

## Pennsylvania: New withholding requirements for payments of non-employee compensation to non-residents



David M. Kall | Thursday, April 12, 2018

On Jan. 1, 2018, the Keystone State's new budget took effect by way of [Act 43 of 2017](#). Among other things, it created a withholding obligation for certain payors of Pennsylvania-source income and lessees of Pennsylvania real estate. As of this date, anyone that makes the following payments is required to withhold 3.07 percent of:

- Payments of Pennsylvania-source non-employee compensation or business income to a non-resident individual or disregarded entity that has a non-resident member, provided that the payments are required to be reported on a federal Form 1099-MISC.
- Lease payments made in the course of a trade or business to a non-resident lessor by a lessee of Pennsylvania real estate.

### **Non-employee compensation**

An [information notice](#) issued by the Pennsylvania Department of Revenue explains that a payment is considered "non-employee compensation" if it is made to someone who is not one's employee and for services in the course of one's trade or business.

Withholding is optional for payments to a payee of less than \$5,000 annually. The Department of Revenue advises that if there is uncertainty about the total amount of payments that will be made to a payee, the

## Pennsylvania New withholding requirements for paym

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payor should withhold and remit income tax from all payments to the payee.

Payees having tax withheld who receive a copy of federal Form 1099-MISC from the payor are required to file a copy with their Pennsylvania tax return.

Payors that withhold from a payee are:

1. Required to apply for a 1099-MISC withholding account by completing a PA-100 Pennsylvania Enterprise Registration Form.
2. Required to electronically file quarterly withholding returns and annual reconciliations with the Department of Revenue via e-TIDES.
3. Required to electronically remit the withheld monies via e-TIDES.
4. Liable for withheld taxes in the same manner as employers withholding employee compensation.
5. Liable for taxes not withheld in the same manner as employers withholding employee compensation.

The schedule for withholding and remittance for payors is the following:

- Quarterly – If total withholding is under \$300 per quarter, the taxes are due the last day of April, July, October and January.
- Monthly – If total withholding is \$300 to \$999 per quarter, the taxes are due the 15th day of the following month.
- Semi-Monthly – If total withholding is \$1,000 to \$4,999.99 per quarter, the taxes are due within three banking days of the close of the semi-monthly period.
- Semi-Weekly – If total withholding is \$5,000 or greater per quarter (\$20,000 per year).

Payors are also required to file reconciliation returns for each quarter and the annual withholding reconciliation statement (REV-1667 R) with the 1099-MISC statements for each payee.

### **Lease payments**

As with non-employee compensation, withholding is optional for lessees paying a non-resident lessor less than \$5,000 annually, but the Department of Revenue similarly advises that if there is uncertainty about the total amount of payments that will be made to a non-resident lessor, the payor should withhold and remit income tax from all payments to the non-resident lessor.

The information notice provides this additional information:

- A lessor includes only individuals, estates and trusts.
- A lease payment includes, but is not limited to, rents, royalties, bonus payments, damage rents and other payments made pursuant to a lease.
- Lessees withholding tax are required to file a federal Form 1099-MISC with both the lessor and the Department of Revenue showing the amount paid to them and the amount of the withholding.
- Lessors having tax withheld who receive a copy of federal Form 1099-MISC from the lessee are required to file a copy with their Pennsylvania tax return.

The requirements for lessees that withhold from a lessor are the same as those for payors listed above, as is the schedule for withholding and remittance.

### **Pushback from small businesses**

The National Federation of Independent Business (NFIB), which represents 325,000 small businesses in all 50 states and Washington, D.C., was not happy with the new withholding requirements. Citing concerns of cost and “paperwork nightmare[s],” the group **argued** that non-resident withholding “turns small-business owners into uncompensated state tax collectors and hurts their relationships with outside contractors.”

## Pennsylvania New withholding requirements for paym

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Moreover, “[c]ompanies located near the state borders could be especially impacted. [Non-resident withholding] also creates a tricky situation if the PA business doesn’t think it will exceed the \$5,000 threshold and doesn’t withhold tax, only to go over that limit later and be forced to return to a contractor who’s already been paid for the tax money.”

NFIB blamed the state’s \$2.2 billion deficit, and time pressures that lawmakers were under, for the provision’s passage. Even so, it was pleased to have stopped a series of tax increases that would have harmed small businesses, including on natural gas, electricity and phone service.

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