

**TITLE 3: TAXATION**  
**CHAPTER 5: UNIFORM DIVISION OF INCOME FOR TAX PURPOSES**  
**PART 12: VALUATION OF PROPERTY FOR INCLUSION IN PROPERTY FACTOR**

**3.5.12.1 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; 3.5.12.1 NMAC - Rn, 3 NMAC 5.12.1, 6/29/01]

**3.5.12.2 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; 3.5.12.2 NMAC - Rn, 3 NMAC 5.12.2, 6/29/01]

**3.5.12.3 STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[1/15/97; 3.5.12.3 NMAC - Rn, 3 NMAC 5.12.3, 6/29/01]

**3.5.12.4 DURATION:** Permanent.  
[1/15/97; 3.5.12.4 NMAC - Rn, 3 NMAC 5.12.4, 6/29/01]

**3.5.12.5 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; 3.5.12.5 NMAC - Rn & A, 3 NMAC 5.12.5, 6/29/01]

**3.5.12.6 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; 3.5.12.6 NMAC - Rn, 3 NMAC 5.12.6, 6/29/01]

**3.5.12.7 DEFINITIONS:** [Reserved.]  
[1/15/97; 3.5.12.7 NMAC - Rn, 3 NMAC 5.12.7, 6/29/01]

**3.5.12.8 PROPERTY FACTOR - VALUATION OF OWNED PROPERTY:**

A. Property owned by the taxpayer shall be valued at its original cost. As a general rule “original cost” is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.

B. If the original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer.

C. Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.

D. Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.12.8 NMAC - Rn, 3 NMAC 5.12.8, 6/29/01]

**3.5.12.9 PROPERTY FACTOR - VALUATION OF RENTED PROPERTY:**

A. Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for such property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. Subrents are not deducted when the subrents constitute business income because the property which produces the subrents is used in the regular course of a trade or business of the taxpayer when it is producing such income. Accordingly there is no reduction in its value.

B. “Annual rental rate” is the amount paid as rental for property for a twelve- month period (i.e., the amount of the annual rent). Where property is rented for less than a twelve-month period, the rent paid for the actual period of rental shall constitute the “annual rental rate” for the tax period. However, where a taxpayer has rented property for a term of twelve or more months and the current tax period covers a period of less than twelve months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be

annualized. If the rental term is for less than twelve months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month-to-month basis.

C. "Annual rent" is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(1) any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or a percentage of sales, profits or otherwise; and

(2) any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc.; if a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

D. "Annual rent" does not include:

(1) incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.; and

(2) royalties based on extraction of natural resources, whether represented by delivery or purchase; for this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property which constitutes a sharing of current or future production of natural resources from such property, irrespective of the method of payment or how such consideration may be characterized, whether as a royalty, advance royalty rental or otherwise.

E. Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.12.9 NMAC - Rn & A, 3 NMAC 5.12.9, 6/29/01; A, 7/31/12]

#### **HISTORY OF 3.5.12 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 5.12, Valuation of Property for Inclusion in Property Factor, filed 12/31/96.

3.5.12 NMAC, Valuation of Property for Inclusion in Property Factor, filed 6/18/2001.