
FYI-350

New Mexico
Taxation and Revenue Department

FOR YOUR INFORMATION

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CORPORATE INCOME TAX and CORPORATE FRANCHISE TAX

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OVERVIEW

New Mexico Corporate Income Tax. New Mexico imposes a corporate income tax on the net income of every domestic corporation and every foreign corporation employed or engaged in the transaction of business in, into, or from this state, or which has income from property or employment within this state.

“Corporation” means corporations, joint stock companies, real estate trusts organized and operated under the Real Estate Trust Act, financial corporations, banks, and other business associations. “Corporation” also means limited liability companies and partnerships taxed as corporations under the Internal Revenue Code.

“Net income” generally is federal taxable income adjusted to exclude amounts not taxable by states (See *Tax Base*, page 5).

New Mexico Corporate Franchise Tax is the obligation of every domestic and foreign corporation, including S corporations, that either engages in business in New Mexico or exercises its corporate franchise in this state whether actively engaged in business or not.

A corporation exercises its corporate franchise when it seeks treatment as a legal entity or person who is subject to the jurisdiction of and privileges provided by state law. Indications of exercise of a corporate franchise include but are not limited to:

- 1) registering with the Secretary of State;
- 2) registering with any regulatory agency of the state;
- 3) appointing a registered agent in this state to accept service of legal process on behalf of the corporation;
- 4) appointing any agent to carry on activity within this state;
- 5) using the New Mexico judicial system to enforce contractual provisions or to collect debt;
- 6) owning property located in this state;
- 7) registering trade names with the state; or
- 8) filing legal documents for public notice with any county clerk in this state.

EXEMPT CORPORATIONS

Exempt from corporate income tax and corporate franchise tax are:

- 1) Insurance companies, health maintenance organizations (HMOs), and reciprocal or inter-insurance exchanges that pay a premium tax to the state, and
- 2) Trusts organized in the United States that form part of a stock, bonus, pension,

- 3) or profit-sharing plan of an employer for the exclusive benefit of employees or their beneficiaries -- if the trust is exempt from federal income tax -- and
- 4) nonprofit 501(c) organizations unless the nonprofit corporation has unrelated business income subject to federal income tax. A 501(c) organization with unrelated business income subject to federal income tax is subject to corporate income and franchise tax in New Mexico.

TAX RATES

New Mexico Corporate Income Tax is imposed on total net income (including New Mexico and non-New Mexico income). The percentage of New Mexico income is then applied to the gross tax.

For taxable years beginning prior to January 1, 2014,

<i>if total net income is...</i>	<i>then your tax is...</i>
Not over \$500,000	4.8% of net income
Over \$500,000 but not over \$1,000,000	\$24,000 plus 6.4% of net income over \$500,000
Over \$1,000,000	\$56,000 plus 7.6% of net income over \$1,000,000

The highest corporate income tax rates will be decreasing over a period of five years, beginning in 2014 as follows.

For taxable years beginning on or after January 1, 2014, and prior to January 1, 2015,

<i>if your total net income is...</i>	<i>then your tax is...</i>
Not over \$500,000	4.8% of net income
Over \$500,000 but not over \$1,000,000	\$24,000 plus 6.4% of net income over \$500,000
Over \$1,000,000	\$56,000 plus 7.3% of net income over \$1,000,000

For taxable years beginning on or after January 1, 2015, and prior to January 1, 2016,

<i>if your total net income is...</i>	<i>then your tax will be...</i>
Not over \$500,000	4.8% of net income
Over \$500,000 but not over \$1,000,000	\$24,000 plus 6.4% of net income over \$500,000
Over \$1,000,000	\$56,000 plus 6.9% of net income over \$1,000,000

For taxable years beginning on or after January 1, 2016, and prior to January 1, 2017,

<i>if your total net income is...</i>	<i>then your tax will be...</i>
Not over \$500,000	4.8% of net income
Over \$500,000 but not over \$1,000,000	\$24,000 plus 6.4% of net income over \$500,000
Over \$1,000,000	\$56,000 plus 6.6% of net income over \$1,000,000

For taxable years beginning on or after January 1, 2017, and prior to January 1, 2018,

<i>if your total net income is...</i>	<i>then your tax will be...</i>
Not over \$500,000	4.8% of net income
Over \$500,000	\$24,000 plus 6.2% of net income over \$500,000

For taxable years beginning on or after January 1, 2018,

<i>if your total net income is...</i>	<i>then your tax will be...</i>
Not over \$500,000	4.8% of net income
Over \$500,000	\$24,000 plus 5.9% of net income over \$500,000

New Mexico Corporate Franchise Tax is \$50 per year or partial year. Payment of the \$50 corporate franchise tax for *each* corporation that is a member of a combination of unitary corporations or of a consolidated group must accompany a combined or consolidated return if the entity is registered to do business in the state, engaged in the transaction of business in the state, or exercises its corporate franchise in the state. Corporate franchise tax is due even when the corporation is immune from the imposition of corporate income tax under Public Law (P.L. 86-272) or when a qualified Subchapter S subsidiary is “disregarded” for federal income tax purposes but is registered to do business, engaged in the transaction of business, or exercises its corporate franchise in the state. For more information about P.L. 86-272, see the *Appendix* on page 12.

TAX CREDITS

New Mexico offers a number of tax credits against corporate income tax for qualifying businesses. For a list of credits and how to apply for them, request publication FYI-106, *Claiming Tax Credits For CRS Taxes and Business-Related Income*. The publication is available at all district offices. See “For Further Assistance” on page 18 for locations and telephone numbers. FYI-106 is also on our web site at www.tax.newmexico.gov. Select “Forms and Publications”.

TAX BASE

The rate structure alone is insufficient for meaningful comparisons of state corporate income taxes. Significant variations exist among states on what constitutes a taxable income base. There are two major areas of difference. The first is the definition of “base income” with allowable deductions and exemptions. The second is the method of determining the portion of a multistate or multinational corporation's income that is taxable in a particular state.

New Mexico law adopts the federal Internal Revenue Code definitions of income, deductions and exemptions; that is, New Mexico “piggybacks” on federal taxable income, and federal base changes are automatically reflected in New Mexico's base. **NOTE:** *New Mexico does not follow federal net operating loss carry-over or carry-back provisions or tax credits.*

As a member of the Multistate Tax Compact New Mexico has adopted the Uniform Division of Income for Tax Purposes Act (UDITPA). The Compact, UDITPA, and associated regulations spell out the rules by which a corporation or group of corporations operating in more than one state divides income and expenses among those states. For most businesses New Mexico uses the standard three-factor formula of property, payroll, and sales. There are special rules for airlines, railroads, construction contractors, trucking companies, broadcasters, the financial industry, and the publishing industry. An optional formula is available to certain electing manufacturers, to have their business income apportioned to New Mexico using special apportionment formulas which phase-in a single weighted sales factor over a 5-year period, beginning January 1, 2014.

BASE INCOME ADJUSTMENTS

New Mexico makes two adjustments to base income: 1) net operating loss deductions allowed by IRC 172(a), and 2) inclusion of interest received on non-New Mexico state or local bonds.

ADDITIONS TO BASE INCOME

Interest income from municipal bonds other than New Mexico municipal bonds must be added to base income.

NET OPERATING LOSSES

New Mexico recognizes a net operating loss (NOL) for New Mexico corporate income tax only when the federal corporate tax return shows the NOL or when federal taxable income minus interest on U.S. obligations yields a negative number. A net operating loss deduction (NOLD) is the amount of excess loss from the NOL year that is deductible from a corporation's federal taxable income in a carry-over year.

For NOLs generated in tax years prior to January 1, 1991, the carry-back and carry-over periods are the same for New Mexico as for federal purposes: usually three years back and 15 years forward. Apply any NOL incurred before 1991 to carry-back years first, then to carry-forward years.

For NOLs generated in tax years beginning on or after January 1, 1991 and prior to January 1, 2013, the loss is eligible for carry forward only up to five years. Apply the NOL to each carry-forward year in sequence.

For NOLs generated in tax years beginning on or after January 1, 2013, the loss is eligible for carry forward up to 20 years. Apply the NOL to each carry-forward year in sequence.

NET INCOME ADJUSTMENTS

Calculate net income by adjusting base income to exclude interest on United States obligations, other income that states are prohibited from taxing, and NOL carryovers.

REPORTING OPTIONS

New Mexico offers corporate taxpayers three options for reporting corporate income tax. These are known as the “ladder.” The state also allows an alternative reporting method (page 8). For tax years beginning on or after January 1, 2014, combined reporting is required for corporations with retail facilities exceeding thirty thousand feet, unless the corporation also employs 750 people in New Mexico in non-retail business activities.

The ladder options are:

Option 1: Separate corporate entity

Option 2: Combination of domestic unitary corporations

Option 3: Federal consolidated group

A taxpayer may elect to file the initial New Mexico corporate income tax return using one of the three reporting methods above. In succeeding years the taxpayer may choose a different reporting basis without written permission from the Secretary of Taxation and Revenue as long as the new reporting method is a higher option number on the ladder than the previous reporting method. By moving up the ladder a taxpayer includes more corporate activity in the report of income to the state of New Mexico. A request to move back down the ladder to a lower number requires prior approval from the Secretary of Taxation and Revenue.

The election of a reporting option is open to a taxpayer every year if it is for a higher-ranked reporting method. New Mexico does not permit retroactive election of a different reporting method.

All three ladder options require allocation and apportionment of income under UDITPA for businesses operating in this state. An average percentage is calculated for the ratios between property, payroll, and sales factors of business activity in New Mexico and the corporation's business activity everywhere.

A taxpayer who believes the allocation and apportionment rules do not fairly represent the extent of its business activities in New Mexico may petition the Secretary of Taxation and Revenue for, or the Secretary may require:

- 1) Use of separate accounting for corporations otherwise listed in combined or consolidated returns;
- 2) Exclusion of any of the standard factors;
- 3) Inclusion of one or more additional apportionment factors, or
- 4) Use of other reasonable methods to apportion the taxpayer's income equitably

Option 1: Separate Corporate Entity. Regardless of how the corporation actually files for federal purposes, it uses the separate corporate method to file in New Mexico as if it had filed as a stand-alone entity at the federal level.

A corporation filing as a separate entity in New Mexico submits a copy of its federal Form 1120 or other applicable form, following all federal rules for determination of income. A corporation that is part of a federal consolidated return submits a separate pro-forma 1120 return and follows all appropriate rules for the determination of federal income as if it were a stand-alone entity. Transactions with other members of the federal consolidated group may not be netted out.

Option 2: Combination of Domestic Unitary Corporations. Two or more corporations engaged in a unitary business may report the combined income of all members of the unitary business whether or not the unitary business files a federal consolidated return. "Unitary corporations" means two or more integrated corporations more than 50% owned and controlled by the same person. At least one of the following conditions must exist:

- 1) centralized services;
- 2) Centralized management or executive force and centralized system of operation, or
- 3) Unity of operations shown by central purchasing, advertising, accounting, or other operations of the corporations are dependent on or contribute property or services to one another individually or as a group.

A domestic unitary group of corporations using the combination method must prepare and submit a simulated federal return on federal Form 1120 or other applicable form, following all federal rules for consolidation except those relating to ownership percentage. All unitary corporations must appear on the return, including those not engaged in business in New Mexico. The exceptions are:

- 1) Corporations incorporated in a foreign country and not engaged in a trade or business in the United States;
- 2) Insurance companies and other exempt organizations.

For tax years beginning on or after January 1, 2014, combined reporting is required for corporations with retail facilities exceeding thirty thousand feet, unless the corporation also employs 750 people in New Mexico in non-retail business activities.

Option 3: Federal Consolidated Group. A corporation filing a federal consolidated return reports the income of all affiliated corporations shown on the federal return.

A consolidated group consists of a parent corporation and its subsidiaries, even non-unitary entities. A taxpayer who files a consolidated New Mexico income tax return must do so on the same basis as the federal consolidated return, applying property, payroll, and sales factors to the total consolidated group. Include non-unitary corporations within the consolidated group. Entities excluded for federal purposes are similarly excluded from the state consolidated return. Consolidated filers must submit copies of federal consolidated return form 1120.

Option 4: Alternative Tax Reporting Method. New Mexico corporate tax law provides for election of an alternative tax-reporting method for any corporation required to file a corporate income tax return. To do so it must meet *all* the following requirements:

The corporation's only activities in New Mexico are sales;

The corporation does not own or rent real estate in New Mexico, and

The corporation's annual gross sales in or into New Mexico amount to \$100,000 or less.

A corporation meeting all three requirements may elect to pay a tax of .75% of its annual gross receipts from sales in or into New Mexico when completing a CIT-1 form. The taxpayer must file both a CIT-1 and a Schedule CC (Schedule CC is not part of the CIT packet. Please go to our web site at www.tax.newmexico.gov. Select "Forms and Publications", "Income Taxes", "Corporate Income Tax (CIT) – Current Year", "Other CIT-Related Forms and scroll down to find Schedule CC.

A corporation whose principal business activity is manufacturing, as defined in Section 7-4-10 NMSA 1978, may elect to have business income apportioned to this state:

(1) in the taxable year beginning on or after January 1, 2014 and prior to January 1, 2015, by multiplying the income by a fraction, the numerator of which is twice the sales factor plus the property factor plus the payroll factor and the denominator of which is four;

(2) in the taxable year beginning on or after January 1, 2015 and prior to January 1, 2016, by multiplying the income by a fraction, the numerator of which is three multiplied by the sales factor plus the property factor plus the payroll factor and the denominator of which is five;

(3) in the taxable year beginning on or after January 1, 2016 and prior to January 1, 2017, by multiplying the income by a fraction, the numerator of which is seven multiplied by the sales factor plus one and one-half multiplied by the property factor plus one and one-half multiplied by the payroll factor and the denominator of which is ten;

(4) in the taxable year beginning on or after January 1, 2017 and prior to January 1, 2018, by multiplying the income by a fraction, the numerator of which is eight multiplied by the sales factor plus the property factor plus the payroll factor and the denominator of which is ten; and

(5) in taxable years beginning on or after January 1, 2018, by multiplying the income by a fraction, the numerator of which is the total sales of the taxpayer in New Mexico during the taxable year and the denominator of which is the total sales of the taxpayer from any location within or outside of the state during the taxable year.

A corporation electing a method of apportionment listed above is required to notify the Department of the election, in writing, no later than the date on which the taxpayer files a return for the first taxable year that the election applies. The elected method of apportionment will apply to all taxable years thereafter until the taxpayer notifies the Department, in writing, that the election is terminated. The taxpayer cannot terminate the election until the method of apportioning business income elected has been used by the taxpayer for at least three consecutive taxable years, including a total of at least thirty-six calendar months.

FILING REQUIREMENTS

Corporate Income Tax is due on the 15th day of the third month following the close of the corporation's fiscal year. The due date is March 15 for those on a calendar-year basis. Taxpayers reporting for short years file on the 15th day of the third month following the close of the short year. The full franchise tax of \$50 is due with short-year returns. Please see the section on the franchise tax below.

Report and pay corporate income tax using form *CIT-1* for all corporate taxpayers except pass-through entities (see paragraph below on S corporations).

Attach other corporate schedules as appropriate:

Schedule CIT-A for corporations with income from sources inside and outside New Mexico;

Schedule CIT-B for corporations allocating non-business income per UDITPA guidelines;

Schedule CIT-C, the New Mexico foreign dividend deduction schedule;

Schedule CIT-CR, Non-refundable Credit Schedule;

Schedule CIT-D Foreign Dividend Deduction Schedule;

Schedule CC for corporations qualified to use the alternative tax for computing New Mexico corporate income tax.

S corporations file the S Corporate Income and Franchise Tax Return.

Refer to FYI-106 for information about forms to apply for and claim corporate income tax credits.

Corporate Franchise Tax, due at the same time as the corporate income tax, is reported on the appropriate income tax form. The franchise tax applies to each corporation in combined unitary or consolidated tax returns if the corporation exercises its corporate franchise in New Mexico. Every time a corporate income and franchise tax return is due, even for a short-year return, the \$50 franchise tax is due. Inactive corporations are liable for franchise tax as long as they exercise their corporate franchises in this state. Please see page 2 for parameters.

New Mexico honors Internal Revenue Service extensions of time to file but imposes statutory interest on underpayments from the time the tax was originally due. If there is no federal extension, the taxpayer may request a state extension from the Department's Corporate Income Tax Section before the tax-due date (See "*For Further Assistance*", page 18). On page 10 of this publication is a section on interest and penalty.

ESTIMATED PAYMENTS

Every corporation must pay quarterly estimated income tax if it has a tax liability for the tax year of \$5,000 or more after applicable credits. Use the CIT-ES form to make quarterly estimated payments.

The total estimate should be 80% of the amount due for the current year, 100% of the prior year's tax if the tax due was at least \$5,000, or 110% of the tax due for the year before the prior tax year if the tax due was at least \$5,000 -- whichever amount is smallest. Pay the estimated tax in equal installments on the 15th day of the fourth, sixth, ninth, and twelfth months of the corporation's tax year.

Corporations with seasonal or annualized income may be able to reduce penalty and interest on underpayment of estimated tax by completing Form RPD-41287, *Calculation of Penalty and Interest on Underpayment of Estimated Tax*.

EXTENSION PAYMENTS

To prevent the accrual of interest on unpaid tax, corporations make extension payments on or before the 15th day of the third month following the close of the taxable year. Use the CIT-EXT form for extension payments.

ALTERNATIVE TAX REPORTING METHOD PAYMENTS

If a corporation elects the alternative tax reporting method described on page 8, it files a Schedule CC with the CIT-1 form.

PASS-THROUGH ENTITY REPORTING (Form PTE)

New Mexico law requires pass-through entities to submit a PTE return if the entity does business in the state and has not chosen to report as a C corporation for federal income tax purposes. Among pass-through entities are any partnership, joint venture, common trust fund, limited association, pool or working agreement, limited liability company, or any combination of persons or interests required to file a federal partnership return of income. **Exceptions** are sole proprietorships, estates or trusts, insurance companies and reciprocal or inter-insurance exchanges that pay a premium tax to New Mexico, and rural electric cooperatives established under the Rural Electric Cooperative Act (Section 62-15-28 NMSA 1978).

A pass-through entity doing business in this state files an annual information return with the Department on or before the due date of the entity's federal return for the taxable year. At the time it files the information return, New Mexico requires the PTE to deduct and withhold from each non-resident owner's share of net income an amount equal to 4.9% of the owner's share of net income.

Beginning in 2002 investment partnerships whose partners' income is solely from interest, dividends and sales of securities are no longer required to file the PTE form, withhold tax from out-of-state partners' income, or solicit out-of-state owners for promises to pay.

INTEREST AND PENALTIES

If the corporation does not pay its New Mexico corporate income tax or corporate franchise tax on time, interest accrues at the quarterly rate set by the United States Internal Revenue Code, calculated daily, on the amount of tax due. For the third quarter of 2014 the interest rate is 3% (.008219178% daily). **To determine the interest rate for the current quarter, please be sure to consult the rate information posted on our web site at www.tax.newmexico.gov.** Interest accrues even when the corporation has an extension of time to file a return.

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Should the tax remain unpaid when due because of negligence or disregard of rules or regulations but without intent to defraud, the corporation is liable for a penalty of 2% per month or partial month from the date the return was due, not to exceed 20% of the tax amount plus interest. There is no penalty when there is an extension and the tax is paid by the extended due date. The statute imposing penalty is Section 7-1-69 NMSA 1978.

A check not paid by the financial institution on which it is drawn does not constitute payment. The corporation incurs a penalty of \$20 plus any other applicable penalty or interest.

APPENDIX

INFORMATION FOR MULTISTATE AND MULTINATIONAL CORPORATIONS

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DETERMINING NEXUS

Liability for New Mexico corporate income tax often depends on whether a corporation has *nexus* in New Mexico. To have nexus means a corporation has enough connection to New Mexico that it is fair for the state to subject the business to state corporate income tax.

Any corporation with income from the transaction of business in, into, or from New Mexico or from property or employment in this state has nexus — that is, sufficient presence for New Mexico to impose the corporate income tax — unless its activities are immune under Public Law (P.L.) 86-272 (31 USCA 351).

P.L. 86-272 restricts a state's imposition of income tax on income from within its borders under certain circumstances. If a corporation's sales into New Mexico meet all the following criteria, the corporation may be immune from New Mexico corporate income tax under P.L. 86-272. *Please note that P.L. 86-272 does not provide immunity from the corporate franchise tax:*

CRITERIA FOR IMMUNITY UNDER P.L. 86-272 (THE CORPORATION MUST MEET ALL CRITERIA.)

1. The corporation does not maintain a business location or office in New Mexico. A business location includes but is not limited to an office, warehouse, or other site in this state from which the corporation sells, stores or displays a product or service. The home of a resident employee may be a business location if potential customers know they can go there to purchase the product or service that the corporation sells.

2. The corporation is not incorporated in New Mexico. The immunity afforded by P.L. 86-272 does not extend to a corporation incorporated in New Mexico. Immunity is not lost merely by registering with the Public Regulation Commission to do business in the state, however.

3. All sales occur in interstate commerce. For a sale to qualify as interstate commerce under P.L. 86-272, approval of the sale must occur outside the state (except for sales by independent contractors — see page 14), and deliveries must be via common carrier from a point outside the state.

Under this criterion the state permits one activity -- the solicitation of sales in interstate commerce. A corporation having any other activity, except those listed below as immune or otherwise incidental to solicitation, loses its immunity from state taxation.

4. The corporation sells only tangible personal property in the state. A corporation that sells

only tangible personal property is immune under P.L. 86-272 if it meets the other four criteria. Immunity does not extend to a corporation that leases, rents, or licenses tangible personal property or conducts transactions involving such intangibles as franchises, patents, copyrights, trademarks and the like.

A corporation selling services is not immune under P.L. 86-272. When a sale combines tangible personal property and services, the corporation surrenders immunity. Examples of combinations are photographic development, fabrication of customer's materials, installation of equipment, architectural services, and engineering services.

5. All sales solicited in New Mexico are contingent on approval (acceptance) outside the state. To retain immunity from corporate income tax under P.L. 86-272 a corporation must limit its activities in New Mexico to soliciting sales of tangible personal property. Independent contractors, however, may perform some additional activities on the corporation's behalf without the corporation's losing its immunity (*Independent Contractors*, page 14).

PROTECTED ACTIVITIES

A corporation performing the following "protected" activities in New Mexico in conjunction with soliciting sales of tangible personal property is immune under P.L. 86-272:

- 1) Soliciting orders by any medium of advertising;
- 2) Soliciting orders through an in-state resident employee or representative of the corporation. This person may not maintain or use any office or place of business in the state except an "in-home" office. An "in-home" office is an office located within the residence of the employee or representative that (i) is not publicly attributed either to the company or to the employee as a representative of the company, and (ii) is limited to soliciting and receiving orders from customers, transmitting such orders outside the state for acceptance or rejection by the company, or for other such activities on this list;
- 3) Carrying samples and promotional materials only for display or distribution without charge or other consideration;
- 4) Furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;
- 5) Providing automobiles to sales personnel for their use in conducting protected activities;
- 6) Passing orders, inquiries, and complaints to the home office;
- 7) Missionary sales activities; that is, soliciting indirect customers for the company's goods. An example is a manufacturer who solicits retailers to buy the manufacturer's goods from the manufacturer's wholesale customers. Mission activity is protected if the solicitation activities are otherwise immune;
- 8) Coordinating shipment or delivery without payment or other consideration and providing information about shipment or delivery either before or after placing the order;
- 9) Checking customers' inventories without charge for reorder but not for other purposes like quality control;

- 10) Maintaining a sample or display room for up to two weeks (14 days) at any one location within the state during the tax year;
- 11) Recruiting, training, or evaluating sales personnel, including occasionally using homes, hotels, or similar places for meetings with sales personnel;
- 12) Mediating direct customer complaints when the sole purpose is to ingratiate sales personnel with the customer and facilitate requests for orders;
- 13) Owning, leasing, using, or maintaining personal property for use in the employee's or representative's in-home office (see item 2, page 13, for definition of "in-home") or automobile, but the use must be limited to the conduct of protected activities. An employee's or representative's limited use of such personal property as a cellular telephone, facsimile machine, duplicating equipment, personal computer, and computer software for conducting protected solicitation does not by itself remove a corporation's immunity.

INDEPENDENT CONTRACTORS

A contracting corporation may retain immunity under P.L. 86-272 when its independent contractors make sales and maintain an office in this state. If an independent contractor maintains a stock of goods in the state under consignment or any other type of arrangement with the corporation except for display and solicitation, immunity is lost.

Sales representatives of a single principal are not independent contractors. They are subject to the limitations defined by P.L. 86-272.

UNPROTECTED ACTIVITIES

A corporation performing any of the following activities in New Mexico in conjunction with the solicitation to sell tangible personal property loses its immunity under PL 86-272:

- 1) Making repairs or providing maintenance or service to the property sold or to be sold;
- 2) Collecting current or delinquent accounts directly or by third parties through assignment or otherwise;
- 3) Investigating creditworthiness;
- 4) Installing or supervising installation during or after shipment or delivery;
- 5) Conducting training courses, seminars, or lectures for personnel other than personnel involved in solicitation only;
- 6) Providing any kind of technical assistance or service, including but not limited to engineering assistance or design service, when one of the purposes is other than to facilitate solicitation of orders;
- 7) Investigating, handling, or otherwise assisting in resolving customer complaints except for mediating direct customer complaints when the sole purpose of the mediation is to ingratiate sales personnel with the customer;

- 8) Approving or accepting orders;
- 9) Repossessing property;
- 10) Securing deposits on sales;
- 11) Picking up or replacing damaged or returned property;
- 12) Hiring, training, or supervising any personnel except those involved only in solicitation;
- 13) Using agency stock checks or any other instrument or process by which sales personnel make sales within this state;
- 14) Maintaining a sample or display room for longer than 14 days at any one location within the state during the tax year;
- 15) Carrying samples for sale, exchange or distribution in any manner for consideration or other value;
- 16) Owning, leasing, using or maintaining any of the following facilities or property in the state:
 - a) Repair shop
 - b) Parts department
 - c) Any office but an in-home office described on page 13
 - d) Warehouse
 - e) Meeting place for directors, officers, or employees
 - f) Stock of goods except samples for sales personnel or goods used entirely ancillary to solicitation
 - g) Telephone answering service publicly attributed to the company or to employees or agents of the company in their representative status
 - h) Mobile store; that is, vehicles with drivers who are sales personnel making sales from the vehicles
 - i) Real property or fixtures to real property of any kind;
- 17) Consigning stock of goods or other tangible personal property to any person, including an independent contractor, for sale;
- 18) Maintaining by any employee or other representative an office or place of business of any kind except an in-home office described on page 13

(Note: a telephone listing or other public listing within New Mexico for the company or for an employee or representative of the company in such capacity, or other indications through advertising or business literature that the company or its employee or representative can be contacted at a specific address within New Mexico, normally means that the company is maintaining within this state an office or place of business attributable to the company or its employee or representative in a representative capacity.

The normal distribution and use of business cards and stationery showing the employee's or representative's name, address, telephone, fax numbers and affiliation with the company, however, shall not by themselves be considered as advertising or otherwise publicly attributing an office to the company, its employee or representative.

To maintain any office or other place of business in this state that does not qualify as an in-home office as defined on page 13 causes loss of protection under P.L. 86-272. For the purpose of this list it does not matter if the company pays directly, indirectly, or not at all for the cost of maintaining an in-home office.);

19) Entering into franchise or license agreements; selling or otherwise disposing of a franchise or license, or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state;

20) Shipping or delivering goods into New Mexico via private vehicle, rail, water, air, or other carrier, irrespective of whether a shipment or delivery fee or other charge is imposed directly or indirectly on the purchase, or

21) Conducting any activity not listed on the "Protected Activities" list that is not entirely ancillary to requests for orders, even if the activity helps to increase purchases.

TAXPAYER INFORMATION

The Department offers a variety of taxpayer information. Some information is free and other information must be purchased.

General Information. FYIs and Bulletins present general information with a minimum of technical language. All FYIs and Bulletins are free and available through all local tax offices, the Tax Information and Policy Office, and on the Internet. The Taxation and Revenue Department's Internet address is:

<http://www.tax.newmexico.gov>

Regulations. The Department establishes regulations to interpret and exemplify the various tax acts it administers. The Taxation and Revenue Department regulation book is available from the New Mexico Compilation Commission on a prepaid basis. The Compilation Commission also has a compact disk of all statutes and regulations. Specific regulations are also available at the State Records Center or on its web page at www.nmcpr.state.nm.us/nmac.

Order regulation books directly from:

New Mexico Compilation Commission

<http://www.nmcompcomm.us/index.html>

Rulings. Rulings signed by the Secretary and approved by the Attorney General are written statements that apply to one or a small number of taxpayers. A taxpayer may request a ruling (at no charge) to clarify its tax liability or responsibility under specific circumstances. The request for a ruling must be in writing, include accurate taxpayer identification and the details about the taxpayer's situation, and be addressed to the Secretary of the Taxation and Revenue Department at P.O. Box 630, Santa Fe, NM 87504-0630. The taxpayer's representative, such as an accountant or attorney, may request a ruling on behalf of the taxpayer but must disclose the name of the taxpayer. While the Department is not required to issue a ruling when requested to do so, every request is carefully considered.

The Department will not issue a ruling to a taxpayer who is undergoing an audit, who has an outstanding assessment, or who is involved in a protest or litigation with the Department over the subject matter of the request. The Secretary may modify or withdraw any previously issued ruling and is required to withdraw or modify any ruling when subsequent legislation, regulations, final court decisions or other rulings invalidate a ruling or portions of a ruling. Taxation and Revenue Department rulings are compiled and available on the Department's web page free of charge at <http://www.tax.newmexico.gov/rulings.aspx>.

Public Decisions & Orders. All public decisions and orders issued by the hearing officers since July 1994 are compiled and available on the Department's web page free of charge at <http://www.tax.newmexico.gov/tax-decisions-orders.aspx>.

FOR FURTHER ASSISTANCE

Local tax offices can provide full service and information about the Department's taxes, programs, and forms as well as specific information about your filing situation.

ALBUQUERQUE (505) 841-6200

Taxation and Revenue Department
5301 Central NE
P.O. Box 8485
Albuquerque, NM 87198-8485

LAS CRUCES (575) 524-6225

Taxation and Revenue Department
2540 S. El Paseo Bldg. #2
P.O. Box 607
Las Cruces, NM 88004-0607

SANTA FE (505) 827-0951

Taxation and Revenue Department
Manuel Lujan Sr. Bldg.
1200 S. St. Francis Dr.
P.O. Box 5374
Santa Fe, NM 87502-5374

ROSWELL (575) 624-6065

Taxation and Revenue Department
400 Pennsylvania Ave., Suite 200
P.O. Box 1557
Roswell, NM 88202-1557

FARMINGTON (505) 325-5049

Taxation and Revenue Department
3501 E. Main St., Suite N
P.O. Box 479
Farmington, NM 87499-0479

Main switchboard (Santa Fe): (505) 827-0700

This publication provides general information. It does not constitute a regulation, ruling, or decision issued by the Secretary of the New Mexico Taxation and Revenue Department. The Department is legally bound only by a regulation or a ruling [7-1-60, New Mexico Statutes Annotated, 1978]. In the event of a conflict between FYI and statute, regulation, case law or policy, the information in FYIs is overridden by statutes, regulations and case law. Taxpayers and preparers are responsible for being aware of New Mexico tax laws and rules. Consult the Department directly if you have questions or concerns about information provided in this FYI.