

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 Veterans Benefits and Transition Act of 2018, must annually submit Form RPD-41348 to an employer or payor responsible for withholding New Mexico tax. Complete a new statement if eligibility changes. 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.

1. Taxable Year	2. Employer or payor's name
3. Employee or payee's name	4. Employee or payee's social security number
5. Servicemember's name	6. Servicemember's social security number
7a. Street address where you reside (city, state, ZIP code) 7b. Check if you and your spouse reside at the same address <input type="checkbox"/>	
8a. Name of military servicemember's permanent duty station (city, state, ZIP code) 8b. Check if foreign address <input type="checkbox"/>	

Statement of employee or payee.

9. The employee or payee's, for tax purposes, has declared domicile in the state of: _____

10. The servicemember, for tax purposes, has declared domicile in the state of: _____

11. The servicemember is currently assigned 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 Veterans Benefits and Transition Act of 2018 (P.L. 115-407).
- ☐ **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 Veterans Benefits and Transition Act of 2018 (P.L. 115-407).

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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LINE INSTRUCTIONS FOR FORM RPD-41348

Read pages 2 through 4 of these instructions before completing the line instructions. The employee or payee (military non-resident spouse) begins by entering the effective date of the statement at the top of the page then completes lines 1 through 11.

- 1. Taxable Year:** Enter the tax year that this form applies to. Must submit a new form each tax year.
- 2. Employer or payor's name:** Enter the name of the military spouse's place of employment.
- 3. Employee or payee's name:** Enter the name of the military spouse.
- 4. Employee or payee's social security number:** Enter the social security number of the military spouse.
- 5. Servicemember's name:** Enter the name of the military servicemember.
- 6. Servicemember's social security number:** Enter the social security number of the military service member.
- 7a. Street address where you reside (city, state, ZIP code):** Enter the address where the military spouse resides. This does not have to be the same residence as the military servicemember.
- 7b. Check the box** if the military spouse and military servicemember reside at the same address.
- 8a. Name of the military servicemember's permanent duty station (city, state, ZIP code):** Enter the duty location or official station of the military servicemember. If this is a foreign address, write it in the standards that U.S. Postal Service has set for international mail and addresses.
- 8b. Check the box** if the military servicemember's permanent duty station is in a foreign location.
- 9.** Enter the declared domicile state that the military spouse has declared for tax purposes. This does not have to be the same declared domicile state as the military servicemember. See "About Domicile" on page 3 of these instructions.
- 10.** Enter the declared domicile state that the military servicemember has declared for tax purposes.
- 11. Check either YES or NO,** if the military servicemember's duty station is currently assigned in New Mexico.

REVIEW AND SIGN

The employee or payee must review the "Eligibility Requirements" listed on page 2 of these instructions. Check either, **I am eligible for the exemption OR I am NOT eligible for the exemption.** Both the employee or payee and employer or payor must sign and date the form. Include phone numbers for both parties.

VERIFY ELIGIBILITY OF MILITARY SPOUSE AND SUBMIT

The employee or payee reviews "Verification of Eligibility" beginning on page 3 of these instructions and submits a copy of one document from each of the documentation groups to the employer or payor. The employer or payor reviews the eligibility documentation for completion then submits it and the form to the address listed at the top of the form.

IMPORTANT: All parties involved must keep a copy for their records.

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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 2018, 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. They may source their non-military wages, salaries, tips and other income from services performed to their chosen state of domicile instead of New Mexico where the income is earned. 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.

Certain restrictions apply:

- The servicemember must have declared domicile 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:

- Servicemember leaves the service.
- Divorce.
- The servicemember's spouse commits an action that clearly establishes New Mexico as the 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: 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 non-resident spouse who qualifies to claim an exempt New Mexico withholding status, 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 on record. The employee or payee must also keep a copy of Form RPD-41348.

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, the employer or payor must verify eligibility. See "Verification of Eligibility" on page 2 of 3 of these instructions. Once verified, the income and withholding is reported on federal forms W2 or 1099 to the state of domicile declared by the servicemember's 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.

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.

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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.

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 state does not change. If you go to a foreign country for a business or work assignment, or for study, research or any other purpose, your domicile state does not change unless you show that you definitely do not intend to return.

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

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 has a box titled VHA ZIP within the Pay Data line. This identifies the ZIP Code that is used in computing the Variable Housing Allowance (VHA) for the duty assignment of the servicemember.
- 2. Servicemember's recent W-2.** "State box" declares the state that servicemember has declared as a tax domiciliary.

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Group 3 – Verification of domicile for servicemember's spouse.

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.

- Servicemember's voters registration card
- Voters registration card for servicemember's spouse
- Driver's license
- Marriage license
- 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 servicemember's spouse for verification of eligibility in the employee's personnel files.