

TITLE 3: TAXATION
CHAPTER 5: UNIFORM DIVISION OF INCOME FOR TAX PURPOSES
PART 17: DETERMINATION OF SALES IN THIS STATE OF TANGIBLE PERSONAL PROPERTY FOR INCLUSION IN SALES FACTOR

3.5.17.1 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; 3.5.17.1 NMAC - Rn, 3 NMAC 5.17.1, 6/29/01]

3.5.17.2 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; 3.5.17.2 NMAC - Rn, 3 NMAC 5.17.2, 6/29/01]

3.5.17.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[1/15/97; 3.5.17.3 NMAC - Rn, 3 NMAC 5.17.3, 6/29/01]

3.5.17.4 DURATION: Permanent.
[1/15/97; 3.5.17.4 NMAC - Rn, 3 NMAC 5.17.4, 6/29/01]

3.5.17.5 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; 3.5.17.5 NMAC - Rn & A, 3 NMAC 5.17.5, 6/29/01]

3.5.17.6 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; 3.5.17.6 NMAC - Rn, 3 NMAC 5.17.6, 6/29/01]

3.5.17.7 DEFINITIONS: [Reserved.]
[1/15/97; 3.5.17.7 NMAC - Rn, 3 NMAC 5.17.7, 6/29/01]

3.5.17.8 SALES FACTOR - SALES OF TANGIBLE PERSONAL PROPERTY IN THIS STATE:

- A. Gross receipts from sales of tangible personal property (except sales to the United States government) are in this state:
- (1) If the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale; or
 - (2) If the property is shipped from an office, store, warehouse, factory or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.
- B. Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.
- C. Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.
- D. The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.
- E. When property being shipped by a seller from the state of origin to a consignee in another state is diverted while enroute to a purchaser in the state, the sales are in this state.
- F. If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory or other place of storage in this state.
- G. If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:
- (1) if the taxpayer is taxable in the state from which the third party ships the property, then the sale is in such state.

(2) if the taxpayer is not taxable in the state from which the property is shipped, then the sale is in this state.
[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.17.8 NMAC - Rn, 3 NMAC 5.17.8, 6/29/01]

3.5.17.9 SALES FACTOR - SALES OF TANGIBLE PERSONAL PROPERTY TO UNITED STATES GOVERNMENT IN THIS STATE: Gross receipts from sales of tangible personal property to the United States government are in this state if the property is shipped from an office, store, warehouse, factory or other place of storage in this state. For purposes of Section 3.5.17.9 NMAC, only sales for which the United States government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government.
[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.17.9 NMAC - Rn & A, 3 NMAC 5.17.9, 6/29/01]

HISTORY OF 3.5.17 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 5.17, Determination of Sales in this State of Tangible Personal Property Inclusion in Sales Factor, filed 12/31/96.

3.5.17 NMAC, Determination of Sales in this State of Tangible Personal Property Inclusion in Sales Factor, filed 6/18/2001.