

TITLE 3: TAXATION
CHAPTER 5: UNIFORM DIVISION OF INCOME FOR TAX PURPOSES
PART 11: PROPERTY FACTOR FOR APPORTIONMENT OF BUSINESS INCOME

3.5.11.1 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; 3.5.11.1 NMAC - Rn, 3 NMAC 5.11.1, 6/29/01]

3.5.11.2 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; 3.5.11.2 NMAC - Rn, 3 NMAC 5.11.2, 6/29/01]

3.5.11.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[1/15/97; 3.5.11.3 NMAC - Rn, 3 NMAC 5.11.3, 6/29/01]

3.5.11.4 DURATION: Permanent.
[1/15/97; 3.5.11.4 NMAC - Rn, 3 NMAC 5.11.4, 6/29/01]

3.5.11.5 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; 3.5.11.5 NMAC - Rn & A, 3 NMAC 5.11.5, 6/29/01]

3.5.11.6 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; 3.5.11.6 NMAC - Rn, 3 NMAC 5.11.6, 6/29/01]

3.5.11.7 DEFINITIONS: [Reserved.]
[1/15/97; 3.5.11.7 NMAC - Rn, 3 NMAC 5.11.7, 6/29/01]

3.5.11.8 PROPERTY FACTOR - IN GENERAL:

A. The property factor of the apportionment formula for the trade or business of the taxpayer shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of such trade or business. The term "real and tangible personal property" includes land, buildings, machinery, stocks of goods, equipment and other real and tangible personal property but does not include coin or currency.

B. Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of taxpayer's trade or business. The method of determining that portion of the value to be included in the factor will depend upon the facts of each case.

C. The property factor shall reflect the average value of property includable in the factor.
[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.11.8 NMAC - Rn, 3 NMAC 5.11.8, 6/29/01]

3.5.11.9 PROPERTY FACTOR - PROPERTY USED FOR THE PRODUCTION OF BUSINESS INCOME: Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period (except inventoriable goods in process) shall be excluded from the factor until such property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent

withdrawal is established by an identifiable event such as its conversion to the production of nonbusiness income, its sale or the lapse of an extended period of time (normally five years) during which the property is held for sale. [1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.11.9 NMAC - Rn, 3 NMAC 5.11.9, 6/29/01]

3.5.11.10 PROPERTY FACTOR - CONSISTENCY IN REPORTING:

A. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property 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.

B. 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 valuation of property and in the exclusion or inclusion of property in the property factor, 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; 3.5.11.10 NMAC - Rn, 3 NMAC 5.11.10, 6/29/01]

3.5.11.11 PROPERTY FACTOR - NUMERATOR: The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.11.11 NMAC - Rn, 3 NMAC 5.11.11, 6/29/01]

HISTORY OF 3.5.11 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 5.11, Property Factor for Apportionment of Business Income, filed 12/31/96.

3.5.11 NMAC, Property Factor for Apportionment of Business Income, filed 6/18/2001.