

Act 43 of 2017 created a withholding obligation for certain payors of Pennsylvania-source income and lessees of Pennsylvania real estate to non-residents. It also expanded the requirements with respect to when a copy of Federal Form 1099-MISC is required to be filed with the Pennsylvania Department of Revenue.

Beginning January 1, 2018, anyone that makes the following payments is required to withhold from such payments an amount equal to the tax rate specified per 72 P.S. § 7302 (currently 3.07%):

- Payments of Pennsylvania source non-employee compensation or business income to a non-resident individual or disregarded entity that has a non-resident member and is reported on a 1099-MISC.
- A lessee of Pennsylvania real estate who makes a lease payment in the course of a trade or business to a non-resident lessor.

NOTE: Withholding is optional for payors or lessees paying less than \$5,000 annually. However, if you are unsure of the total amount of payments that will be made during the year, the Department encourages you to withhold and remit income tax from all payments made.

Governmental payors, including the Pennsylvania State System of Higher Education and its institutions, are exempt from the requirement of withholding on non-employee compensation and business income.

IMPORTANT

The 1099-MISC income subject to the withholding provisions of Act 43 of 2017 will not be subject to assessment for a failure to withhold for a period ending prior to July 1, 2018. However, when tax is withheld, it must be filed and remitted as required by law.

The department expects that payors/lessors will file the related 1099-MISC, with boxes 16 and 17 completed, with the department timely in January 2019.

NON-EMPLOYEE COMPENSATION

Typically, a payment is considered "non-employee compensation" if it is made to: (i) someone who is not your employee; and (ii) for services in the course of your trade or business.

LEASE PAYMENTS

A lease payment includes, but is not limited to, rents, royalties, bonus payments, damage rents and other payments made pursuant to a lease.

A lessor includes only individuals, estates and trusts.

PAYOR / LESSEE RESPONSIBILITIES REGISTERING

Any payor/lessee required to withhold must apply for a 1099-MISC withholding account by completing a PA-100 Pennsylvania Enterprise Registration Form electronically at www.pa100.state.pa.us. If you already have an employer withholding account and you do not want to report the 1099-MISC separately, you do not have to complete a new registration. However, if you want to report the 1099-MISC separately, you must register for a 1099-MISC withholding account.

PERIODIC WITHHOLDING AND REMITTANCE REQUIREMENTS

Payors and lessees are required to withhold and remit taxes on income according to the following schedule:

- **Semi-Weekly** – If total withholding is \$5,000 or greater per quarter (\$20,000 per year), such payors are required to make withholding deposits on the following Wednesday for any payments made on Wednesday, Thursday or Friday; and on Friday for any payments made on Saturday, Sunday, Monday or Tuesday.
- **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.
- **Monthly** – If total withholding is \$300 to \$999 per quarter, the taxes are due the 15th day of the following month.
- **Quarterly** – If total withholding is under \$300 per quarter, the taxes are due the last day of April, July, October and January.

The (REV-1716) Period Ending and Administrative Due Dates for the Remittance of Employer Withholding and filing of Quarterly Returns and W-2 Forms can be located on the Pennsylvania Department of Revenue website, www.revenue.pa.gov.

Withholding tax payments, quarterly returns, and annual reconciliations must be submitted electronically to the Department through e-TIDES, the Department's online business tax filing system. All payments of \$1,000 or more must be remitted by Electronic Funds Transfer (EFT). Electronic payments can be made through e-TIDES at www.etides.state.pa.us.

ANNUAL FILING REQUIREMENTS

The **Annual Withholding Statement (REV-1667)**, along with the individual 1099-MISC forms, must be filed electronically with the Department through e-TIDES, www.etides.state.pa.us by January 31 of the ensuing tax year.

ISSUING 1099-MISC

Payors or lessees are required to file a Federal Form 1099-MISC with the Department and are required to provide a copy to the payee or lessor by January 31 of the ensuing tax year.

CORRECTED 1099-MISC

If a corrected Federal Form 1099-MISC is issued to a payee or lessor and the amounts related to income from sources within Pennsylvania changes for nonresident recipients or the total amount changes for resident recipients.

PAYEE / LESSOR RESPONSIBILITIES

Payees and lessors having tax withheld who receive a copy of the Federal Form 1099-MISC from the lessees are required to file a copy thereof with their Pennsylvania tax return.

Frequently Asked Questions

When does the new withholding requirement take effect?

Beginning January 1, 2018, anyone that pays Pennsylvania-source non-employee compensation or business income to a non-resident individual or disregarded entity that has a non-resident member is required to withhold from such payments an amount equal to the tax rate specified per 72 P.S. § 7302 (currently 3.07%).

Does the new 1099 withholding requirement apply to all companies or only the ones which already have an employer withholding responsibility?

The new withholding requirement is applicable to anyone, when any of conditions set forth in Act 43 of 2017 are applicable.

I do not have any payroll, do I now need to set up a payroll account?

Businesses that currently do not withhold Pennsylvania personal income tax from employee compensation, or businesses who desire to segregate 1099-MISC withholding from regular employer withholding, will have to register for a 1099-MISC withholding account using the online PA-100 at www.pa100.state.pa.us.

I already have a payroll account. Do I now need to set up a 1099-MISC account?

Businesses that currently withhold Pennsylvania personal income tax from employee compensation can use the same account to report, withhold and remit 1099-MISC withholdings.

I outsource my payroll, do I now need to set up a separate withholding account?

Businesses that currently do not withhold Pennsylvania personal income tax from employee compensation, or businesses who desire to segregate 1099-MISC withholding from regular employer withholding, will have to either register for a 1099-MISC withholding account

using the online PA-100 or work with their payroll provider to combine the filings.

NOTE: If the decision is made to include 1099-MISC withholding along with regular employer withholding, the deposit schedule will align with the employer's assigned deposit frequency.

How do I file my 1099-MISC Withholding Tax return and payment?

Withholding tax payments, quarterly returns, and annual reconciliations must be submitted electronically to the Department through e-TIDES at www.etides.state.pa.us.

How do I obtain a 1099-MISC withholding account?

Initially, a new 1099-MISC withholding account will be established to remit on a quarterly basis and will then be subject to an annual payment frequency change based on amounts withheld.

If the payor or lessee does not currently have an employer withholding account, entities required to withhold and remit Pennsylvania personal income tax are required to apply for a 1099-MISC withholding account by completing a PA-100 Pennsylvania Enterprise Registration Form electronically at www.pa100.state.pa.us. If you have any questions or need assistance filling out the PA-100 Pennsylvania Enterprise Registration Form, please call our Tax Registration Office at 717-787-3653.

How often must I remit a 1099-MISC Withholding Tax return and payment?

For more information on filing returns and payments, and quarterly due dates, please visit our online services center at www.revenue.pa.gov.

As a PA resident, I hire a non-resident contractor for various jobs throughout the year. Obviously, I'm not sure if my year-end total payments to them will be greater than \$5,000. How should I handle the new withholding rules?

Withholding is optional for payors paying less than \$5,000 annually. However, if you are unsure of the total amount of payments that will be made during the year, the Department encourages you to withhold and remit income tax from all payments made.

If the payor is only obligated to pay withholding on PA-sourced income, is it the payor's responsibility to determine the PA sourced income?

[Section 101.8 of the Pennsylvania Code](#) provides guidance on this matter.

Our company has a non-resident serving as a Director. Are we required to withhold Pennsylvania Personal Income Tax?

If you will be paying the individual more than \$5,000 annually, you are required to withhold PA Personal Income Tax and remit the tax based on published information.

When issuing a 1099-MISC, how should I account for workers living in reciprocal states?

Reciprocity applies to W-2 based employee compensation only. Pennsylvania-sourced income being reported on a 1099-MISC is always taxable for Pennsylvania personal income tax purposes, as it is considered nonemployee compensation regardless of whether it is classified as compensation or business income by the recipient.

Will PA have a separate W-9 to include state of residency?

No, PA is not creating a W-9 form. Payors and lessees will need to establish what information is needed to determine a payee or lessor's residency. However, the

Internal Revenue Service, Form W-9, does provide information in Box 3 to determine if a payee or lessor is an individual or a single-member LLC and the address provided may assist in determining their state of residence.

If a Payor contracts with a single member LLC, how is the Payor to determine if the single-member is a non-resident owner?

Form [REV-611](#), Determining Residency for PA Personal Income Tax Purposes, provides guidance on the subject.

How can I find more information about what income is taxable in PA, and therefore subject to this withholding?

[This link](#) defines what is considered to be taxable income from within this commonwealth e.g. PA sourced Income