

TITLE 3: TAXATION
CHAPTER 5: UNIFORM DIVISION OF INCOME FOR TAX PURPOSES
PART 1 GENERAL PROVISIONS

3.5.1.1 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; 3.5.1.1 NMAC - Rn, 3 NMAC 5.1.1, 6/29/01]

3.5.1.2 SCOPE: This part applies to every taxpayer having income which is taxable for income tax purposes both within and without New Mexico.
[1/15/97; 3.5.1.2 NMAC - Rn, 3 NMAC 5.1.2, 6/29/01]

3.5.1.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[1/15/97; 3.5.1.3 NMAC - Rn, 3 NMAC 5.1.3, 6/29/01]

3.5.1.4 DURATION: Permanent.
[1/15/97; 3.5.1.4 NMAC - Rn, 3 NMAC 5.1.4, 6/29/01]

3.5.1.5 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; 3.5.1.5 NMAC - Rn & A, 3 NMAC 5.1.5, 6/29/01]

3.5.1.6 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.
[1/15/97; 3.5.1.6 NMAC - Rn, 3 NMAC 5.1.6, 6/29/01]

3.5.1.7 DEFINITIONS: [Reserved]
[1/15/97; 3.5.1.7 NMAC - Rn, 3 NMAC 5.1.7, 6/29/01]

3.5.1.8 CITATIONS: Unless otherwise noted, all citations to statute in Title 3, Chapter 5 NMAC are to the New Mexico Statutes Annotated, 1978 (NMSA 1978).
[1/15/97; 3.5.1.8 NMAC - Rn, 3 NMAC 5.1.8, 6/29/01]

3.5.1.9 “BUSINESS AND NONBUSINESS INCOME” DEFINED:

A. Section 7-4-2 NMSA 1978 defines “business income” as income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management or disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. In essence, all income which arises from the conduct or the disposition or liquidation of trade or business operations of a taxpayer is business income.

B. “Nonbusiness income” means all income other than business income.

C. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, nonoperating income, etc., is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is “business income” or “nonbusiness income” is the identification of the transactions and activity which are the elements of particular trade or business. In general, all transactions and activities of the taxpayer which are dependent upon or contribute to the operations of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of, and constitute integral parts of, a trade or business.

[1/15/74, 9/15/88, 9/20/93, 1/15/97, 10/29/99; 3.5.1.9 NMAC - Rn & A, 3 NMAC 5.1.9, 6/29/01]

3.5.1.10 BUSINESS AND NONBUSINESS INCOME; APPLICATION OF DEFINITIONS:

A. The following are rules for determining whether particular income is business or nonbusiness income.

B. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or is incidental thereto and therefore is includable in the property factor under Part 3.5.11 NMAC.

C. Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if such property was utilized for the production of nonbusiness income or otherwise was removed from the property factor before its sale, exchange or other disposition, the gain or loss will constitute nonbusiness income.

D. "Interest income" is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to such trade or business operations.

E. Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose of acquiring and holding the stock is related to or incidental to such trade or business operations.

F. Patent and copyright royalties are business income where the patent or copyright with respect to which the royalties were received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the patent or copyright is related or incidental to such trade or business operations.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.1.10 NMAC - Rn & A, 3 NMAC 5.1.10, 6/29/01]

3.5.1.11 PRORATION OF DEDUCTIONS:

A. In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business incomes of more than one trade or business, to several items of nonbusiness income or to both. In such cases the deduction shall be prorated among such trades or businesses and such items of nonbusiness income in a manner which fairly distributes the deduction among the classes of income to which it is applicable.

B. In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

C. If the returns or reports filed by a 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 application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.1.11 NMAC - Rn, 3 NMAC 5.1.11, 6/29/01]

HISTORY OF 3.5.1 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.

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.

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.

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 9/20/93.

History of Repealed Material: [RESERVED]

NMAC History:

3 NMAC 5.1, Uniform Division of Income for Tax Purposes - General Provisions, filed 12/31/96.

3.5.1 NMAC, Uniform Division of Income for Tax Purposes - General Provisions, filed 6/18/2001.