



INFORMATIONAL NOTICE PERSONAL INCOME TAX 2017-01

Issued: December 14, 2017

Revised: January 19, 2018

Submission of Federal Form 1099-MISC and Withholding on Pennsylvania-Source Non-Employee Compensation, Business Income and Lease Payments

Purpose

This notice supersedes and replaces Informational Notice Personal Income Tax 2012-02 and provides guidance to payors of Pennsylvania-source income on their filing, withholding and remittance obligations. Further, this notice provides guidance to every lessee of Pennsylvania real estate who makes lease payments to a non-resident lessor, on their filing, withholding and remittance obligations.

Background

Act 43 of 2017 created a withholding obligation for certain payors of Pennsylvania-source income and lessees of Pennsylvania real estate to non-residents and 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.

Withholding on Non-Employee Compensation and Business Income

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 and is required to file a Federal Form 1099-MISC with the Department based upon the above-stated rules is required to withhold from such payments an amount equal to the tax rate specified at 72 P.S. § 7302 (currently, 3.07%). Withholding is optional for payors paying a payee less than \$5,000 annually. If you are unsure of the total amount of payments that will be made to a payee, the Department encourages you to withhold and remit income tax from all payments to the payee.

In general, governmental payors, including Pennsylvania's State System of Higher Education and its institutions, are exempt from this requirement.

Generally, 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.

Payees having tax withheld who receive a copy of the Federal Form 1099-MISC from the payor are required to file a copy thereof 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 electronically at: www.pa100.state.pa.us;
2. Required to electronically file quarterly withholding returns and annual reconciliations with the Department 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; and
5. Liable for taxes not withheld in the same manner as employers withholding employee compensation.

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

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.

Withholding on Certain Lease Payments

Anyone leasing Pennsylvania real estate who makes a lease payment in the course of their trade or business to a non-resident lessor is required to withhold from such payments an amount equal to the tax rate specified at 72 P.S. § 7302 (currently, 3.07%). Withholding is optional for lessees paying a non-resident lessor less than \$5,000 annually. If you are unsure of the total amount of payments that will be made to a non-resident lessor, the Department encourages you to withhold and remit income tax from all payments to the non-resident lessor.

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 showing the amount paid to them and the amount of the withholding.

In general, lessees that are governmental entities do not conduct “trade or business” and therefore are exempt from this requirement.

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.

Lessees that withhold from a lessor are:

1. 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;

2. Required to electronically file quarterly withholding returns and annual reconciliations with the Department 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; and
5. Liable for taxes not withheld in the same manner as employers withholding employee compensation.

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

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)

Lessees are also required to file reconciliation returns for each quarter, the annual withholding reconciliation statement (REV-1667R) with the 1099-MISC statements for each Lessor. The Federal Form 1099-MISC may and is strongly encouraged to be filed electronically with the Department through e-TIDES.

Federal Form 1099-MISC Filing Obligations

In General

Prior to tax year 2018, anyone that pays nonemployee compensation or makes payments under an oil and gas lease from sources within Pennsylvania to a nonresident individual, an entity treated as a partnership for tax purposes or a single member limited liability company and is required to file a Federal Form 1099-MISC with the Federal government is required to submit a copy of the Federal Form 1099-MISC to the department. The amounts reported on the form 1099-MISC should be the amounts paid for the entire calendar year.

Beginning in tax year 2018 (filing in 2019), anyone that pays Pennsylvania-source income (of whatever class) to a resident or non-resident individual, partnership or single member limited liability company and is required to file a Federal Form 1099-MISC with respect to such payment with the Federal government is required to:

1. File a copy of the Federal Form 1099-MISC with the Department by January 31 of the next year, if not filed electronically, or January 31 of the next year, if filed electronically; and
2. File a copy of the Federal Form 1099-MISC with the payee by January 31 of the next year.

For tax year 2018 and each calendar year thereafter, if the Federal Form 1099-MISC is not completed so that state income and state tax withheld information is filled in (currently, boxes 16 through 18), the copy filed with the Department and the payee shall be updated so that this information is present.

Filing

If the payor or lessee is required to perform electronic filing for Pennsylvania employer withholding purposes, the Federal Form 1099-MISC shall be filed electronically with the Department. Electronic submission will be available through the Department's e-TIDES system.

If the payor or lessee is not required to perform electronic filing for Pennsylvania employer withholding purposes but is registered to do so, the Federal Form 1099-MISC may and is strongly encouraged to be filed electronically with the Department through e-TIDES.

If the payor or lessee is neither required nor registered to perform electronic filing for Pennsylvania employer withholding purposes and does not wish to register via e-TIDES, the Federal Form 1099-MISC shall be submitted in paper format to: The Pennsylvania Department of Revenue, P.O. Box 280412, Harrisburg, PA 17128-0412.

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, a paper copy of the corrected Federal Form 1099-MISC should be forwarded to the Department.