

**TITLE 3: TAXATION**  
**CHAPTER 5: UNIFORM DIVISION OF INCOME FOR TAX PURPOSES**  
**PART 3 ALLOCATION AND APPORTIONMENT OF INCOME IN GENERAL**

**3.5.3.1 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; 3.5.3.1 NMAC - Rn, 3 NMAC 5.3.1, 6/29/01]

**3.5.3.2 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; 3.5.3.2 NMAC - Rn, 3 NMAC 5.3.2, 6/29/01]

**3.5.3.3 STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[1/15/97; 3.5.3.3 NMAC - Rn, 3 NMAC 5.3.3, 6/29/01]

**3.5.3.4 DURATION:** Permanent.  
[1/15/97; 3.5.3.4 NMAC - Rn, 3 NMAC 5.3.4, 6/29/01]

**3.5.3.5 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; 3.5.3.5 NMAC - Rn & A, 3 NMAC 5.3.5, 6/29/01]

**3.5.3.6 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; 3.5.3.6 NMAC - Rn, 3 NMAC 5.3.6, 6/29/01]

**3.5.3.7 DEFINITIONS:**

- A. "Allocation" and "allocate" refer to the assignment of nonbusiness income to a particular state.
  - B. "Apportionment" and "apportion" refer to the division of business income between states by the use of a formula containing apportionment factors.
  - C. "Business activity" refers to the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer.
  - D. "Taxpayer" means any individual subject to tax imposed by the Income Tax Act or any corporation required to file an income tax return pursuant to the Corporate Income and Franchise Tax Act.
- [1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.3.7 NMAC - Rn, 3 NMAC 5.3.7, 6/29/01]

**3.5.3.8 APPLICATION OF SECTIONS 7-4-2 TO 7-4-19 NMSA 1978; APPORTIONMENT:** Where a taxpayer elects to apportion income pursuant to Section 7-2-11 NMSA 1978 or Section 7-2A-8 NMSA 1978, if the business activity in respect to any trade or business of a taxpayer occurs both within and without this state, and if by reason of such business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from such trade or business which is derived from sources within this state shall be determined by apportionment in accordance with Sections 7-4-10 to 7-4-18 NMSA 1978.  
[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.3.8 NMAC - Rn & A, 3 NMAC 5.3.8, 6/29/01]

**3.5.3.9 APPLICATION OF SECTIONS 7-4-2 TO 7-4-19 NMSA 1978; COMBINED REPORT:** If a particular trade or business is carried on by a taxpayer and one or more affiliated corporations, nothing in Sections 7-4-2 to 7-4-19 NMSA 1978 or in Title 3, Chapter 5 NMAC shall preclude the use of a "combined report" whereby the entire business income of such trade or business is apportioned in accordance with Sections 7-4-10 to 7-4-18 NMSA 1978.  
[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.3.9 NMAC - Rn & A, 3 NMAC 5.3.9, 6/29/01]

**3.5.3.10 APPLICATION OF SECTIONS 7-4-2 TO 7-4-19 NMSA 1978; ALLOCATION:** Any taxpayer electing to apportion income pursuant to Section 7-2-11 NMSA 1978 or Section 7-2A-8 NMSA 1978 and who is subject to the taxing jurisdiction of this state shall allocate all of its net nonbusiness income or loss within or without this state in accordance with Sections 7-4-5 to 7-4-9 NMSA 1978. Such income or loss to be allocated within or without this state is the gross income less related expenses.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.3.10 NMAC - Rn & A, 3 NMAC 5.3.10, 6/29/01]

**3.5.3.11 CONSISTENCY AND UNIFORMITY IN REPORTING:**

A. In filing with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

B. If the returns or reports filed by a taxpayer for 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 classification of income as business or nonbusiness income, 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; 3.5.3.11 NMAC - Rn, 3 NMAC 5.3.11, 6/29/01]

**HISTORY OF 3.5.3 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 5.3, Allocation and Apportionment of Income in General, filed 12/31/96.

3.5.3 NMAC, Allocation and Apportionment of Income in General, filed 6/18/2001.