
FYI-107

New Mexico
Taxation and Revenue Department

FOR YOUR INFORMATION

Tax Information and Policy Office ♦ P.O. Box 630 ♦ Santa Fe, New Mexico 87504-0630

AN INDIVIDUAL'S GUIDE TO NEW MEXICO WITHHOLDING TAX

This FYI provides general guidance for determining whether a person's wages, gambling winnings, pensions or annuities are subject to New Mexico withholding tax.

New Mexico withholding tax is similar to federal withholding tax. It is based on an estimate of an individual's New Mexico income tax liability and is credited against the individual's actual income tax liability on the New Mexico personal income tax return.

CONTENTS

Withholding from Wages.....	page 2
Withholding Tax and Estimated Payments.....	page 4
Gambling Winnings	page 4
Pensions and Annuities	page 4
Withholder Liability	page 5
Taxpayer Information.....	page 6
For Further Assistance	page 7

This information is as accurate as possible at time of publication. Subsequent legislation, new state regulations or court decisions may affect its accuracy. For the latest information please check the Taxation and Revenue Department's web site at www.tax.newmexico.gov/.

WITHHOLDING FROM WAGES

An employee's wages are subject to New Mexico withholding tax if the employer does business in New Mexico or derives income from this state and is required to withhold from the employee's wages for payment of federal income tax. An employee does **not** have a right of action against an employer for any amount deducted and withheld from the employee's wages.

New Mexico withholding tax is imposed upon the wages of an employee who is:

- A New Mexico resident paid by an employer for services performed either in or outside New Mexico; or
- A nonresident of New Mexico paid by an employer for services performed in New Mexico. Employers are not required to withhold New Mexico income tax from the wages of nonresident employees who work in New Mexico for 15 or fewer days during the calendar year.

Employees who are residents of New Mexico and employed by transportation companies will have New Mexico income tax withheld from their pay regardless of their place of employment or the amount of time which they perform services in New Mexico or in other states.

Taxpayers who are **self-employed** should not report and pay New Mexico withholding tax on their wages. Instead, such taxpayers should make estimated payments, using Form PIT-ES. For further information about estimated payments, please refer to "FYI-320, Personal Income Tax Estimated Payments", which is available through our web site at www.tax.newmexico.gov/.

Voluntary Withholding from Income Subject to New Mexico Tax

An employee earning income from an employer who does not do business in New Mexico or derive income from this state may still be subject to New Mexico personal income tax on the wages paid by that employer. While the law does not require such an employer to report and pay New Mexico withholding tax for employees, the employer may agree to do so upon the employee's request. To report and pay New Mexico withholding tax, the employer must obtain a New Mexico CRS Identification Number (also called a "New Mexico business tax identification number").

Special Situations Affecting New Mexico Withholding

Generally, if an employee's withholding is correct for federal income tax purposes, it will be correct for New Mexico personal income tax purposes. There are, however, special situations in which an employee, while correctly withheld for federal purposes, will not be correctly withheld for New Mexico purposes. Three of these special situations are discussed in the following paragraphs: (1) employees with wages that are subject to federal income tax but exempt from New Mexico personal income tax; (2) employees who have adjusted their federal withholding in a manner that will result in under withholding for New Mexico purposes; and (3) employees who are residents of New Mexico but subject to withholding in another state.

In these special situations, the employee should complete and file with their employer a separate Form W-4 for New Mexico withholding purposes. New Mexico does not have its own version of the federal Form W-4, but uses a W-4 labeled by the employer: "For New Mexico Withholding

Tax Only.”

1. Exemptions from New Mexico Withholding

The wages of some employees may be subject to federal income tax but exempt from New Mexico personal income tax. Employers may withhold from such wages for federal tax purposes, but New Mexico does **not** require withholding from wages that are exempt from its personal income tax. These exempt wages, for which New Mexico withholding is not required, include:

- Income of a **Native American** who is a member of a New Mexico federally-recognized Indian nation, tribe or pueblo if that income was wholly earned on the lands of the reservation or pueblo of which the Native American is an enrolled member while he or she was domiciled on that land. This exemption also applies to the income of a spouse or dependent of a Native American who is a member of a New Mexico federally-recognized Indian nation, tribe or pueblo when the spouse or dependent lives on the member's reservation or pueblo and the income is earned on that reservation or pueblo; and
- Income from **active-duty** military service.

Employees who have income that is exempt from New Mexico personal income tax should complete and file with their employer a separate Form W-4 for New Mexico withholding purposes and indicate “exempt” on line 7 of the Form.

2. Requesting Additional Withholding

In certain situations an employee may have completed a Form W-4 that results in correct withholding for federal income tax purposes but may result in too little withholding for New Mexico personal income tax purposes. Those situations include:

- When an employee claimed the special allowance for head-of-household filing status on the Form W-4 Withholding Allowances Worksheet;
- When an employee increased exemption allowances on Form W-4 to offset expected federal tax credits, such as the Child Tax Credit, or credits for child or dependent care expenses; and
- When an employee requested that additional amounts be withheld for federal purposes.

An employee in one of these situations should request their employer to withhold more money for New Mexico withholding by completing and filing with their employer a separate Form W-4 for New Mexico withholding purposes. The additional withholding amount should be entered on this Form W-4.

3. Avoiding Withholding by More than One State

Employment may require some New Mexico residents to spend extensive time in another state that has an income tax comparable to the New Mexico personal income tax. New Mexico residents generally are subject to New Mexico personal income tax on all of their income, but if that income is also taxed by another state New Mexico allows a credit for the other state's income tax on that income.

The wages earned during an extensive period spent in another state may be subject to income

tax, and therefore withholding tax, imposed by the other state, as well as to New Mexico income tax and withholding tax. The New Mexico income tax on those wages will be reduced, possibly to zero, by the credit allowed for the income tax on the wages paid to the other state. Employees can accordingly reduce or eliminate New Mexico withholding tax on such wages by increasing the number of exemption allowances on a separate Form W-4 filed with their employer for New Mexico withholding purposes.

WITHHOLDING TAX AND ESTIMATED PAYMENTS

If the difference between the amount of tax shown as due on a taxpayer's New Mexico personal income tax return and the amount of tax withheld is \$500 or more, the taxpayer must make a required annual payment (RAP) through withholding and/or estimated payments. That RAP is either 90 percent of the current-year tax liability or 100 percent of the prior-year tax liability. Taxpayers may choose to meet their RAP by increasing the New Mexico withholding from their wages to total at least 90 percent of the current-year tax liability or 100 percent of the prior-year liability.

Taxpayers may calculate the amount of total New Mexico withholding needed to satisfy their RAP and divide it by the number of annual pay periods to determine the proper withholding amount. Once the amount per paycheck is determined, an employee can request that their employer withhold that amount for New Mexico withholding by completing and filing with their employer a separate Form W-4 for New Mexico withholding purposes. The additional withholding amount should be entered on this Form W-4.

GAMBLING WINNINGS

Winnings from gambling activities, including racing, casino games, the New Mexico state lottery and bingo, are subject to New Mexico withholding tax at the rate of six percent if federal withholding is required. This withholding applies to both residents and nonresidents of New Mexico and to for-profit and nonprofit activities. The operators of such activities are responsible for reporting and paying the withholding tax on winnings. An Indian nation, tribe or pueblo is not required to deduct or withhold tax from gambling winnings made to members or spouses of members of that Indian nation, tribe or pueblo. A person who receives winnings that are subject to withholding does **not** have a right of action against the person who deducted and withheld an amount from the winnings.

PENSIONS AND ANNUITIES

The income of New Mexico residents from pensions and annuities is subject to New Mexico personal income tax. New Mexico does not, however, require the payors of such income to withhold New Mexico income tax unless requested to do so by the recipients of the payments. If an individual requests in writing that the payor deduct and withhold an amount from the amount of the pension or annuity due the individual, the payor is required to deduct and withhold the amount requested unless the requested amount is less than \$10.00. An individual who has instructed a payor to deduct and withhold an amount from a pension or annuity does **not** have a right of action against a payor for any amount deducted and withheld pursuant to the instruction. To report and pay New Mexico withholding tax, the payor must obtain a New

Mexico CRS Identification Number (also called a “New Mexico business tax identification number”).

WITHHOLDER LIABILITY

Every withholder of New Mexico income tax is liable for the amount of tax that is required to be deducted and withheld under the Withholding Tax Act except:

- 1) when the failure to deduct and withhold is for an amount that is paid; and
- 2) when the failure to deduct and withhold was due to reasonable cause.

TAXPAYER INFORMATION

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

General Information. FYI's and Bulletins present general information with a minimum of technical language. All FYI's 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:

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 www.tax.newmexico.gov/. Click on "tax library."

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 www.tax.newmexico.gov/. Click on "tax library."

FOR FURTHER ASSISTANCE

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

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LAS CRUCES (575) 524-6225

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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 FYI's 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.