

Guidance for New Mexico Resident Military Spouses Claiming Relief From Another State's Income Tax Withholding Tax Requirements

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Eligibility Requirements

Based on the Veterans Benefits and Transition Act of 2018, a military servicemember's spouse, who is domiciled in New Mexico and moves to another state solely to be with their spouse who is in that state because of military orders, may keep their New Mexico domicile status and may source their non-military wages and other income from services performed to New Mexico or their chosen state of domicile. For tax purposes, this can be either the domicile state that the servicemember claims or the state in which the servicemember's spouse has established domicile. The qualifying spouse's income is taxed in New Mexico instead of the state where the income is earned.

For assistance, contact New Mexico Taxation and Revenue Department:

- Employers or payors, email the Combined Reporting System (CRS) unit at CRS.TaxReturnHelp@state.nm.us, or call (505) 827-0832.
- New Mexico resident military spouse taxpayers, email the Personal Income Tax (PIT) unit at TRD.TaxReturnHelp@state.nm.us, or call (505) 827-0827.

If you are a military servicemember's non-New Mexico resident spouse who qualifies to claim an exempt New Mexico withholding status based on the Veterans Benefits and Transition Act of 2018, see Form RPD-41348 Military Spouse Withholding Tax Exemption Statement.

To access forms go to www.tax.newmexico.gov/forms-publications.aspx, select **Income Taxes** then **Personal Income Tax (PIT) - Current Year**. Select the **Personal Income Tax Return Forms** folder for PIT forms and **Other PIT-Related Forms** for Form RPD-41348 and RPD-41348 Guidance.

You must check with the state in which you currently reside, however, generally the following restrictions apply:

- The servicemember must have declared domicile in another state.
- The servicemember must be in the state in compliance with military orders.
- The servicemember's New Mexico resident spouse must be in the state in which they currently reside solely to be with their spouse.

Under the following conditions the military servicemember's spouse is not eligible or ceases to be eligible for relief:

- Servicemember leaves the service
- Divorce
- The servicemember's spouse commits an action that clearly establishes the state as their state of domicile. Examples: filing a court action, such as a claim for divorce; accepting in-state tuition; applying for certain state benefits such as filing a claim for a tax credit only available to persons domiciled in the other state.

NOTE: If the servicemember is stationed overseas, the spouse still qualifies for relief. Deployment location does not change the domicile of a servicemember.

Reporting Requirements

A military servicemember's New Mexico resident spouse who qualifies for relief, and who is earning income from services performed in another state, may claim an exempt withholding status from the other state's withholding requirements. The qualifying spouse must inform the employer or payor, that they qualify for the relief, and withholding should begin to be made to New Mexico instead of the state in which they currently reside. The employer or payor may require a statement and documentation establishing that the servicemember's spouse qualifies. To make sure all state requirements are being met, check with the state's taxation department.

To obtain a refund for tax withheld to another state, the qualifying military servicemember and New Mexico resident spouse must file an income tax return in the state in which they had tax withheld. The qualifying military servicemember's New Mexico resident spouse must also file an income tax return to

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New Mexico and pay New Mexico tax with the return. On the New Mexico return, the spouse's non-military income must be sourced to New Mexico on Schedule PIT-B. A credit for tax paid to the other state would only be allowed for income not sourced to New Mexico. NOTE: Tax withheld and paid to a state other than New Mexico cannot be directly transferred to New Mexico. You must apply for a refund of tax withheld with the state to which the tax was paid and pay any New Mexico personal income tax due.

A qualified servicemember's spouse must ensure that the tax due is paid to New Mexico through either withholding tax or estimated tax, to avoid penalty on underpayment of New Mexico income tax.

About Domicile in New Mexico

Your domicile is the place you intend as your permanent home. It is the state where your permanent home is located and where you intend to return whenever you are away (as on vacation, business assignment, educational leave or military assignment). You can have only one domicile. Your New Mexico domicile is not changed until you can show that you have abandoned it and established a new domicile outside the state.

A change of domicile must be clear and convincing. Easily controlled factors are NOT the primary factors to consider in deciding where you are domiciled. If you move to a new location but intend to stay there only for a limited amount of time (no matter how long), your domicile does not change. If your domicile is New Mexico and you go to a foreign country for a business or work assignment, or for study, research or any other purpose, your domicile does not change unless you show that you definitely do not intend to return to New Mexico.

Based on the Veterans Benefits and Transition Act of 2018 a servicemember's spouse:

- Can choose their state of domicile, from either the state in which they have established domicile OR the state in which the servicemember has established domicile.
- May inherit the domicile of a servicemember upon marriage.
- Does not have to show that domicile had been established in another state before moving into it.
- Does not have to live in a state before claiming it as domicile.

No single factor determines a person's state of domicile. Carefully evaluate all factors before claiming or changing domicile.

Verification of Eligibility

Employer's and payor's of each state may require different documents for verification of eligibility. Keep a copy of all paperwork submitted to the employer or payor for verification. The following are some examples of what you can use as verification:

- Employee's Military ID card
- Marriage License
- Servicemember's current Leave and Earnings Statement (LES) for Variable Housing Allowance (VHA) ZIP information within the Pay Data line.
- Servicemember's recent W-2
- Servicemember's voters registration card
- Voters registration card for servicemember's spouse
- Driver's licenses for both
- Children's birth records
- Professional licenses
- Proof of employment
- New Mexico state tuition