

**TITLE 3: TAXATION**  
**CHAPTER 3: PERSONAL INCOME TAXES**  
**PART 4: EXEMPTIONS**

3.3.4.1 **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; 3.3.4.1 NMAC - Rn, 3 NMAC 3.4.1, 12/14/00]

3.3.4.2 **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; 3.3.4.2 NMAC - Rn, 3 NMAC 3.4.2, 12/14/00]

3.3.4.3 **STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[1/15/97; 3.3.4.3 NMAC - Rn, 3 NMAC 3.4.3, 12/14/00]

3.3.4.4 **DURATION:** Permanent.  
[1/15/97; 3.3.4.4 NMAC - Rn, 3 NMAC 3.4.4, 12/14/00]

3.3.4.5 **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; 3.3.4.5 NMAC - Rn & A, 3 NMAC 3.4.5, 12/14/00]

3.3.4.6 **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Income Tax Act.  
[1/15/97; 3.3.4.6 NMAC - Rn, 3 NMAC 3.4.6, 12/14/00]

3.3.4.7 **DEFINITIONS:** [Reserved]  
[1/15/97; 3.3.4.7 NMAC - Rn, 3 NMAC 3.4.7, 12/14/00]

3.3.4.8 **INCOME OF A MEMBER OF A NATO FORCE**

- A. For purposes of this section (3.3.4.8 NMAC):
- (1) "NATO signatory" means a nation, other than the United States, that is a contracting party to the North Atlantic Treaty;
  - (2) "NATO force" means any NATO signatory's military unit or force or civilian component thereof present in New Mexico in accordance with the North Atlantic Treaty; and
  - (3) "Member of a NATO force" means the military and civilian personnel of the NATO force and their dependents.
- B. The salary, fringe benefits and other emoluments received by a member of a NATO force with respect to employment by or membership in the NATO force are not subject to the New Mexico income tax pursuant to Article X, Section 1 of the North Atlantic Treaty.
- C. Income of a member of a NATO force from sources within New Mexico, other than from the member's employment by or membership in the NATO force, are subject to the tax imposed by Section 7-2-3 NMSA 1978.
- D. This applies to taxable years beginning on or after January 1, 1995.  
[12/22/95, 1/15/97; 3.3.4.8 NMAC - Rn & A, 3 NMAC 3.4.8, 12/14/00]

3.3.4.9 **APPORTIONMENT OF SECTION 7-2-5.2 NMSA 1978 EXEMPTION**

- A. Any individual who is blind or sixty-five years of age or older, who has income both within and without this state and who claims the exemption provided by Section 7-2-5.2 NMSA 1978 shall apportion the exemption amount claimed in accordance with this section (3.3.4.9 NMAC).
- B. For taxable years beginning in 1987, 1988 or 1989, apportionment shall be accomplished by reducing the individual's deduction for non-New Mexico income by an amount equal to the product of the maximum

allowable amount for the individual's filing status and adjusted gross income multiplied by the percentage of non-New Mexico income computed on the individual's New Mexico income tax return or any schedules or attachments thereto.

(1) Example 1: X is a single individual over sixty-five years of age whose total adjusted gross income is \$19,000. Thirty percent of X's adjusted gross income is non-New Mexico income. X must reduce X's non-New Mexico income by \$2,100, computed as follows:

Maximum allowable amount for a single individual with \$19,000 AGI	\$ 7,000
30% x \$7,000	<u>x .30</u>
Adjustment to non-New Mexico Income	\$ 2,100

(2) Example 2: A and B are married and file a joint return. A is over 65. B is 62 and blind. 10% of their \$25,000 adjusted gross income is from outside New Mexico. A & B must reduce their non-New Mexico income by an amount of 1,600 computed as follows:

Maximum allowable amount per individual for a married couple filing jointly with \$25,000 AGI	\$ 8,000
Multiply by 2 since both individuals qualify	<u>x 2</u>
	\$16,000
10% x \$16,000	<u>x .10</u>
Adjustment to non-New Mexico Income	\$ 1,600

C. For taxable years beginning on or after January 1, 1990, apportionment is accomplished in the process of determining tax due and the amount of the credit available pursuant to Subsection C of Section 7-2-11 NMSA 1978. Accordingly, no separate process is necessary to apportion the exemption provided by Section 7-2-5.2 NMSA 1978.

D. This version of this section (3.3.4.9 NMAC) is retroactively applicable to taxable years beginning on or after January 1, 1990.  
[3/3/89, 12/29/89, 3/16/92, 1/15/97; 3.3.4.9 NMAC - Rn & A, 3 NMAC 3.4.9, 12/14/00]

3.3.4.10 **SECTION 7-2-5.4 NMSA 1978: EXEMPTION APPORTIONMENT**

A. Any individual who has adopted a special needs child on or after January 1, 1988, who has income both within and without this state and who claims the exemption provided by Section 7-2-5.4 NMSA 1978 shall apportion the exemption amount claimed in accordance with this section (3.3.4.10 NMAC).

B. For taxable years beginning in 1988 or 1989, apportionment shall be accomplished by reducing the deduction for non-New Mexico income by an amount equal to the product of the exemption amount multiplied by the percentage of non-New Mexico income computed on the individual's New Mexico income tax return or any schedules or attachments thereto.

C. Example: A & B are married and file a joint return for 1988 and for 1989. 25% of their income is from outside New Mexico in 1988 but only 20% in 1989. In March, 1988, they adopted a special needs child. In July, 1989, they adopt a second special needs child. For the 1988 tax year, they must reduce the amount of their allocation and apportionment of non-New Mexico income by \$625, and for the 1989 tax year \$1,000, computed as follows:

Example:		
	1988	1989
Statutory maximum per child	\$2,500	\$2,500
Number of children adopted	<u>x 1</u>	<u>x 2</u>
	\$2,500	\$5,000
% of non-New Mexico income for 1988	<u>x .25</u>	
% of non-New Mexico income for 1989		<u>x .20</u>
Adjustment to non-New Mexico income	\$ 625	\$1,000

D. For taxable years beginning on or after January 1, 1990, apportionment is accomplished in the process of determining tax due and the amount of the credit available pursuant to Subsection C of Section 7-2-11 NMSA 1978. Accordingly, no separate process is necessary to apportion the exemption provided by Section 7-2-5.4 NMSA 1978.

E. This version of this section (3.3.4.10 NMAC) is retroactively applicable to taxable years beginning on or after January 1, 1990.

[3/3/89, 12/29/89, 3/16/92, 1/15/97; 3.3.4.10 NMAC - Rn & A, 3 NMAC 3.4.10, 12/14/00]

3.3.4.11 **MEDICAL CARE SAVINGS ACCOUNT AMOUNTS:** Any amount exempt from taxation under the Income Tax Act by the provisions of the Medical Care Savings Account Act that is excluded, exempted or deducted in determining federal taxable income may not be deducted from base income in determining net income. With respect to such an amount, the exemption under Section 7-2-5.6 NMSA 1978 is provided through the process of determining federal taxable income.

[9/15/97; 3.3.4.11 NMAC - Rn & A, 3 NMAC 3.4.11, 12/14/00]

3.3.4.12 **PENSION INCOME OF TRIBAL MEMBERS AND SPOUSES WHO ARE TRIBAL MEMBERS**

A. For the purposes of Section 7-2-5.5 NMSA 1978, pension income of a New Mexico resident who is a member of an Indian nation, tribe or pueblo and who resides on the tribal territory of the resident's or the spouse's Indian nation, tribe or pueblo is qualified for the exemption provided by Section 7-2-5.5 NMSA 1978 to the extent the pension derives from the resident's employment within the boundaries of the resident's or the spouse's Indian nation, tribe or pueblo during marriage to that spouse.

B. A pension received from the United States armed forces qualifies for the exemption provided by Section 7-2-5.5 NMSA 1978 to the extent the pension derives from service of the resident while stationed on the tribal territory of the resident's or, during the marriage, the spouse's Indian nation, tribe or pueblo or while the resident's home of record was on the tribal territory of the resident's or, during the marriage, the spouse's Indian nation, tribe or pueblo.

C. Except for wages and pensions described in Subsections A and B of this section, income received by a member of an Indian nation, tribe or pueblo while the member resides in New Mexico on the tribal territory of the member's or the spouse's Indian nation, tribe or pueblo generally is net income subject to New Mexico income tax and generally is not exempt under Section 7-2-5.5 NMSA 1978. To the extent, however, the income derives from property or activities on the tribal territory of the member's or, during the marriage, the spouse's Indian nation, tribe or pueblo, the income may be excluded from net income only to the extent state taxation is prohibited by federal law. For example, rents from property owned by the member on the tribal territory of the member's Indian nation, tribe or pueblo are excluded from net income but rents from property not on tribal territory are not. If a negligible portion of the income derives from property or activities on the tribal territory of the member's or spouse's Indian nation, tribe or pueblo, the entire amount is net income.

D. For the purposes of this regulation, "spouse" means an individual who is a member of an Indian nation, tribe or pueblo and is married to the resident or member of an Indian nation, tribe or pueblo.

[3.3.4.12 NMAC - N, 5/15/01]