

New Mexico Taxation and Revenue Department
Military Spouse Withholding Tax Exemption Statement

Effective date of this statement. _____

A military servicemember's non-resident spouse, eligible to claim an exempt New Mexico withholding status based on the Military Spouses Residency Relief Act, must annually submit Form RPD-41348 to an employer or payor responsible for withholding New Mexico tax. Complete a new statement if eligibility changes. The employer or payor must verify that the employee or payee qualifies and submit a copy of this statement to the Department. All parties involved must keep a copy of this statement in their records. The employer or payor accepting this form must mail a copy of the statement and verification of eligibility to New Mexico Taxation and Revenue Department, P.O. Box 25128, Santa Fe, New Mexico 87504-5128. For assistance, contact (505) 827-0832.

| | |
|--|---|
| Taxable Year | Employer or payor's name |
| Employee or payee's name | Employee or payee's social security number |
| Servicemember's name | Servicemember's social security number |
| Street address where you reside (include city, state, ZIP code) | Check if you and your spouse reside at the same address <input type="checkbox"/> |
| Name of military servicemember's permanent duty station (include city, state, ZIP code) | Check if foreign address <input type="checkbox"/> |

Statement of employee or payee.

The employee or payee's domicile is in the state of: _____

The spouse who has declared legal residence for purposes of withholding state income taxes from military pay is in the state of: _____

The spouse is a military servicemember with current military orders assigning him or her to a military duty station in New Mexico. Check one
YES **NO**

Review the eligibility requirements in the instructions and check the statement that applies.

- I am eligible for the exemption** from New Mexico Income Tax Withholding requirements because I meet the requirements set forth under the Servicemembers Civil Relief Act, as amended by the Military Spouses Residency Relief Act (P.L. 111-97).
- I am NOT eligible for the exemption** from New Mexico Income Tax Withholding requirements because I do not or no longer meet the requirements set forth under the Servicemembers Civil Relief Act, as amended by the Military Spouses Residency Relief Act (P.L. 111-97).

| | | |
|---|---------------|-----------------------|
| Signature of employee or payee - Under penalty of perjury, I certify that I have examined this statement, including accompanying attachments, and to the best of my knowledge and belief it is true, correct and complete. | | |
| _____ Signature of employee or payee | _____ Date | _____ Phone number |

| | | |
|---|---------------|-----------------------|
| Signature of employer or payor - Under penalty of perjury, I certify that I have examined this statement, including accompanying attachments, and to the best of my knowledge and belief it is true, correct and complete. | | |
| _____ Signature of employer or payor | _____ Date | _____ Phone number |

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**Guidance For Employers and Non-resident Military Spouses
Claiming Relief From New Mexico Income Tax Withholding Requirements**

Eligibility Requirements

Beginning with the tax year 2009, a military servicemember's spouse who moves to New Mexico solely to be with their spouse who is in New Mexico because of military orders, may keep their out-of-state residency status and may source their non-military wages, salaries, tips, etc., and other income from services performed to their state of residence. The qualifying spouse's income is taxed to the state of domicile instead of New Mexico where the income is earned.

Certain restrictions apply:

- The servicemember must have declared "legal residence for purposes of withholding state income taxes from military pay" in another state.
- The servicemember must be in New Mexico in compliance with military orders.
- The servicemember's spouse must be in New Mexico 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 under the Military Spouses Residency Relief Act:

- Servicemember leaves the service.
- Divorce.
- Physical separation due to duty changes – the servicemember's orders move him or her to a location outside the state where the spouse is allowed to join him or her but chooses not to. For example: If the servicemember is posted to an undesirable location or is sent to a training school from which the servicemember will return, and the spouse stays in New Mexico, the spouse no longer qualifies for the relief. Once the servicemember leaves a spouse in New Mexico due to a change in the servicemember's base "home", the spouse no longer qualifies.
- Spouse commits an action that clearly establishes New Mexico as his or her 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 New Mexico.

NOTE: Deployment through temporary duty orders (TDY) does not change the base "home" to which the servicemember is assigned. For example, if the servicemember is deployed to a war zone for combat assignment, the spouse still qualifies for relief under the Military Spouses Residency Relief Act.

Reporting Requirements

A military servicemember's non-resident spouse who qualifies to claim an exempt New Mexico withholding status based on the Military Spouses Residency Relief Act, must submit to the employer or payor responsible for withholding New Mexico income tax, Form RPD-41348. The employer or payor must keep the document within its records. The employee or payee must also keep a copy of Form RPD-41348 in his or her records.

If the military servicemember spouse's situation changes after submitting Form RPD-41348, a new form must be completed and provided to the employer or payee. Form RPD-41348 can either establish that the employee or payee qualifies or establish that the employee or payee no longer qualifies. Form RPD-41348 must be complete and signed by the military servicemember's spouse and the employer or payor.

- If the servicemember's non-resident spouse is claiming an exempt New Mexico withholding status based on the Military Spouses Residency Relief Act, the employer or payor must also verify eligibility. See "Verification of Eligibility" in the following pages. One document from each of the 3 groups described under "Verification of Eligibility" must be provided to the employer and the employer must maintain a copy of the verification in its records. Once verified, the income and withholding is reported on federal forms W2 or 1099 to the state of domicile declared by the spouse.
- If the servicemember's spouse **does not** qualify, or ceases to qualify, then the income and withholding from employment or services performed in New Mexico is reported on federal forms W2 or 1099 to New Mexico.

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Form RPD-41348 must be completed for every tax year that the employee or payee wishes to claim exempt status. The statement for exempt status applies only for one tax year, and should be submitted to the employer or payor prior to beginning employment or performing services - and by the first day of each subsequent tax year.

If the qualifying military servicemember's spouse has had New Mexico tax withheld from their income, they may obtain a refund of the tax withheld by filing a New Mexico personal income tax return. The military servicemember's spouse may be asked to provide a copy of Form RPD-41348, and other proof showing eligibility. Form RPD-41348 and verification does not need to be submitted at the time the return is filed.

NOTE: The employer is liable for amounts required to be deducted and withheld by the Withholding Tax Act [7-3-1 NMSA 1978] unless the failure to withhold was due to reasonable cause. Compliance with Department instructions on Form RPD-41348, for allowing exempt status for purposes of withholding New Mexico income tax, is evidence of reasonable cause.

About Domicile

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.

Important:

- Spouses cannot pick and choose their states of domicile. They must establish domicile.
- The spouse does not inherit the domicile of a servicemember upon marriage.
- The spouse cannot adopt the domicile of the servicemember – or any other domicile.
- The spouse must be able to show that domicile had been established in another state before moving into New Mexico.
- At minimum, the spouse must have lived in a state before claiming it as domicile.

No single factor determines a person's state of domicile. All factors must be evaluated.

Verification of Eligibility

The employee or payee must provide at least one document from each of the three groups of verification to the employer or payor, as verification of eligibility. The employer must keep a copy of the documentation in its files.

Group 1 – Verification of Marriage

1. **Employee's military ID card.** The card should indicate that the employee is the spouse of the servicemember, and the card must be unexpired.
2. **Marriage License.**

Group 2 – Verification of Servicemember's Domicile

1. **Servicemember's current Leave and Earnings Statement (LES).** The LES must indicate that the servicemember has declared "legal residence for purposes of withholding state income taxes from mili-

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tary pay" in another state. NOTE: The home of record means the jurisdiction from which a servicemember joined, not the permanent domicile of the servicemember. The servicemember's LES also has a box that identifies the ZIP Code that the housing allowance is based upon. This will be the ZIP for the duty assignment of the servicemember. The box has VHA ZIP title and is on the Pay Data line of the LES. If a soldier changes duty station and it is a permanent change of duty station during the year, then the housing allowance changes upon signing into the new unit. The housing allowance is based on the duty station of the military member.

- 2. Servicemember's recent W-2.** "State box" declares the state that servicemember has declared as a tax domiciliary.

Group 3 – Verification of Spouse's Domicile

Documents that a spouse may own that will show that the spouse was domiciled in another state.

The document must be issued to the spouse as a resident of the other state.

- Spouse's voters registration card
- Spouse's driver's license
- Marriage license, unless provided as verification in group 1
- Divorce decree
- Children's birth records
- Professional license
- Documentation showing that the spouse qualifies for in-state tuition
- Proof of employment

The employer must keep a copy of Form RPD-41348 and the documents provided by the spouse for verification of eligibility in the employee's personnel files.