

TITLE 3: TAXATION
CHAPTER 5: UNIFORM DIVISION OF INCOME FOR TAX PURPOSES
PART 14: PAYROLL FACTOR FOR APPORTIONMENT OF BUSINESS INCOME

3.5.14.1 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; 3.5.14.1 NMAC - Rn, 3 NMAC 5.14.1, 6/29/01]

3.5.14.2 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; 3.5.14.2 NMAC - Rn, 3 NMAC 5.14.2, 6/29/01]

3.5.14.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[1/15/97; 3.5.14.3 NMAC - Rn, 3 NMAC 5.14.3, 6/29/01]

3.5.14.4 DURATION: Permanent.
[1/15/97; 3.5.14.4 NMAC - Rn, 3 NMAC 5.14.4, 6/29/01]

3.5.14.5 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; 3.5.14.5 NMAC - Rn & A, 3 NMAC 5.14.5, 6/29/01]

3.5.14.6 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; 3.5.14.6 NMAC - Rn, 3 NMAC 5.14.6, 6/29/01]

3.5.14.7 DEFINITIONS: [Reserved.]
[1/15/97; 3.5.14.7 NMAC - Rn, 3 NMAC 5.14.7, 6/29/01]

3.5.14.8 PAYROLL FACTOR - IN GENERAL:

A. The payroll factor of the apportionment formula for each trade or business of the taxpayer shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

B. The total amount "paid" to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation under such method for unemployment compensation purposes.

C. The compensation of any employee on account of activities which are connected with the production of nonbusiness income shall be excluded from the factor.

D. The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services provided that such amounts constitute income to the recipient under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such employees were subject to the federal Internal Revenue Code.

E. The term "employee" means any officer of a corporation or any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, an individual will be considered to be an employee if the individual is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. The term

“employee” also includes a leased employee whenever the taxpayer is the employer or joint employer of such a leased employee.

F. In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

G. 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 treatment of compensation paid, 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, 3/31/98; 3.5.14.8 NMAC - Rn & A, 3 NMAC 5.14.8, 6/29/01]

3.5.14.9 PAYROLL FACTOR - DENOMINATOR: The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by Public Law 86-272, are included in the denominator of the payroll factor.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.14.9 NMAC - Rn & A, 3 NMAC 5.14.9, 6/29/01]

3.5.14.10 PAYROLL FACTOR - NUMERATOR: The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Section 7-4-15 NMSA 1978 to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report such compensation under such method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitutes compensation paid in this state except for compensation excluded under Parts 3.5.14 and 3.5.15 NMAC. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.14.10 NMAC - Rn & A, 3 NMAC 5.14.10, 6/29/01]

HISTORY OF 3.5.14 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 5.14, Payroll Factor for Apportionment of Business Income, filed 12/31/96.

3.5.14 NMAC, Payroll Factor for Apportionment of Business Income, filed 6/18/2001.