# N.M. Code R. § 3.3.1.12 - INCOME FROM OBLIGATIONS OF GOVERNMENTS

State Regulations Compare Current through Register Vol. 32, No. 24, December 28, 2021

A. **Income from United States government obligations.**

(1) Income from obligations issued by the United States are not includable in net income.

(2) Because they are not obligations of the United States, income from investment in the following is includable in net income:

(a) financial instruments guaranteed by the federal national mortgage association ("Fannie Maes"), the government national mortgage association ("Ginnie Maes"), the federal national home loan association ("Freddie Macs") and any similar organization whose income states are not prohibited by federal law from subjecting to income taxation;

(b) financial instruments issued by the College Construction Loan Insurance Corporation or the National Consumer Cooperative Bank;

(c) agreements ("repo's") to sell and repurchase United States government obligations; and

(d) agreements ("reverse repo's") to purchase and resell United States government obligations.

(3) This version of Subsection 3.3.1.12A NMAC is retroactively effective for taxable years beginning on or after January 1, 1991.

B. **Income from obligations of Puerto Rico and territories and possessions of the United States.** Income from obligations of the commonwealth of Puerto Rico and of Guam, the Virgin Islands, American Samoa, Northern Mariana Islands and other territories or possessions of the United States are includable in net income only to the extent that inclusion is not prohibited by federal law. Income from such obligations which New Mexico is prohibited from taxing by the laws of the United States may be deducted from net income.

C. **Exclusion of certain income from mutual funds or trusts.**

(1) Income from investments in mutual funds, unit investment trusts or simple trusts which are invested in obligations of the United States, obligations of the state of New Mexico or its agencies, institutions, instrumentalities or political subdivisions or obligations of the commonwealth of Puerto Rico or territories or possessions of the United States may be deducted from net income to the extent that such investment income is nontaxable income provided that:

(a) for the purposes of this subsection (3.3.1.12C NMAC), "nontaxable income" means income from investments in obligations of:

(i) the United States;

(ii) the state of New Mexico or any of its agencies, institutions, instrumentalities or political subdivisions;

(iii) the commonwealth of Puerto Rico, the income from which obligations states are prohibited from taxing by the laws of the United States; and

(iv) Guam, the Virgin Islands, American Samoa, Northern Mariana Islands or other territories or possessions of the United States, the income from which obligations states are prohibited from taxing by the laws of the United States;

(b) the mutual fund provides to the investor an annual statement of the income, by source, which was distributed to the individual investor; and

(c) the trust provides to the beneficiary an annual statement of the income by source and that the income received by the beneficiary retains the same character under the Internal Revenue Code as that income had when earned by the trust.

(2) Only that amount of income may be deducted which is shown on the statement as flowing through to the investor from obligations of the United States, of the commonwealth of Puerto Rico, of Guam, the Virgin Islands, American Samoa, Northern Mariana Islands or other territories or possessions of the United States or of the state of New Mexico or any of its agencies, institutions, instrumentalities or political subdivisions.

D. Expenses related to certain investment income.

(1) Because this investment income is exempt from income taxation by New Mexico, expenses of the taxpayer related to the earning of income from investments, directly or through mutual funds, unit investment trusts or simple trusts, in obligations of the United States, obligations of the state of New Mexico or its agencies, institutions, instrumentalities or political subdivisions or obligations of the commonwealth of Puerto Rico or territories or possessions of the United States may not be deducted from net income. To the extent that such expenses have been deducted in determining federal taxable income, the amount must be added back to net income.

(2) Income from investment in state and local bonds is subject to New Mexico income taxation. Expenses of the taxpayer related to the earning of income from investments, directly or through mutual funds, unit investment trusts or simple trusts, in state or local bonds are deductible in determining net income. To the extent that such expenses have not been deducted in determining federal taxable income, these amounts may be subtracted from net income.

(3) Subsection 3.3.1.12D NMAC applies to taxable years beginning on or after January 1, 1991.

E. **Income earned on "state or local bonds".**

(1) Not included in the term "state or local bond" is any obligation of the commonwealth of Puerto Rico or of territories or possessions of the United States the income from which New Mexico is prohibited from taxing by the laws of the United States.

(2) For taxable years beginning on or after January 1, 1991, income from investing in any state or local bond, as that term is defined in Section 7-2-2 NMSA 1978, is includable in base income.

(3) Income from investing in state or local bonds is to be included in base income in the year it is actually received without regard to federal tax treatment of the income, except that:

(a) the taxpayer may elect to report this income for New Mexico purposes on an accrual basis; and

(b) income from investing in state or local bonds earned or accrued before the first taxable year beginning on or after January 1, 1991, but which is received after that date is not includable in base income. Income is earned or accrued ratably, by assigning an equal amount of income to each day of the accrual period.

(4) Example 1: A, a New Mexico resident, purchases a state of California municipal bond in 1992 and receives semi-annual interest payments. A does not elect to report to New Mexico on an accrual basis. All income from this bond is included in base income. This income is included only as the interest payments are received.

(5) Example 2: B, a New Mexico resident and calendar year filer, purchases a city of Los Angeles municipal bond in 1990. This bond pays interest semi-annually on April 1 and October 1. B does not elect to report to New Mexico on an accrual basis. On April 10, 1991, B receives $1,000 of interest. Since this payment includes interest earned or accrued before January 1, 1991, this income is to be allocated between the period prior to the tax year and the period following December 31, 1990. The income accrual period is 182 days in length (October 1, 1990, through March 31, 1991), of which 90 days are in B's first taxable year beginning on or after January 1, 1991. B's 1991 base income includes $494.51 ($1,000 x 90/182). The remaining $505.49 is not subject to New Mexico income tax.

(6) Example 3: C, a New Mexico resident and calendar year filer, purchased a city of San Francisco municipal bond on January 1, 1981 for $1,400. C does not elect to report accrued income on this bond for New Mexico income tax purposes. Although this bond pays interest semi-annually, C bought it stripped and at a discount. C has no right to the interest. On January 1, 1995, C receives the bond principal of $5,000. This is C's first and only payment on the bond. Since this payment includes income earned or accrued before January 1, 1991, the income is allocated between the period prior to January 1, 1991, and the period following December 31, 1990. The income accrual period is 5112 days, of which 1461 are after December 31, 1990. C's 1995 base income includes $1,028.87 ((1461/5112) x ($5,000 - $1,400)). The remaining $2,571.13 of income is not subject to New Mexico income tax.

(7) Example 4: Same facts as Example 3, except that C did not become a New Mexico resident until January 1, 1993. The income from the bond must be allocated between the period prior to January 1, 1993, and the period after December 31, 1992. 730 days follow December 31, 1992. C's 1995 base income includes $514.08 ((730/5112) x ($5,000 - $1,400)). The remaining $3,085.92 is not subject to New Mexico income tax.

(8) Subsection 3.3.1.12E NMAC applies to taxable years beginning on or after January 1, 1991.

F. **Bonds issued by tribal governments are not "state or local bonds".**

(1) Bonds issued by Indian governments are not "state or local bonds" under the Income Tax Act. As defined in Section 7-2-2 NMSA 1978, the term "state" does not include Indian nations, tribes or pueblos or their governments. The term "local government" is not defined by the Income Tax Act but is commonly used to mean political subdivisions of states. Indian nations, tribes and pueblos are not political subdivisions of states.

(2) To the extent that the Internal Revenue Code treats interest from bonds issued by Indian governments as if it were interest from "state or local bonds", such interest is excluded from federal adjusted gross income and therefore initially excluded from New Mexico base income as well. Because bonds issued by Indian governments are not "state or local bonds" for purposes of the Income Tax Act, interest income with respect to such bonds is not required to be added to federal adjusted gross income in determining New Mexico base income.

# Notes

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3/16/92, 6/24/93, 11/17/95, 1/15/97, 1/15/98; 3.3.1.12 NMAC - Rn & A, 3 NMAC 3.1.12, 12/14/00