

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Taxation and Revenue Department hereby gives notice as required under Section 14- 4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to amend, repeal and replace, and adopt the following rules as authorized by Section 9-11-6.2 NMSA 1978:

Purpose: The proposed rules are to reflect the 2019 legislative session changes in House Bill 6 to the Corporate Income Tax Act and the Uniform Division of Income for Tax Purposes Act and provide clarity to the public on both prior law and changes that are effective for the 2020 tax year.

Summary of Proposed Changes: The New Mexico Taxation and Revenue Department proposes to amend/repeal/replace the following rules:

Corporate Income and Franchise Tax Act

3.4.1.9 NMAC (<i>Net Operating Losses</i>)	Section 7-2A-2 NMSA 1978
3.4.1.10 NMAC (<i>Income from Obligations of Governments</i>)	Section 7-2A-2 NMSA 1978
3.4.1.11 NMAC (<i>Base Income for Filing as a Separate Corporate Entity</i>)	Section 7-2A-2 NMSA 1978
3.4.1.12 NMAC (<i>Foreign Source Dividends</i>)	Section 7-2A-2 NMSA 1978
[NEW] 3.4.1.13 (<i>Foreign Source Dividends After January 1, 2020</i>)	Section 7-2A-2 NMA 1978
[NEW] 3.4.1.14 NMAC (<i>Unitary Business</i>)	Section 7-2A-2 NMSA 1978
3.4.10.7 NMAC (<i>Definitions</i>)	Section 7-2A-8 NMSA 1978
3.4.10.8 NMAC (<i>Reporting Methods</i>)	Section 7-2A-8.3 NMSA 1978
3.4.10.9 NMAC (<i>Separate Accounting; Computation of Net Operating Losses</i>)	Section 7-2A-8 NMSA 1978
3.4.10.11 NMAC (<i>Combined Returns</i>)	Section 7-2A-8.3 NMSA 1978
[New] 3.4.10.12 NMAC (<i>Consolidated Filing Election</i>)	Section 7-2A-8.3 NMSA 1978
[NEW] 3.4.10.14 NMAC (<i>Computation of Base and Net Income - Applicable to Periods Beginning on or After January 1, 2020</i>)	Section 7-2A-2 NMSA 1978
[NEW] 3.4.10.15 NMAC (<i>Net Operating Losses of Filing Groups - Applicable to Tax Years Beginning on or After January 1, 2020</i>)	Section 7-2A-2 NMSA 1978
[NEW] 3.4.10.16 NMAC (<i>Obligations of Excluding Corporations to File a Return</i>)	Section 7-2A-3 NMSA 1978
[NEW] 3.4.14.11 NMAC (<i>Tax Credits; Applicability to Unitary Groups</i>)	Section 7-2A-9.2 NMSA 1978

Uniform Division of Income for Tax Purposes Act

3.5.4.9 NMAC (<i>Taxable in Another State - When a Taxpayer is “Subject To” a Tax:</i>)	Section 7-4-4 NMSA 1978
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3.5.4.10 NMAC Section 7-4-4 NMSA 1978
(Taxable in Another State - When a State has Jurisdiction to Subject a Taxpayer to a Net Income Tax)
[New] 3.5.4.11 NMAC Section 7-4-4 NMSA 1978
(Taxable in Another State - When a Taxpayer is "Subject to" a Tax - for Tax Periods Beginning on or After January 1, 2020)

3.5.10.8 NMAC Section 7-4-10NMSA 1978
(Apportionment Formula:)

[New] 3.5.16.11 NMAC Section 7-4-16 NMSA 1978
(Effect of Combined Filing on the Sales Factor)

3.5.18.8 NMAC Section 7-4-18 NMSA 1978
(Sales Factor - Sales Other Than Sales of Tangible Personal Property in This State:)
[New] 3.5.18.9 NMAC Section 7-4-18 NMSA 1978
(Sales Factor - Sales Other Than Sales of Tangible Personal Property in This State - Applicable to Tax Years Beginning on or After January 1, 2020)

Hearing Date: Notice of public rule hearing: A public hearing will be held on the proposed rule changes on Thursday, February 25, 2021, at 1:00 p.m. through the internet, email, and telephonic means in response to concerns surrounding COVID-19 and in accordance with Executive Order 2020-004, Declaration of a Public Health Emergency, and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19.

Technical Information: No technical or scientific information was consulted in drafting these proposed rule changes.

Public Hearing Location: The Public Hearing will be accessible via WebEx by going <https://nm-tax.webex.com/nm-tax/j.php?MTID=m54ada1b7d3b9821f418e965b12c66135> or by telephone by dialing 1-415-655-0001 and using the meeting number (access code) 132 999 0384 Password 02252021. Any oral comments made during this hearing will be recorded and any electronic written comments can be submitted during the hearing at policy.office@state.nm.us.

How to participate: Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Bobbie Marquez at BobbieJ.Marquez@state.nm.us. The Taxation and Revenue Department will make every effort to accommodate all reasonable requests but cannot guarantee accommodation of a request that is not received at least ten calendar days prior to the scheduled hearing.

Complete Copies of the proposed rule changes can be found at www.tax.newmexico.gov/proposed-regulations-hearing-notices.aspx or are available upon request by contacting the Tax Policy Office at policy.office@state.nm.us.

The copies of the proposed amended and repealed rules were placed on file in the Office of the Secretary on January 11, 2021. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final rules, if filed, will be filed as required by law on or about March 12, 2021.

When are comments due: Written comments on the proposals can be submitted by email to policy.office@state.nm.us or by mail to the Taxation and Revenue Department, Tax Information and Policy Office, Post Office Box 630, Santa Fe, New Mexico 87504-0630 or on or before February 25, 2021. All written comments received by the agency will be posted on www.tax.newmexico.gov no more than 3 business days following receipt to allow for public review.