

TITLE 3: TAXATION
CHAPTER 3: PERSONAL INCOME TAXES
PART 1: GENERAL PROVISIONS

3.3.1.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[1/15/97; 3.3.1.1 NMAC - Rn, 3 NMAC 3.1.1, 12/14/00]

3.3.1.2 SCOPE: This part applies to each resident of New Mexico and to each nonresident 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.
[1/15/97; 3.3.1.2 NMAC - Rn, 3 NMAC 3.1.2, 12/14/00]

3.3.1.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[1/15/97; 3.3.1.3 NMAC - Rn, 3 NMAC 3.1.3, 12/14/00]

3.3.1.4 DURATION: Permanent.
[1/15/97; 3.3.1.4 NMAC - Rn, 3 NMAC 3.1.4, 12/14/00]

3.3.1.5 EFFECTIVE DATE: 1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[1/15/97; 3.3.1.5 NMAC - Rn & A, NMAC 3.1.5, 12/14/00]

3.3.1.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Income Tax Act.
[1/15/97; 3.3.1.6 NMAC - Rn, 3 NMAC 3.1.6, 12/14/00]

3.3.1.7 DEFINITIONS: For purposes of Subsection S of Section 7-2-2 NMSA and Section 3.3.1.9 NMAC, a "day" is any consecutive 24-hour period.
[3.3.1.7 NMAC - N, 4/29/05]

3.3.1.8 CITATION OF REGULATIONS: Unless otherwise stated, all citations of statutes in Title 3, Chapter 3 NMAC pertaining to the Income Tax Act are to the New Mexico Statutes Annotated, 1978 (NMSA 1978).
[1/15/74, 12/29/89, 3/16/92, 1/15/97; 3.3.1.8 NMAC - Rn, 3 NMAC 3.1.8, 12/14/00]

3.3.1.9 RESIDENCY

A. **Full-year residents.** For purposes of the Income Tax Act, the following are full-year residents of this state:

- (1) an individual domiciled in this state during all of the taxable year, or
- (2) an individual other than an individual described in Subsection D of this section who is physically present in this state for a total of one hundred eighty-five (185) days or more in the aggregate during the taxable year, regardless of domicile.

B. **Part-year residents.**

(1) An individual who is domiciled in New Mexico for part but not all of the taxable year, and who is physically present in New Mexico for fewer than 185 days, is a part-year resident.

(a) During the first taxable year in which an individual is domiciled in New Mexico, if the individual is physically present in New Mexico for less than a total of 185 days, the individual will be treated as a non-resident of New Mexico for income tax purposes for the period prior to establishing domicile in New Mexico.

(b) An individual domiciled in New Mexico who is physically present in New Mexico for fewer than 185 days and changes his domicile to a place outside this state with the bona fide intention of continuing to live permanently outside New Mexico, is not a resident for Income Tax Act purposes for periods after that change of domicile.

(2) An individual who moves into this state with the intent to make New Mexico his permanent domicile is a first-year resident. A first-year resident should report any income earned prior to moving into New Mexico as nonresident income even if he is physically present in New Mexico for 185 days or more.

C. "Domicile" defined:

(1) A domicile is the place where an individual has a true, fixed home, is a permanent establishment to which the individual intends to return after an absence, and is where the individual has voluntarily fixed habitation of self and family with the intention of making a permanent home. Every individual has a domicile somewhere, and each individual has only one domicile at a time.

(2) Once established, domicile does not change until the individual moves to a new location with the bona fide intention of making that location his or her permanent home.

(3) No change in domicile results when an individual leaves the state if the individual's intent is to stay away only for a limited time, no matter how long, including:

- (a) for a period of rest or vacation;
- (b) to complete a particular transaction, perform a contract or fulfill an engagement or obligation, but intends to return to New Mexico whether or not the transaction, contract, engagement or obligation is completed, or
- (c) to accomplish a particular purpose, but does not intend to remain in the new location once the purpose is accomplished.

(4) To determine domicile, the department shall give due weight to an individual's declaration of intent. However, those declarations shall not be conclusive where they are contradicted by facts, circumstances and the individual's conduct. In particular, the department will consider the following factors in determining whether an individual is domiciled in New Mexico (the list is not intended to be exclusive and is in no particular order):

- (a) homes or places of abode owned or rented (for the individual's use) by the individual, their location, size and value; and how they are used by the individual;
- (b) where the individual spends time during the tax year and how that time is spent; e.g., whether the individual is retired or is actively involved in a business, and whether the individual travels and the reasons for traveling, and where the individual spends time when not required to be at a location for employment or business reasons, and the overall pattern of residence of the individual;
- (c) employment, including how the individual earns a living, the location of the individual's place of employment, whether the individual owns a business, extent of involvement in business or profession and location of the business or professional office, and the proportion of in-state to out-of-state business activities;
- (d) home or place of abode of the individual's spouse, children and dependent parents, and where minor children attend school;
- (e) location of domicile in prior years;
- (f) ownership of real property other than residences;
- (g) location of transactions with financial institutions, including the individual's most active checking account and rental of safety deposit boxes;
- (h) place of community affiliations, such as club and professional and social organization memberships;
- (i) home address used for filing federal income tax returns;
- (j) place where individual is registered to vote;
- (k) state of driver's license or professional licenses;
- (l) resident or nonresident status for purposes of tuition at state schools, colleges and universities, fishing and hunting licenses, and other official purposes; and
- (m) where items or possessions that the individual considers "near and dear" to his or her heart are located, e.g., items of significant sentimental or economic value (such as art), family heirlooms, collections or valuables, or pets.

(5) The department shall evaluate questions regarding domicile on a case-by-case basis. No one of the factors considered by the department shall be conclusive with respect to an individual's domicile. Factors such as the state of driver's license, place of voter registration and home address may be given less weight, depending on the circumstances, because they are relatively easy to change for tax purposes.

D. "Domicile" and residency for armed forces personnel

(1) A resident of this state who is a member of the United States armed forces does not lose residence or domicile in this state, or gain residency or domicile in another state, solely because the service member left this state in compliance with military orders.

(2) A resident of another state who is a member of the United States armed forces does not acquire residence or domicile in this state solely because the service member is in this state in compliance with military orders.

(3) A resident of another state who is a member of the United States armed forces does not become a resident of this state solely because the service person is in this state for one hundred and eighty-five (185) or more days in a taxable year.

(4) Compensation for service in the armed forces is subject to personal income tax only in the state of the service member's domicile. "Compensation for military service" does not include compensation for off-duty employment, or military retirement income.

(5) For purposes of this section, "armed forces" means all members of the army of the United States, the United States navy, the marine corps, the air force, the coast guard, all officers of the public health service detailed by proper authority for duty either with the army or the navy, reservists placed on active duty, and members of the national guard called to active federal duty.

E. Examples:

(1) A, a life-long resident of Texas, accepts a job in New Mexico. On December 5, 2003, A moves to New Mexico with the intention of making New Mexico her permanent home. A has established domicile in New Mexico during the 2003 tax year. Because she was physically present in New Mexico for fewer than 185 days during that year, she should file as a part-year resident, and she will be treated as a resident for personal income tax purpose only for that period after she establishes a New Mexico domicile.

(2) B, a resident of Arizona, makes several weekend visits to New Mexico in the early months of 2004. On July 1, 2004, he moves to New Mexico with the intention of making it his permanent home. Family matters call him back to Arizona on August 1, 2004, and he soon determines that he must remain in Arizona. B was domiciled in New Mexico during the thirty days he spent in this state with the intention of making it his permanent home. Because B was physically present in this state for fewer than 185 days in 2004, B should file as a part-year resident for that tax year. For personal income tax purposes he will be treated as a resident of New Mexico only from July 1 to August 1, 2004.

(3) C was born and raised in New Mexico. She leaves New Mexico in December 2003 to pursue a two-year master's degree program in Spain. She intends to return to New Mexico when she completes her studies. During her absence she keeps her New Mexico driver's license and voter registration. Because New Mexico remains her domicile, C should file returns for tax years 2003, 2004 and 2005 as a full-year New Mexico resident.

(4) D, a resident of California, comes to New Mexico on three separate occasions in 2004 to work on a movie. D does not intend to remain in New Mexico, and when the movie is completed, D returns to her home in California. D is physically present in New Mexico for 200 days in 2004. Because D was physically present in New Mexico for at least 185 days, D must file as a full-year resident of New Mexico for tax year 2004.

(5) E, a resident of New Mexico, joined the army. Since joining the military, E has been stationed in various places around the world. Although E has not been back to New Mexico in the ten years since he joined the army, he continues to vote in New Mexico and holds a current New Mexico driver's license. E must file as a full-year resident of New Mexico.

(6) Same facts as Example 5, except that in August 2003, while stationed in Georgia, E retires from the military. Instead of returning to New Mexico, E moves to Florida where he intends to spend his retirement. For tax year 2003, E must file as a part-year resident, because he was not physically present in the state for 185 days or more. E is a resident of New Mexico until August 2003, when he moves to Florida with the intent of making that his permanent home.

(7) F, a resident of Texas, is an air force officer. In March 2002 he moves to New Mexico to begin a two-year assignment at Kirtland Air Force Base. F is registered to vote in Texas and holds a Texas driver's license. F is not a resident of New Mexico in 2002. During the second year of F's assignment, he registers to vote in New Mexico, obtains a New Mexico driver's license, and enrolls his son in a New Mexico university paying resident tuition. Although F's presence in New Mexico under military orders is not sufficient to establish New Mexico residency or domicile, his conduct in 2003 is sufficient to establish domicile. In 2003 F must file as a part-year resident of New Mexico. He will be treated as a non-resident for income tax purposes for that period of 2003 prior to establishing domicile in New Mexico.

(8) G is a Native American who lives and works on his tribe's pueblo in New Mexico. Federal law prohibits the state from taxing income earned by a Native American who lives and works on his tribe's territory. G joins the marines and is stationed outside New Mexico. Because G's domicile remains unchanged during his

military service, G's income from military service is treated as income earned on the tribe's territory by a tribal member living on the tribe's territory, and is not taxable by New Mexico.
[10/23/85, 12/29/89, 3/16/92, 6/24/93, 1/15/97; 3.3.1.9 NMAC - Rn & A, 3 NMAC 3.1.9, 12/14/00, A, 4/29/05; A, 4/28/06; A, 12/15/10]

3.3.1.10 MODIFIED GROSS INCOME

A. Modified gross income definitions.

(1) The following definitions apply in determining the amount of modified gross income for each taxable year:

(a) "Social Security Benefits" means only cash payments made pursuant to Title II of the Social Security Act for old age, survivors and disability benefits, including any amount deducted for part B coverage.

(b) "Unemployment Compensation Benefits" means cash benefits paid through the employment security division of the New Mexico department of labor or any similar state agency of another state or any private income substitution program.

(c) "Workers' Compensation Benefits" means cash payments to the worker made by the employer or any insurance company providing workers' compensation coverage where such payments are based on the worker's average weekly wage, but does not include payments for medical or rehabilitative services, whether made directly to the provider or made to the worker for reimbursement of such expenses.

(d) "Public Assistance and Welfare Benefits" means unrestricted cash payments made under the supplemental security income program, the aid to families with dependent children program, general assistance or similar programs. It does not include medical payments or reimbursements under medicaid, medicare, hospital indigency programs, department of vocational rehabilitation programs, V.A. medical assistance, CHAMPUS or other such programs. It does not include housing subsidies or payments.

(e) "Cost of Living Allowances" or "Gifts" do not include provision of free room and board to persons when that room is provided based on financial need or noncommercial considerations. "Costs of living allowances" does include provision of room or compensation for room made during an employer-employee relationship or other commercial situation.

(f) "Income From Discharge of Indebtedness" means income which becomes available because of the forgiveness of a debt. It does not include debts which are discharged by bankruptcy or when the discharge fails to result in the availability of cash resources.

(g) "Gains Derived From Dealings in Property" mean "gains derived from dealings in property" as defined in 26 C.F.R. (Internal Revenue Service Income Tax Regulation) 1.61-6, as amended or renumbered.

(h) "Interest" means "interest" as defined in 26 C.F.R. (Internal Revenue Service Income Tax Regulation) 1.61-7, as amended or renumbered.

(i) "Net Rents" means cash income derived from the rental of real or personal property over and above all expenditures related to the rented property, including but not limited to mortgage payments, management expenses, housekeeping, property taxes, brokerage fees, special assessments and other operating charges.

(j) "Annuities" and "Income From Life Insurance and Endowment Contracts" mean "annuities" and "certain proceeds of endowment and life insurance contracts" as defined in 26 U.S.C. Section 72 (Internal Revenue Code of 1986), as amended or renumbered, and regulations promulgated thereunder.

(2) Scholarships, grants, fellowships or similar payments, made either to the taxpayer or to an educational institution or to both, which do not have to be repaid are modified gross income.

(3) Modified gross income does not include:

(a) payments made for hospital, dental, medical or drug expenses, whether the payment is made directly to the insured/recipient or to a third party provider, and regardless of whether a premium is paid or not.

(b) the value of room and board provided by federal, state or local government or by private individuals or agencies when the assistance is based upon financial need or other noncommercial considerations, and not as a form of compensation.

(c) debts that have been discharged by a United States bankruptcy court.

(d) gifts or gratuities which are not cash or which have no market value or only negligible market value.

(e) any additional benefits or payments made pursuant to a government program made directly or indirectly to a third party, when identified to a particular use or invoice, such as housing rehabilitation grants for low income housing, housing subsidies or payments, weatherization payments and energy crisis intervention payments pursuant to the Home Energy Assistance Act of 1980 (Title III of Public Law 96-223).

(f) payments made to New Mexico residents pursuant to the foster grandparent program under the National Older American Volunteer Act (42 U.S.C. Section 5011).

(g) the value of food stamp coupons under the Food Stamp Act, 7 U.S.C. § 2016c.

(h) monies received during the taxable year as comprehensive low income, food, medical, low income food and medical or property tax rebates.

(i) proceeds from loans which the taxpayer is legally obligated to repay.

(4) Example 1: G has two children and receives \$2,796 per year AFDC (Aid to Families with Dependent Children) from the human services department. The monthly rate is \$233 per month. G lives in a Section VIII rent subsidy house for which G pays \$50 a month rent and the housing authority pays the owner an additional \$150 per month. During the year the human services department pays \$550 for health and medical expenses for G and G's children under the medicaid program. G's modified gross income is \$2,796. Neither the rent subsidy nor medicaid is includable as modified gross income.

(5) Example 2: A is 75 years old and receives a total of \$238 per month from social security and supplemental security income (\$170 per month social security and \$68 per month SSI). A lives in a trailer which A's daughter and son-in-law own and in which A has permission to remain until A dies. A also received two tanks of bottled gas under the community action energy crisis program. A's modified gross income is \$2,856 (\$238 a month times 12 months). The rental value of the trailer is not included in modified gross income since it was provided upon noncommercial considerations and to a person in need. The utility assistance A received is also not included.

(6) Example 3: B is a retired person. B has medical bills of \$600 for which B's insurance will reimburse B after B pays the doctor. B also received approximately \$1,500 in housing rehabilitation benefits, which were paid in one check made payable to B and the housing contractor. Later on B was given a check for \$200 by the housing rehabilitation agency to pay for materials which B had purchased on credit as part of the rehabilitation program. B is living on a savings account which earns interest. B's modified gross income is only the amount of interest earned by the savings account. The insurance payment is not modified gross income because it is an indirect medical payment and identified to a particular expense. The same reasoning applies to the \$200 payment made for the materials. Finally, the weatherization or rehabilitation benefits are not modified gross income.

(7) Example 4: M is an elderly person who lives alone and receives \$500 per month (\$6,000 per year) social security payments. Periodically, M receives gifts of food and used clothing from community sources. M is given a used pickup truck, valued at \$1,000, and jewelry valued at \$3,000 by a relative. M's modified gross income is \$6,000 plus \$1,000, plus \$3,000, for a total of \$10,000. The car and jewelry are included since they are gifts which are tangible marketable items. The food and clothing do not represent cash or marketable items and so are not included in modified gross income.

B. Impact of losses on modified gross income. "Modified gross income" may not be diminished by deductions or offset by losses which may be allowed under the New Mexico Income Tax Act or under the Internal Revenue Code of 1986, as amended or renumbered. Despite any loss occurring from any transaction, or any expense connected therewith, zero is the lowest amount which may be reported for any item in computing "modified gross income". The loss from one business or activity shall not reduce the income from another business or activity. If a business incurs a loss during the taxable year, the amount of income to be included in modified gross income from that business is zero (-0-) for that taxable year.

C. Sick pay included in modified gross income. "Sick pay", payments received for damages for personal injury or illness and disability payments from whatever source are "modified gross income".

D. Settlement of claims included in modified gross income. Amounts received in settlement of a claim or as a result of a judgment are "modified gross income".

[1/18/82, 12/29/89, 7/20/90, 3/16/92, 1/15/97; 3.3.1.10 NMAC - Rn, 3 NMAC 3.1.10, 12/14/00]

3.3.1.11 REQUIREMENTS FOR CLAIMING DEPENDENTS AS PERSONAL EXEMPTIONS

A. Except as otherwise provided by 3.3.1.11 NMAC, each dependent claimed as a personal exemption for New Mexico income tax purposes must meet the tests of dependency in Section 152 of the Internal Revenue Code as amended or renumbered. The taxpayer shall provide the name of each dependent and the social security number for any dependent who is two years of age or older when required to do so by the instructions to the

New Mexico income tax return. The personal exemption amount claimed for a dependent may be disallowed if the dependent does not meet the tests of dependency or if required information is not provided.

B. For purposes of claiming a tax rebate or credit for which eligibility is determined by the amount of modified gross income, a dependent must meet all tests of dependency required by Section 152 of the Internal Revenue Code except the requirement that public assistance provide less than half of the dependent's total support. [10/11/91, 3/16/92, 1/15/97; 3.3.1.11 NMAC - Rn & A, 3 NMAC 3.1.11, 12/14/00]

3.3.1.12 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.

(3) This version of Subsection 3.3.1.12A NMAC is retroactively effective for taxable years beginning on or after January 1, 1991.

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 this subsection (3.3.1.12C 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;

(b) the mutual fund provides to the investor an annual statement of the income, by source, which was distributed to the individual investor; and

(c) the trust provides to the beneficiary an annual statement of the income by source and that the income received by the beneficiary retains the same character under the Internal Revenue Code as that income had when earned by the trust.

(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.

(3) Subsection 3.3.1.12D NMAC applies to taxable years beginning on or after January 1, 1991.

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 7-2-2 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 resident, purchases a state of California municipal bond in 1992 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 resident and calendar year filer, purchases a city of Los Angeles municipal bond in 1990. 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, 1991, B receives \$1,000 of interest. Since this payment includes interest earned or accrued before January 1, 1991, this income is to be allocated between the period prior to the tax year and the period following December 31, 1990. The income accrual period is 182 days in length (October 1, 1990, through March 31, 1991), of which 90 days are in B's first taxable year beginning on or after January 1, 1991. B's 1991 base income includes \$494.51 ($\$1,000 \times 90/182$). The remaining \$505.49 is not subject to New Mexico income tax.

(6) Example 3: C, a New Mexico resident 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 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 income tax.

(7) Example 4: Same facts as Example 3, except that C did not become a New Mexico resident until January 1, 1993. The income from the bond must be allocated between the period prior to January 1, 1993, and the period after December 31, 1992. 730 days follow December 31, 1992. C's 1995 base income includes \$514.08 ($((730/5112) \times (\$5,000 - \$1,400))$). The remaining \$3,085.92 is not subject to New Mexico income tax.

(8) Subsection 3.3.1.12E NMAC applies to taxable years beginning on or after January 1, 1991.

F. Bonds issued by tribal governments are not "state or local bonds".

(1) Bonds issued by Indian governments are not "state or local bonds" under the Income Tax Act. As defined in Section 7-2-2 NMSA 1978, the term "state" does not include Indian nations, tribes or pueblos or their governments. The term "local government" is not defined by the Income Tax Act but is commonly used to mean political subdivisions of states. Indian nations, tribes and pueblos are not political subdivisions of states.

(2) To the extent that the Internal Revenue Code treats interest from bonds issued by Indian governments as if it were interest from "state or local bonds", such interest is excluded from federal adjusted gross income and therefore initially excluded from New Mexico base income as well. Because bonds issued by Indian governments are not "state or local bonds" for purposes of the Income Tax Act, interest income with respect to such bonds is not required to be added to federal adjusted gross income in determining New Mexico base income. [3/16/92, 6/24/93, 11/17/95, 1/15/97, 1/15/98; 3.3.1.12 NMAC - Rn & A, 3 NMAC 3.1.12, 12/14/00]

3.3.1.13 NET OPERATING LOSSES

A. Net operating losses; generated by deduction of income from United States obligations.

(1) Section 3.3.1.13 NMAC and subsections thereunder apply to the income of a taxpayer derived from any unincorporated business.

(2) If, for an unincorporated business, the exclusion of income from obligations of the United States of America results in a negative amount for New Mexico net income for that business for a taxable year, the resulting negative amount may be deemed to be a net operating loss for that taxable year. The taxpayer must establish the loss from exclusion of income from obligations of the United States of America by filing a New Mexico return or amended return within the time period set forth in Section 7-2-12 NMSA 1978, Subsections B, C and E of Section 7-1-26 NMSA 1978. An amended return carrying back or forward any such net operating loss must be filed within the time period set forth in Subsections B, C and E of Section 7-1-26 NMSA 1978. The taxpayer shall apply relevant provisions of 26 U.S.C. Section 172 of the Internal Revenue Code to determine the years to which the net operating loss may be applied.

(3) Any net operating loss deemed created by this subsection (3.3.1.13A NMAC) may be carried back or forward in accordance with the provisions of Section 7-2-2 NMSA 1978 and Subsections A through E of Section 3.3.1.13 NMAC. For taxable years beginning prior to January 1, 1991, the resulting taxable income shall then be allocated and apportioned in that year pursuant to the provisions of Section 7-2-11 NMSA 1978.

(4) For the purposes of Subsections A through E of Section 3.3.1.13 NMAC, the term "unincorporated business" includes:

- (a) S corporations taxed as partnerships for federal income tax purposes; and
- (b) limited liability companies formed pursuant to the Limited Liability Company Act or a similar law of another state which are not taxed as corporations for federal income tax purposes.

B. Net operating losses; time limitation.

(1) A net operating loss, including any net operating loss deemed created pursuant to Subsection 3.3.1.13A NMAC, for a taxable year may be excluded from the base income of any other taxable year only if the net operating loss for the taxable year is established by the filing of a return, either original or amended, within the time periods set forth in Subsections B, C and E of Section 7-1-26 NMSA 1978.

(2) Example: In 1997, a taxpayer who reports income tax on a calendar year basis discovers an error which relates to the taxpayer's state returns for 1990 and 1993. The original 1990 and 1993 returns were timely filed in 1991 and 1994, respectively. Absent the time limitations on filing amended returns, correcting the error through filing of amended returns would create net operating losses in both 1990 and 1993. An amended return may be filed only for 1993 and only the 1993 loss may be excluded from the base income of any other year.

C. **Net operating losses; must be deductible for federal income tax purposes.** The net operating loss carryover of an unincorporated business acquired by the taxpayer or otherwise included, as for example through a change in reporting method, in the taxpayer's return for a taxable year may be excluded from New Mexico base income only to the extent the Internal Revenue Code and regulations issued thereunder would permit deduction of such loss carryovers for federal income tax purposes for that taxable year by that taxpayer.

D. Net operating losses; carryover and carryback rules for taxable years beginning after 1990.

(1) For taxable years beginning on or after January 1, 1991, any net operating loss for federal tax purposes and any net operating loss deemed created pursuant to Subsection 3.3.1.13A NMAC included in net income derived from an unincorporated business may be carried forward only. These loss carryovers may be excluded from base income only for five years or until the total amount of the loss carryover has been excluded, whichever occurs first. The first year in which the loss carryover may be excluded from base income is:

- (a) in the case of a timely filed original return, the next taxable year; and
- (b) in all other cases, the first taxable year beginning after the date on which the return establishing the loss is filed, not the next taxable year following the taxable year in which the loss occurred.

(2) Example: B reports for income tax purposes on a calendar year basis. The 1991 original return included a net operating profit from a partnership in which B is a partner. Subsequently, the partnership reports

revised information to B, showing a net operating loss instead of the original net operating profit. Consequently, in June, 1993, B files an amendment to B's timely filed 1991 original New Mexico individual income tax return. B may first apply the 1991 net operating loss reported on the 1993 amended return to B's New Mexico individual income tax return for 1994. B may not apply this net operating loss to 1992 or 1993.

(3) For taxable years beginning on or after January 1, 1991, net operating loss carryovers must be applied in the following order:

(a) net operating loss carryovers from taxable years beginning prior to January 1, 1991, beginning with the carryover from the oldest taxable year; and

(b) net operating loss carryovers from taxable years beginning on or after January 1, 1991, beginning with the carryover from the oldest taxable year.

(4) Example: Z began operating a sole proprietorship on January 1, 1988. Z has timely filed (on a calendar year basis) income tax returns every year. Z's business earns a net operating profit in 1988, a net operating profit of zero in 1989 and a net operating loss in 1990 which exceeded the 1988 profit by \$5,000. Z's business sustains another net operating loss of \$11,000 for 1991 but creates a net operating profit of \$8,000 for 1992. In applying the loss carryovers, Z must first apply the net operating loss from 1990 to 1988. On Z's 1992 return, Z first applies the \$5,000 carryover balance originating from 1990 and then the loss carryover deriving from 1991.

(5) For taxable years beginning on or after January 1, 1991, any taxpayer excluding a net operating loss carryover from a prior taxable year must attach to the New Mexico return for that taxable year a schedule showing the taxable year in which each net operating loss being carried forward occurred, the amount of each loss excluded in each taxable year following the taxable year in which the loss occurred and the amount of the loss being applied to the taxable year for which the return is being filed.

(6) For any taxable year beginning on or after January 1, 1991, the net operating loss for that taxable year may not be carried back to any preceding taxable year.

E. Net operating losses; carryover and carryback rules for taxable years beginning before 1991.

(1) For taxable years beginning prior to January 1, 1991, any net operating loss, including any net operating loss deemed created pursuant to Subsection 3.3.1.13A NMAC, may be carried forward or carried back to any other taxable year beginning prior to January 1, 1991 in accordance with the provisions of the Internal Revenue Code unless contrary to the provisions of the Income Tax Act and Title 3, Chapter 3 NMAC.

(2) For taxable years beginning prior to January 1, 1991, a net operating loss, including any net operating loss deemed created pursuant to Subsection 3.3.1.13A NMAC, may be carried back only to those prior taxable years for which an individual income tax return was originally due, without regard to any extension, in the period beginning with the January 1 of the third calendar year preceding the calendar year in which began the taxable year for which the loss is established and ending with the day before the first day of the taxable year for which the loss is established.

(3) Example: D operates an unincorporated business and files on a fiscal year basis. D's fiscal year ends April 30. In September, 1993, D files an amended individual income tax return for D's taxable year starting May 1, 1989 and ending April 30, 1990. The amendment establishes a net operating loss for that taxable year. The oldest year to which D may carry back the net operating loss is D's taxable year beginning May 1, 1985 and ending April 30, 1986, the return for which was originally due July 15, 1986.

[3/16/92, 12/28/94, 1/15/97; 3.3.1.13 NMAC - Rn & A, 3 NMAC 3.1.13, 12/14/00]

HISTORY OF 3.3.1 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 1/5/71.

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

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

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 1/15/74.

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 9/16/88.

BOR 77-2, Solar Heating and Cooling Tax Credit Regulations, filed 8/8/77.

R.D. 78-2, Solar Heating and Cooling Tax Credit Regulations, filed 11/9/78.

Rule No. 7-2-16, Regulations Pertaining to the Income Tax Act (Solar Heating and Cooling Tax Credit), 7-2-16 NMSA 1978, filed 2/18/80.

R.D. Statute 7-2-16, Regulations Pertaining to the Income Tax Act (Solar and Wind Energy Tax Credit), 7-2-16 NMSA 1978, filed 2/23/82.

R.D. Statute 7-2-16, Regulations Pertaining to the Solar or Wind Energy Tax Credit under the Income Tax Act, 7-2-16 NMSA 1978, Laws of 1983, Chapter 213, filed 5/18/84.

R.D.I.T. Reg. 7(b), Tax Tables - Regulations Pertaining to the Income Tax Act, Section 7-2-7.1 NMSA 1978, filed 12/11/81.

R.D.I.T. Regulation 2.1, Modified Gross Income Definitions Regulation Pertaining to the Income Tax Act, Section 7-2-2 (Q) NMSA 1978, filed 1/18/82.

R.D.I.T. Regulation 20:1, Information Returns: Royalties - Regulations Pertaining to the Income Tax Act, Section 7-2-20 NMSA 1978, filed 2/4/82.

R.D.I.T. Regulation 20:1, Regulations Pertaining to the Information Returns: Rents and Royalties Income Tax Act, Section 7-2-20 NMSA 1978, filed 1/25/83.

R.D. Statute 7-2B-1, Regulations Pertaining to the Income Tax Act (Solar Capital Investments Credit), Section 7-2B-1 NMSA 1978, filed 2/23/82.

R.D.I.T. Regulation 12:1, Regulation Pertaining to Reporting Methods for the Income Tax Act, Laws 1971, Chapter 20, Section 3, Section 7-2-12 NMSA 1978, filed 6/10/82.

R.D.I.T. Regulation 5.2:1, Exemption Apportionment Regulation Pertaining to the Income Tax Act, Section 7-2-5.2 NMSA 1978, filed 6/22/82.

I.T. Regulation 5.2:2, Regulation Pertaining to Apportionment Income Tax Act, Section 7-2-5.2 NMSA 1978, filed 3/3/89.

R.D. Statute 7-2-17, Regulation Pertaining to the Income Tax Act (Credit for Solar Irrigation; Refund), Section 7-2-17 NMSA 1978, filed 5/2/83.

R.D. Statute 7-2-17, Regulation Pertaining to the Income Tax Act Credit for Solar Irrigation; Refund, Section 7-2-17 NMSA 1978, Laws of 1983, Chapter 17, Section 1, filed 5/18/84.

R.D.I.T. Regulation 18.1:1, Regulation Pertaining to Definition of "Dependent" for Purposes of the Child Care Credit Income Tax Act, Section 7-2-18.1(5) NMSA 1978, filed 11/10/83.

R.D.I.T. Regulation 7(D) & (E), Proration for Fiscal Year Taxpayer - Regulation Pertaining to the Income Tax Act, Section 7-2-7(D) & (E) NMSA 1978, filed 1/6/84.

R.D.-I.T. Regulation 11:1, Regulation Pertaining to the Computation for Non-Resident Taxpayers Who Have New Mexico Royalty Income Under the Income Tax Act, Section 7-2-11(E) NMSA 1978, filed 2/15/84.

R.D.-I.T. Regulation 11:1 and 11.2, Regulation Pertaining to Income Tax Act Section 7-2-11 NMSA 1978, filed 8/12/85.

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 4/2/84.

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 9/4/87.

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 4/18/84.

R.D. - I.T. Regulations 18.2:1, 2, 3, 4, Regulation Pertaining to Income Tax Act, Section 7-2-18.2 NMSA 1978, filed 5/17/85.

R.D. - I.T. Regulation 2(L), Regulation Pertaining to Income Tax Act, Section 7-2-2 NMSA 1978, filed 10/23/85.

R.D.I.T. Regulation 7.1:1 & 2, Regulation Pertaining to the Income Tax Act, filed 3/31/86.

I.T. Regulation 11:3/4, Regulations Pertaining to Income Allocation Apportionment Income Tax Act, Section 7-2-11 NMSA 1978, filed 2/28/89.

I.T. Regulation 5.4:1, Regulations Pertaining to Exemption Apportionment Income Tax Act, Section 7-2-5.4 NMSA 1978, filed 3/3/89.

I.T. Regulation 2(N):2, Regulation Pertaining to Income from United States Obligations Income Tax, Section 7-2-11 NMSA 1978, filed 5/25/89.

TRD - I.T. Regulation 18.1:2/3, Regulation Pertaining to the Income Tax Act, Section 7-2-18.1 NMSA 1978, filed 10/24/89.

TRD Rule 2-89, Regulations Pertaining to the Income Tax Act, Sections 7-2-1 to 7-2-30 NMSA 1978, filed 12/29/89.

TRD Rule IT-91, Regulations Pertaining to the Income Tax Act, Sections 7-2-1 to 7-2-30 NMSA 1978, filed 3/16/92.

History of Repealed Material: [RESERVED]

NMAC History:

3 NMAC 1.1, Personal Income Taxes - General Provisions, filed 12/31/96.

3.3.1 NMAC, Personal Income Taxes - General Provisions, filed 12/1/2000.