

TITLE 3: TAXATION
CHAPTER 5: UNIFORM DIVISION OF INCOME FOR TAX PURPOSES
PART 16: SALES FACTOR FOR APPORTIONMENT OF BUSINESS INCOME

3.5.16.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[1/15/1997; 3.5.16.1 NMAC - Rn, 3 NMAC 5.16.1, 6/29/2001]

3.5.16.2 SCOPE: This part applies to every taxpayer having income which is taxable for income tax purposes both within and without New Mexico.
[1/15/1997; 3.5.16.2 NMAC - Rn, 3 NMAC 5.16.2, 6/29/2001]

3.5.16.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[1/15/1997; 3.5.16.3 NMAC - Rn, 3 NMAC 5.16.3, 6/29/2001]

3.5.16.4 DURATION: Permanent.
[1/15/1997; 3.5.16.4 NMAC - Rn, 3 NMAC 5.16.4, 6/29/2001]

3.5.16.5 EFFECTIVE DATE: January 15, 1997, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[1/15/1997; 3.5.16.5 NMAC - Rn & A, 3 NMAC 5.16.5, 6/29/2001]

3.5.16.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Uniform Division of Income for Tax Purposes Act.
[1/15/1997; 3.5.16.6 NMAC - Rn, 3 NMAC 5.16.6, 6/29/2001]

3.5.16.7 DEFINITIONS: [RESERVED]
[1/15/1997; 3.5.16.7 NMAC - Rn, 3 NMAC 5.16.7, 6/29/2001]

3.5.16.8 SALES FACTOR - IN GENERAL:

A. Section 7-4-2 NMSA 1978 defines the term “sales” to mean all gross receipts of the taxpayer not allocated under Sections 7-4-5 through 7-4-9 NMSA 1978. Thus for the purposes of the sales factor of the apportionment formula for each trade or business of the taxpayer, the term “sales” means all gross receipts derived by the taxpayer from transactions and activity in the regular course of such trade or business. The following are rules for determining “sales” in various situations.

(1) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, “sales” includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes and gross receipts taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.

(2) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, “sales” includes the entire reimbursed cost, plus the fee.

(3) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts or research and development contracts, “sales” includes the gross receipts from the performance of such services including fees, commissions and similar items.

(4) In the case of a taxpayer engaged in renting real or tangible property, “sales” includes the gross receipts from the rental, lease or licensing the use of the property.

(5) In the case of a taxpayer engaged in the sale, assignment or licensing of intangible personal property, such as patents and copyrights, “sales” includes the gross receipts therefrom.

(6) If a taxpayer derives receipts from the sale of equipment used in its business, such receipts constitute “sales”. For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

B. In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business.

C. In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

D. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act or Article IV of the multistate tax compact are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

[1/15/1974, 9/15/1988, 9/20/1993, 1/15/1997; 3.5.16.8 NMAC - Rn & A, 3 NMAC 5.16.8, 6/29/2001]

3.5.16.9 SALES FACTOR - DENOMINATOR: The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under Section 3.5.19.11 NMAC.

[1/15/1974, 9/15/1988, 9/20/1993, 1/15/1997; 3.5.16.9 NMAC - Rn & A, 3 NMAC 5.16.9, 6/29/2001]

3.5.16.10 SALES FACTOR - NUMERATOR: The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges or time-price differential charges incidental to such gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

[1/15/1974, 9/15/1988, 9/20/1993, 1/15/1997; 3.5.16.10 NMAC - Rn, 3 NMAC 5.16.10, 6/29/2001]

3.5.16.11 EFFECT OF COMBINED FILING ON THE SALES FACTOR: For corporations that file on a combined or consolidated basis, the sales factor for the filing group is calculated without the inclusion of intercompany sales that would otherwise be deferred or eliminated under federal consolidated filing rules when calculating net income for the group.

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

HISTORY OF 3.5.16 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: BOR 71-1, (Income Tax Regulation 10-1) Attachment of Federal Schedule C to New Mexico Income Tax Return, filed 1/5/1971.

BOR 72-1, Regulation for Income Tax Act Section 72-15A-10 NMSA 1953, filed 1/12/1972.

BOR 72-2, (Income Tax Reg. 10-2) Filing of New Mexico Partnership Returns, filed 1/18/1972.

R.D.I.T. Regulation 12:2, Regulation Pertaining to Requirement for the Acceptance of Computer Generated Form PIT-1 and Related Schedules Income Tax Act, Section 7-2-12 NMSA 1978, filed 4/2/1984.

I.T. Regulation 12:4, Regulation Pertaining to Requirement for the Acceptance of Computer Generated Form PIT-1 and Related Schedules Income Tax Act, Section 7-2-12 NMSA 1978, filed 9/4/1987.

R.D.-I.T. Regulation 12:3, Regulation Pertaining to Requirement for the Preparation of Acceptable Reproductions of New Mexico Income Tax Forms Income Tax Act Section 7-2-12 NMSA 1978, filed 4/18/1984.

BOR 74-1, Regulations in Effect and Pertaining to the New Mexico Income Tax Act and the New Mexico Uniform Division of Income for Tax Purposes Act, filed 1/15/1974.

TRD Rule 4-88, Regulations Pertaining to the Uniform Division of Income for Tax Purposes Act Sections 7-4-1 to 7-4-21 NMSA 1978, filed 9/16/1988.

TRD Rule UDI-93, Regulations Pertaining to the Uniform Division of Income for Tax Purposes Act, Sections 7-4-1 through 7-4-21 NMSA 1978, filed 9/20/1993.

History of Repealed Material: [RESERVED]

NMAC History:

3 NMAC 5.16, Sales Factor for Apportionment of Business Income, filed 12/31/1996.

3.5.16 NMAC, Sales Factor for Apportionment of Business Income, filed 6/18/2001.