NEW MEXICO ADMINISTRATIVE CODE
TITLE 3: TAXATION
CHAPTER 3: PERSONAL INCOME TAXES
PART 1: GENERAL PROVISIONS
Sections 3.3.1.1 through 3.3.1.9 NMAC (residency provisions)

Excerpt prepared by Domicile365 for reference, November 2026. Text as published in the New Mexico Administrative Code. Sections 3.3.1.10 and following (modified gross income, dependents, government obligations, net operating losses) are omitted. Consult the official NMAC for the current text.

3.3.1.1 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; 3.3.1.1 NMAC - Rn, 3 NMAC 3.1.1, 12/14/00]

3.3.1.2 SCOPE: This part applies to each resident of New Mexico and to each nonresident employed or engaged in the transaction of business in, into or from New Mexico or deriving any income from any property or employment in New Mexico.
[1/15/97; 3.3.1.2 NMAC - Rn, 3 NMAC 3.1.2, 12/14/00]

3.3.1.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[1/15/97; 3.3.1.3 NMAC - Rn, 3 NMAC 3.1.3, 12/14/00]

3.3.1.4 DURATION: Permanent.
[1/15/97; 3.3.1.4 NMAC - Rn, 3 NMAC 3.1.4, 12/14/00]

3.3.1.5 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; 3.3.1.5 NMAC - Rn & A, NMAC 3.1.5, 12/14/00]

3.3.1.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Income Tax Act.
[1/15/97; 3.3.1.6 NMAC - Rn, 3 NMAC 3.1.6, 12/14/00]

3.3.1.7 DEFINITIONS: For purposes of Subsection S of Section 7-2-2 NMSA and Section 3.3.1.9 NMAC, a "day" is any consecutive 24-hour period.
[3.3.1.7 NMAC - N, 4/29/05]

3.3.1.8 CITATION OF REGULATIONS: Unless otherwise stated, all citations of statutes in Title 3, Chapter 3 NMAC pertaining to the Income Tax Act are to the New Mexico Statutes Annotated, 1978 (NMSA 1978).
[1/15/74, 12/29/89, 3/16/92, 1/15/97; 3.3.1.8 NMAC - Rn, 3 NMAC 3.1.8, 12/14/00]

3.3.1.9 RESIDENCY

A. Full-year residents. For purposes of the Income Tax Act, the following are full-year residents of this state:
(1) an individual domiciled in this state during all of the taxable year, or
(2) an individual other than an individual described in Subsection D of this section who is physically present in this state for a total of one hundred eighty-five (185) days or more in the aggregate during the taxable year, regardless of domicile.

B. Part-year residents.
(1) An individual who is domiciled in New Mexico for part but not all of the taxable year, and who is physically present in New Mexico for fewer than 185 days, is a part-year resident.
(a) During the first taxable year in which an individual is domiciled in New Mexico, if the individual is physically present in New Mexico for less than a total of 185 days, the individual will be treated as a non-resident

of New Mexico for income tax purposes for the period prior to establishing domicile in New Mexico.

(b) An individual domiciled in New Mexico who is physically present in New Mexico for fewer than 185 days and changes his domicile to a place outside this state with the bona fide intention of continuing to live permanently outside New Mexico, is not a resident for Income Tax Act purposes for periods after that change of domicile.

(2) An individual who moves into this state with the intent to make New Mexico his permanent domicile is a first-year resident. A first-year resident should report any income earned prior to moving into New Mexico as nonresident income even if he is physically present in New Mexico for 185 days or more.

C. "Domicile" defined:

(1) A domicile is the place where an individual has a true, fixed home, is a permanent establishment to which the individual intends to return after an absence, and is where the individual has voluntarily fixed habitation of self and family with the intention of making a permanent home. Every individual has a domicile somewhere, and each individual has only one domicile at a time.

(2) Once established, domicile does not change until the individual moves to a new location with the bona fide intention of making that location his or her permanent home.

(3) No change in domicile results when an individual leaves the state if the individual's intent is to stay away only for a limited time, no matter how long, including:

(a) for a period of rest or vacation;

(b) to complete a particular transaction, perform a contract or fulfill an engagement or obligation, but intends to return to New Mexico whether or not the transaction, contract, engagement or obligation is completed, or

(c) to accomplish a particular purpose, but does not intend to remain in the new location once the purpose is accomplished.

(4) To determine domicile, the department shall give due weight to an individual's declaration of intent. However, those declarations shall not be conclusive where they are contradicted by facts, circumstances and the individual's conduct. In particular, the department will consider the following factors in determining whether an individual is domiciled in New Mexico (the list is not intended to be exclusive and is in no particular order):

(a) homes or places of abode owned or rented (for the individual's use) by the individual, their location, size and value; and how they are used by the individual;

(b) where the individual spends time during the tax year and how that time is spent; e.g., whether the individual is retired or is actively involved in a business, and whether the individual travels and the reasons for traveling, and where the individual spends time when not required to be at a location for employment or business reasons, and the overall pattern of residence of the individual;

(c) employment, including how the individual earns a living, the location of the individual's place of employment, whether the individual owns a business, extent of involvement in business or profession and location of the business or professional office, and the proportion of in-state to out-of-state business activities;

(d) home or place of abode of the individual's spouse, children and dependent parents, and where minor children attend school;

(e) location of domicile in prior years;

(f) ownership of real property other than residences;

(g) location of transactions with financial institutions, including the individual's most active checking account and rental of safety deposit boxes;

(h) place of community affiliations, such as club and professional and social organization memberships;

(i) home address used for filing federal income tax returns;
(j) place where individual is registered to vote;
(k) state of driver's license or professional licenses;
(l) resident or nonresident status for purposes of tuition at state schools, colleges and universities, fishing and hunting licenses, and other official purposes; and
(m) where items or possessions that the individual considers "near and dear" to his or her heart are located, e.g., items of significant sentimental or economic value (such as art), family heirlooms, collections or valuables, or pets.

(5) The department shall evaluate questions regarding domicile on a case-by-case basis. No one of the factors considered by the department shall be conclusive with respect to an individual's domicile. Factors such as the state of driver's license, place of voter registration and home address may be given less weight, depending on the circumstances, because they are relatively easy to change for tax purposes.

D. "Domicile" and residency for armed forces personnel

(1) A resident of this state who is a member of the United States armed forces does not lose residence or domicile in this state, or gain residency or domicile in another state, solely because the service member left this state in compliance with military orders.

(2) A resident of another state who is a member of the United States armed forces does not acquire residence or domicile in this state solely because the service member is in this state in compliance with military orders.

(3) A resident of another state who is a member of the United States armed forces does not become a resident of this state solely because the service person is in this state for one hundred and eighty-five (185) or more days in a taxable year.

(4) Compensation for service in the armed forces is subject to personal income tax only in the state of the service member's domicile. "Compensation for military service" does not include compensation for off-duty employment, or military retirement income.

(5) For purposes of this section, "armed forces" means all members of the army of the United States, the United States navy, the marine corps, the air force, the coast guard, all officers of the public health service detailed by proper authority for duty either with the army or the navy, reservists placed on active duty, and members of the national guard called to active federal duty.

E. Examples:

(1) A, a life-long resident of Texas, accepts a job in New Mexico. On December 5, 2003, A moves to New Mexico with the intention of making New Mexico her permanent home. A has established domicile in New Mexico during the 2003 tax year. Because she was physically present in New Mexico for fewer than 185 days during that year, she should file as a part-year resident, and she will be treated as a resident for personal income tax purpose only for that period after she establishes a New Mexico domicile.

(2) B, a resident of Arizona, makes several weekend visits to New Mexico in the early months of 2004. On July 1, 2004, he moves to New Mexico with the intention of making it his permanent home. Family matters call him back to Arizona on August 1, 2004, and he soon determines that he must remain in Arizona. B was domiciled in New Mexico during the thirty days he spent in this state with the intention of making it his permanent home. Because B was physically present in this state for fewer than 185 days in 2004, B should file as a part-year resident for that tax year. For personal income tax purposes he will be treated as a resident of New Mexico only from July 1 to August 1, 2004.

(3) C was born and raised in New Mexico. She leaves New Mexico in December 2003 to pursue a two-year master's degree program in Spain. She intends to return to New Mexico when she completes her studies. During her absence she keeps her New Mexico driver's license and voter registration. Because New

Mexico remains her domicile, C should file returns for tax years 2003, 2004 and 2005 as a full-year New Mexico resident.

(4) D, a resident of California, comes to New Mexico on three separate occasions in 2004 to work on a movie. D does not intend to remain in New Mexico, and when the movie is completed, D returns to her home in California. D is physically present in New Mexico for 200 days in 2004. Because D was physically present in New Mexico for at least 185 days, D must file as a full-year resident of New Mexico for tax year 2004.

(5) E, a resident of New Mexico, joined the army. Since joining the military, E has been stationed in various places around the world. Although E has not been back to New Mexico in the ten years since he joined the army, he continues to vote in New Mexico and holds a current New Mexico driver's license. E must file as a full-year resident of New Mexico.

(6) Same facts as Example 5, except that in August 2003, while stationed in Georgia, E retires from the military. Instead of returning to New Mexico, E moves to Florida where he intends to spend his retirement. For tax year 2003, E must file as a part-year resident, because he was not physically present in the state for 185 days or more. E is a resident of New Mexico until August 2003, when he moves to Florida with the intent of making that his permanent home.

(7) F, a resident of Texas, is an air force officer. In March 2002 he moves to New Mexico to begin a two-year assignment at Kirtland Air Force Base. F is registered to vote in Texas and holds a Texas driver's license. F is not a resident of New Mexico in 2002. During the second year of F's assignment, he registers to vote in New Mexico, obtains a New Mexico driver's license, and enrolls his son in a New Mexico university paying resident tuition. Although F's presence in New Mexico under military orders is not sufficient to establish New Mexico residency or domicile, his conduct in 2003 is sufficient to establish domicile. In 2003 F must file as a part-year resident of New Mexico. He will be treated as a non-resident for income tax purposes for that period of 2003 prior to establishing domicile in New Mexico.

(8) G is a Native American who lives and works on his tribe's pueblo in New Mexico. Federal law prohibits the state from taxing income earned by a Native American who lives and works on his tribe's territory. G joins the marines and is stationed outside New Mexico. Because G's domicile remains unchanged during his military service, G's income from military service is treated as income earned on the tribe's territory by a tribal member living on the tribe's territory, and is not taxable by New Mexico.

[10/23/85, 12/29/89, 3/16/92, 6/24/93, 1/15/97; 3.3.1.9 NMAC - Rn & A, 3 NMAC 3.1.9, 12/14/00, A, 4/29/05; A, 4/28/06; A, 12/15/10]

NMAC History: 3 NMAC 1.1, Personal Income Taxes - General Provisions, filed 12/31/96. 3.3.1 NMAC, Personal Income Taxes - General Provisions, filed 12/1/2000.