

TITLE 3: TAXATION
CHAPTER 5: UNIFORM DIVISION OF INCOME FOR TAX PURPOSES
PART 15: DETERMINATION OF COMPENSATION FOR INCLUSION IN PAYROLL FACTOR

3.5.15.1 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; 3.5.15.1 NMAC - Rn, 3 NMAC 5.15.1, 6/29/01]

3.5.15.2 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; 3.5.15.2 NMAC - Rn, 3 NMAC 5.15.2, 6/29/01]

3.5.15.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[1/15/97; 3.5.15.3 NMAC - Rn, 3 NMAC 5.15.3, 6/29/01]

3.5.15.4 DURATION: Permanent.
[1/15/97; 3.5.15.4 NMAC - Rn, 3 NMAC 5.15.4, 6/29/01]

3.5.15.5 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; 3.5.15.5 NMAC - Rn & A, 3 NMAC 5.15.5, 6/29/01]

3.5.15.6 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; 3.5.15.6 NMAC - Rn, 3 NMAC 5.15.6, 6/29/01]

3.5.15.7 DEFINITIONS: [Reserved.]
[1/15/97; 3.5.15.7 NMAC - Rn, 3 NMAC 5.15.7, 6/29/01]

3.5.15.8 PAYROLL FACTOR - COMPENSATION PAID IN THIS STATE:

A. Compensation is paid in this state if any one of the following tests, applied consecutively, are met.

- (1) The employee's service is performed entirely within the state.
- (2) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.
- (3) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

- (a) if the employee's base of operations is in this state; or
- (b) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or
- (c) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

B. The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.15.8 NMAC - Rn, 3 NMAC 5.15.8, 6/29/01]

HISTORY OF 3.5.15 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 5.15, Determination of Compensation for Inclusion in Payroll Factor, filed 12/31/96.

3.5.15 NMAC, Determination of Compensation for Inclusion in Payroll Factor, filed 6/18/2001.