

TITLE 3: TAXATION
CHAPTER 8: ESTATE TAX
PART 4: NONRESIDENT

3.8.4.1 ISSUING AGENCY: Taxation and Revenue Department; Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[7/15/96; 3.8.4.1 NMAC - Rn, 3 NMAC 8.4.1, 12/14/00]

3.8.4.2 SCOPE: Provisions of this part apply to every person subject to the Estate Tax Act.
[7/15/96; 3.8.4.2 NMAC - Rn, 3 NMAC 8.4.2, 12/14/00]

3.8.4.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act.
[7/15/96; 3.8.4.3 NMAC - Rn, 3 NMAC 8.4.3, 12/14/00]

3.8.4.4 DURATION: Permanent.
[7/15/96; 3.8.4.4 NMAC - Rn, 3 NMAC 8.4.4, 12/14/00]

3.8.4.5 EFFECTIVE DATE: 7/15/96, unless a later date is cited at the end of a section, in which case the later date is the effective date. The effective date of the Estate Tax Act was July 1, 1973. (Laws 1973, Ch. 345, Section 18). The Estate Tax Act and this part apply to estates where decedent passed away after June 30, 1973. Pursuant to Section 7-1-5(H) NMSA 1978 of the Tax Administration Act, the Estate Tax Act regulations filed August 5, 1974 were declared to be effective July 1, 1973. The amendments to those regulations adopted by TRD Rule 7-88 were effective on September 15, 1988.
[7/15/96; 3.8.4.5 NMAC - Rn & A, 3 NMAC 8.4.5, 12/14/00]

3.8.4.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Estate Tax Act.
[7/15/96; 3.8.4.6 NMAC - Rn, 3 NMAC 8.4.6, 12/14/00]

3.8.4.7 DEFINITIONS: [Reserved]
[7/15/96; 3.8.4.7 NMAC - Rn, 3 NMAC 8.4.7, 12/14/00]

3.8.4.8 PROOF OF NONRESIDENCE: When a claim is made that the residence of a decedent was outside the state of New Mexico, the taxpayer has the burden of showing nonresidence.
[8/5/74, 9/15/88, 7/15/96; 3.8.4.8 NMAC - Rn, 3 NMAC 8.4.8, 12/14/00]

3.8.4.9 REAL PROPERTY AND RIGHTS TO REAL PROPERTY LOCATED IN NEW MEXICO

A. The listing in Subsection C of Section 7-7-4 NMSA 1978 of property located in New Mexico is illustrative; it is not an exhaustive listing.

B. Real property in this state belonging to a nonresident decedent is subject to the estate tax. Intangible personal property outside the state belonging to a nonresident decedent is not subject to the tax. If a nonresident decedent owning real property situated within the state has entered into an executory contract for its sale, the right of the decedent, his estate or heirs to the proceeds of the sale will be treated as subject to the tax should the state in which the nonresident decedent was domiciled not subject the proceeds to its own inheritance or estate tax law, either on application of the so-called "doctrine of equitable conversion" or for any other reason. If a nonresident decedent has entered into an executory contract for the purchase of real property situated within the state, the right of the nonresident decedent, his estate or heirs to the real property will be treated as subject to the tax should the state in which the nonresident decedent was domiciled not subject the value of or right to the real property to its own inheritance or estate tax law.

C. Real property in this state belonging to a nonresident decedent includes royalty interests in oil, gas, or similar leases or property interests.

D. For the purposes of the Estate Tax Act, mortgages are considered personal property.
[8/5/74, 9/15/88, 7/15/96; 3.8.4.9 NMAC - Rn & A, 3 NMAC 8.4.9, 12/14/00]

3.8.4.10 TAXABILITY OF DEBT OF DECEASED NONRESIDENT CREDITOR

- A. The concept of “business situs” refers to the place where a business is conducted; it is used to localize notes and accounts, debit balances, receivables, and other intangible property for tax purposes, in a place where the decedent was not a resident.
- B. A debt may arise from a transaction in New Mexico even if the business situs of the decedent's business was outside New Mexico.
- C. The debtor's residence does not determine the taxability of a debt in New Mexico.
- D. Example 1: T is a Texas decedent who owned a store in Clovis, New Mexico. The accounts receivable of T's business are all “property located in New Mexico”, even if many of T's customers owing the debts live in Texas.
- E. Example 2: C is a Colorado decedent who owned a business located in Colorado. C enters New Mexico to sell a widget to D on credit. The sale is made in Farmington. The debt owed by D to C is “property located in New Mexico”.

[8/5/74, 9/15/88, 7/15/96; 3.8.4.10 NMAC - Rn, 3 NMAC 8.4.10, 12/14/00]

3.8.4.11 GENERAL EXAMPLE: The following example illustrates the application of Subsection D of Section 7-7-4 NMSA 1978.

- A. Example 1: S is a decedent who was a resident of State M at the time of her death. The property in her estate consisted solely of bank accounts located in State M and 10,000 shares of stock of XYZ, Inc., a corporation organized under the laws of New Mexico.
- B. Pursuant to Section 7-7-4(C)(2) NMSA 1978, the stock is property located in New Mexico, upon which Section 7-7-4(A) NMSA 1978 imposes tax. However, the estate tax law of State M taxes all personal property of its domiciliary decedents, and refrains from taxing the personal property of New Mexico's (and other states') decedents. Therefore, the transfer of S's estate is exempt from the New Mexico estate tax.

[8/5/74, 9/15/88, 7/15/96; 3.8.4.11 NMAC - Rn & A, 3 NMAC 8.4.11, 12/14/00]

HISTORY OF 3.8.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: BOR 70-1, (Inheritance Tax Reg. 2-1), Accrual of Interest During Probate Court's Extension of Time for Payment of Inheritance Tax, filed 3/5/70.
BOR 71-6, Regulation for Inheritance Tax Act, filed 12/20/71.
BOR 73-2, Regulations in Effect and Pertaining to the New Mexico Inheritance Tax Act, filed 4/4/73.
BOR 74-3, Regulations in Effect and Pertaining to the New Mexico Estate Act, filed 8/5/74.
TRD Rule 7-88, Regulations Pertaining to the New Mexico Estate Tax Act, Sections 7-7-1 to 7-7-20 NMSA 1978, filed 9/15/88.

History of Repealed Material: [RESERVED]

NMAC History:

3 NMAC 8.4, Nonresident, filed 7/2/96.
3.8.4 NMAC, Nonresident, filed 12/1/00.