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# FYI-407

New Mexico  
Taxation and Revenue Department

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## FOR YOUR INFORMATION

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

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### TAXPAYER REMEDIES FOR NATIVE AMERICAN VETERANS INCOME TAX SETTLEMENT FUND

Native American veterans domiciled on tribal lands during their periods of active military service may have been exempt from paying state personal income taxes on their military income, but may have had state personal income taxes withheld from their military income. Such veterans or their successors may claim settlement payments from the Native American Veterans Income Tax Settlement Fund (Section 7-2H-1 NMSA 1978). This publication describes the procedures for protesting the denial of a claim for a settlement payment.

Please note that if you fail to follow the formal remedies outlined below in the time and manner the law requires, you lose the right to use the remedies to address the dispute.

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## Denial of a Claim

Claims for settlement payments are first reviewed by the New Mexico Department of Veterans Services (DVS). DVS may reject an application for a settlement fund claim if the claimant does not provide satisfactory evidence of his or her active duty in the armed forces of the United States, status as a Native American and domicile on tribal land during a period of active duty. A claimant whose application is denied by DVS may dispute the denial by contacting the Secretary of DVS.

If DVS accepts an application, that agency forwards the application to the Taxation and Revenue Department ("Department") for review of the claimant's withholding tax records. The claimant can substantiate the withholding tax amount by providing copies of Form W-2 covering active duty military pay for the year(s) during which New Mexico personal income tax was withheld. If a claimant does not have copies of the applicable Form(s) W-2 for one or more of these years, the claimant can request the Department to obtain the claimant's or deceased veteran's Form(s) W-2, or other withholding information in a form approved by the Department, from the United States Department of Defense. The claimant must also provide a signed statement attesting that the claimant of a deceased veteran did not receive a refund of the New Mexico personal income tax withheld for the year(s) for which the claimant is filing a claim for a settlement payment. A claim will be denied if the claimant's withholding tax information cannot be sufficiently documented or verified. The Department must act on a claim within 210 days of the date that it receives the claim from DVS. Claims not acted upon by the Department within 210 days are deemed denied.

More information can be found for the Department of Veterans Service at [www.dvs.state.nm.us](http://www.dvs.state.nm.us) or they can be contacted at 505-383-2400 or toll free at 1-866-433-8387.

## Filing a Protest

A claimant whose claim is denied in whole or in part by the Department may dispute the denial by filing a written protest of the denial.

The claimant's protest must contain the name and address of the claimant and must clearly specify the grounds for the protest. All evidence in support of the protest also must be submitted with the written protest. The designated hearing officer cannot consider any evidence that has not been submitted to the agency at least 10 days prior to the hearing.

The claimant must file a written protest within 30 days of the date on which the Department mailed notification of the denial of the claim. A protest should be mailed to:

New Mexico Taxation and Revenue Department  
Protest Office  
P.O. Box 1671  
Santa Fe, NM 87504-1671

Private carriers should deliver protests to:

1100 S. St. Francis Drive, Suite 1100  
Santa Fe, NM 87505

A claimant may call the Protest Office at (505) 827-9806.

Upon timely receipt of a protest, the agency must promptly set a date for hearing and on that date hear the protest. The hearing must be scheduled no later than 90 days after the filing of

the written protest. The agency must mail a notice of the hearing to the protestant no less than 15 days prior to the date of the hearing. The Secretary of the Department may designate a hearing officer to conduct the hearing. The claimants may appear at a hearing on their own behalf, have the assistance of an advocate or be represented by an attorney. Hearings are not open to the public except upon request of the claimant and may be postponed or continued at the discretion of the secretary or hearing officer.

The technical rules of evidence and the rules of civil procedure do not apply in the hearings, but hearings must be conducted so that claims are amply and fairly presented. The claimant has the burden of proving that the denial of the claim was improper.

A complete record of the proceedings will be made, and a written decision must be issued within 30 days of the hearing.

For further assistance, please call the personal income tax unit at (505) 827-0827 or fax 827-2526

NOTE: The Department's approvals of refund claim for this purpose are subject to the balance available in the Native American Veterans' Income Tax Settlement Fund.

## 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](http://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 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**

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

### **SANTA FE**

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

### **FARMINGTON**

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

### **LAS CRUCES**

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

### **ROSWELL**

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

Call Center: 1-866-285-2996

*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.*