulation Pertaining to Corporation Income Tax Act Section 7-2A-9.1 NMSA 1978, filed 11/18/1986.

C.I.T. Regulation 9:2, Regulation Pertaining to Reporting Methods for the Corporation Income Tax Act Section 7-2A-9 NMSA 1978, filed 6/2/1987.

TRD Rule 2A-88, Regulations Pertaining to the Corporate Income and Franchise Tax Act (Sections 7-2A-1 to 7-2A-13), filed 9/16/1988.

TRD Rule CIT-91, Regulations Pertaining to the Corporate Income and Franchise Tax Act 7-2A-1 to 7-2A-14 NMSA 1978, filed 1/7/1992.

History of Repealed Material: 3.4.1 NMAC, Corporate Income Taxes - General Provisions, filed 12/1/2000, Repealed 3/23/2021.

NMAC History:

3 NMAC 4.1, Corporate Income Taxes - General Provisions, filed 12/31/1996.

3.4.1 NMAC, Corporate Income Taxes - General Provisions, filed 12/1/2000.

3.4.1 NMAC, Corporate Income Taxes - General Provisions, filed 12/1/2000, Replaced by 3.4.1 NMAC, Corporate Income Taxes - General Provisions, effective 3/23/2021.