

**TITLE 3: TAXATION**  
**CHAPTER 4: CORPORATE INCOME TAXES**  
**PART 10: RETURNS AND REPORTING METHODS**

**3.4.10.1 ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.  
[3.4.10.1 NMAC - Rp, 3.4.10.1 NMAC, 3/23/2021]

**3.4.10.2 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.  
[3.4.10.2 NMAC - Rp, 3.4.10.2 NMAC, 3/23/2021]

**3.4.10.3 STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[3.4.10.3 NMAC - Rp, 3.4.10.3 NMAC, 3/23/2021]

**3.4.10.4 DURATION:** Permanent.  
[3.4.10.4 NMAC - Rp, 3.4.10.4 NMAC, 3/23/2021]

**3.4.10.5 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.  
[3.4.10.5 NMAC - Rp, 3.4.10.5 NMAC, 3/23/2021]

**3.4.10.6 OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Corporate Income and Franchise Tax Act.  
[3.4.10.6 NMAC - Rp, 3.4.10.6 NMAC, 3/23/2021]

**3.4.10.7 DEFINITIONS: [RESERVED]**  
[3.4.10.1 NMAC - Repealed 3/23/2021]

**3.4.10.8 [RESERVED]**  
[3.4.10.8 NMAC - Repealed, 3/23/2021]

**3.4.10.9 [RESERVED]**  
[3.4.10.9 NMAC - Repealed, 3/23/2021]

**3.4.10.10 SEPARATE CORPORATE ENTITY: [RESERVED]**

**3.4.10.11 COMBINED RETURNS - PRIOR TO JANUARY 1, 2020:**

**A.** Members of a combined group: A group of unitary corporations may include both domestic corporations and foreign corporations other than foreign corporations which are incorporated in a foreign country and are not engaged in trade or business in the United States during the taxable year. Such a group may file a state corporate income and franchise tax return using the combination of unitary corporations method if it otherwise meets the requirements of the Corporate Income and Franchise Tax Act and regulations thereunder.

**B.** Base income for members of a combined group.  
**(1)** When a group of unitary corporations files a New Mexico corporate income and franchise tax return using the combination of unitary corporations method, the base income for the combined group of unitary corporations shall be determined by completing a simulated federal corporate income tax return. In completing the simulated federal return, only the income and expenses of the combined corporations will be allowed. The simulated return shall be prepared as if the combined group was filing a federal consolidated return including only the corporations in the unitary (combined) group.

**(2)** When completing the simulated federal return for New Mexico income tax purposes, all 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 be allowed, but only for those transactions between members of the combined group of unitary corporations. No adjustments shall be made or allowed for transactions with any corporation that is not a member of the combined group of unitary corporations. Otherwise, all provisions of the Internal Revenue Code which would apply to the filing of a consolidated return shall apply to the completion of the simulated return for the combined group of unitary corporations.

**C.** This Regulation 3.4.10.11 NMAC is retroactively applicable to taxable years beginning on or after January 1, 1992 but before January 1, 2020. For returns for taxable years beginning on or after January 1, 2020, see 3.4.10.14 NMAC.

[3.4.10.11 NMAC - Rp, 3.4.10.11 NMAC, 3/23/2021]

**3.4.10.12 CONSOLIDATED FILING ELECTION:** When a group of corporations has properly made an election to file on a consolidated basis for New Mexico corporate income tax purposes, the filing group must include all of the members of the group properly included in the filed federal consolidated return.

[3.4.10.12 NMAC - N, 3/23/2021]

**3.4.10.13 INFORMATION RETURNS; RENTS AND ROYALTIES**

**A.** Persons paying rents and royalties from oil and gas properties located in New Mexico, who are required to file internal revenue service information return form 1099-MISC on such payments, shall file the rent and royalty information with the department in the manner stated below.

**(1)** Persons paying such rents and royalties on properties located in New Mexico are required to segregate the New Mexico rents and royalties paid from the rents and royalties paid everywhere and report only those rents and royalties from New Mexico properties to the department. The department will accept the information on magnetic media in lieu of paper returns. The magnetic media must comply with the internal revenue service reporting requirements for filing information returns.

**(2)** A person who has entered into an agreement with the internal revenue service identified as "consent for internal revenue service to release tax information" will be deemed to have complied with the filing requirements of this 3.4.10.13 NMAC.

**B.** The due date for information returns required to be filed with the department shall be June 15 of each year following the close of the previous calendar year.

**C.** This section is applicable to taxable years beginning on or after January 1, 1983.

[3.4.10.13 NMAC - Rp, 3.4.10.13 NMAC 3/23/2021]

**3.4.10.14 COMPUTATION OF BASE AND NET INCOME - APPLICABLE TO PERIODS BEGINNING ON OR AFTER JANUARY 1, 2020:**

**A.** Each corporate member of a unitary filing group computes its "base income" by determining the federal taxable income or federal net operating loss of the corporation on a separate corporate basis as though the member was a separate domestic entity for the taxable year, applying the Internal Revenue Code and applicable regulations. This base income is computed after deductions provided for in Sections 241 through 249 of the Internal Revenue Code but before any deduction for net operating losses. Then, before the base income of the unitary group is determined, the members make the following adjustments to federal taxable income or net operating loss:

- (1)** adding to that income:
  - (a)** interest received on a state or local bond exempt under the Internal Revenue Code;
  - (b)** the amount of any deduction claimed in calculating taxable income for all expenses and costs directly or indirectly paid, accrued or incurred to a captive real estate investment trust; and
  - (c)** the amount of any deduction, other than for premiums, for amounts paid directly or indirectly to a commonly controlled entity that is exempt from corporate income tax pursuant to Section 7-2A-4 NMSA 1978; and
- (2)** subtracting from that income:
  - (a)** income from obligations of the United States net of expenses incurred to earn that income;
  - (b)** other amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States net of any related expenses;

(c) an amount equal to one hundred percent of the Subpart F income, as that term is defined in Section 952 of the Internal Revenue Code, as that section may be amended or renumbered, included in the income of the corporation; and

(d) an amount equal to one hundred percent of the income of the corporation under Section 951A of the Internal Revenue Code, after allowing the deduction provided in Section 250 of the Internal Revenue Code; and

(3) making other adjustments deemed necessary to properly reflect income of the unitary group, including attribution of income or expense related to unitary assets held by related corporations that are not part of the filing group.

**B.** The filing group's net income is computed by combining the member's base income, whether positive or negative, eliminating or deferring intercompany income and expense of the filing group members in a manner consistent with the consolidated filing requirements of the Internal Revenue Code and the Corporate Income and Franchise Tax Act; and without deducting any amount of net operating loss carryover.

[3.4.10.14 NMAC - N, 3/23/2021]

### **3.4.10.15 NET OPERATING LOSSES OF FILING GROUPS - APPLICABLE TO TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2020:**

**A.** In general, for taxable years beginning on or after January 1, 2020, New Mexico provides that net operating loss carryovers be computed on a post-apportioned basis and that the carryover be treated as an attribute of the unitary group, subject to the limitations under the Internal Revenue Code, including the consolidated filing regulations applied to the New Mexico unitary filing group as though it was the federal consolidated group.

**B.** A unitary filing group calculates its net operating loss carryover as follows:

(1) determining the amount of "grandfathered net operating loss carryover," if any, by:

(a) identifying the amount of net loss properly reported to New Mexico for taxable years beginning January 1, 2013 and prior to January 1, 2020 as part of a timely filed original return, or an amended return for those taxable years filed prior to January 1, 2020, that can be attributed to a corporation or corporations which are properly included in the taxpayer's return for the first taxable year beginning on or after January 1, 2020;

(b) reducing each loss identified by:

(i) adding back deductions for royalties or interest paid to any related corporation or group of corporations in computing the loss, but only to the extent that such adjustment would not create a net loss for that related corporation or group; and

(ii) subtracting net operating loss deductions taken prior to January 1, 2020 that would be properly charged against those losses consistent with the Internal Revenue Code and provisions of the Corporate Income and Franchise Tax Act applicable to the year of the deduction; and.

(c) apportioning any remaining loss to New Mexico using the apportionment factors that can properly be attributed to the corporation or corporations for the year of the net loss.

(2) Computing the "net operating loss carryover" as follows:

(a) add:

(i) the apportioned net loss properly reported on an original or amended tax return for taxable years beginning on or after January 1, 2020 by the taxpayer, including a filing group as properly determined under the Corporate Income and Franchise Tax Act;

(ii) the portion of an apportioned net loss properly reported to New Mexico for a taxable year beginning on or after January 1, 2020, on a separate year return, to the extent the taxpayer would have been entitled to include the portion of such apportioned net loss in the taxpayer's consolidated net operating loss carryforward under the Internal Revenue Code and consolidated filing rules if the taxpayer filed a consolidated federal return; and

(iii) the taxpayer's grandfathered net operating loss carryover; and.

(b) subtract:

(i) the amount of the net operating loss carryover attributed to an entity that has left the unitary filing group, computed in a manner consistent with the consolidated filing requirements of the Internal Revenue Code and applicable regulations, as if the taxpayer were filing a consolidated return; and

(ii) the amount of net operating loss deductions properly taken by the taxpayer.

**C.** For taxable years after January 1, 2020, a taxpayer may take a "net operating loss deduction" to the extent allowed under the Internal Revenue Code as of January 1, 2018 for the taxable year in which the deduction is taken, including the eighty percent limitation of Section 172(a) of the Internal Revenue Code as of

January 1, 2018, calculated on the basis of the taxpayer's apportioned net income. In no case may the taxpayer's net operating loss deduction exceed eighty percent of the taxpayer's apportioned net income for the year in which the deductions taken.

[3.4.10.15 NMAC - N; 3/23/2021]

**3.4.10.16 OBLIGATION OF EXCLUDED CORPORATIONS TO FILE A RETURN:** When a unitary group of corporations files a return, whether it is a worldwide, water's edge, or consolidated group return, if that return properly excludes one or more related corporations, those corporations are not relieved of the obligation to file tax returns and pay any tax owed on a separate entity basis. These corporations may separately elect to file a worldwide or water's edge return as a unitary group only if that return will include all corporations that are properly a part of that unitary group. In computing base income and net income, the corporation or corporations that properly file in a separate return from related corporations will not eliminate or defer intercompany transactions with those related corporations.

[3.4.10.16 NMAC - N, 3/23/2021]

#### **HISTORY OF 3.4.10 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:** 3.4.10 NMAC, Returns and Reporting Methods, filed 12/1/2000, Repealed 3/23, 2021.

#### **NMAC History:**

3 NMAC 4.10, Returns and Reporting Methods, filed 12/31/96.

3.4.10 NMAC, Returns and Reporting Methods, filed 12/1/2000.

3.4.10 NMAC, Returns and Reporting Methods, filed 12/1/2000, Replaced by 3.4.10 NMAC, Returns and Reporting Methods, effective 3/23, 2021.