

GENERAL INFORMATION

WHO MUST FILE

New Mexico's law says every person who has income from New Mexico sources and who is required to file a federal income tax return must file a personal income tax return in New Mexico.

New Mexico Residents

If you are a New Mexico resident, you must file a New Mexico return if you meet any of the following conditions:

- You have to file a federal return.
- You want to claim a refund of any New Mexico state income tax withheld from your pay.
- You want to claim any New Mexico rebates or credits.

Non-residents

Non-residents, including foreign nationals and persons who reside in states that do not have income taxes must file here when they have a federal filing requirement and have income from any New Mexico source whatsoever.

Members of the Armed Forces

If you are a member of the military, were a resident of New Mexico at the time of enlistment, and have not changed your state of residency, the amount of your military pay that is subject to federal income tax is also subject to New Mexico income tax. You are required to file a resident return and claim a deduction for any military active duty pay.

You are still a New Mexico resident if your permanent home (domicile) was in New Mexico when you entered the military, and you kept New Mexico as your home of record for military purposes. File a New Mexico resident return even if you are presently serving outside New Mexico.

Your military pay is not subject to New Mexico income tax if your permanent home (domicile) was in New Mexico when you entered the military, but you have established a domicile in another

state and changed your residency status with the military.

Military pay of an enrolled member of an Indian nation, tribe or pueblo is exempt for periods in which the member's home of record is on the lands of that Indian nation, tribe or pueblo.

Member of an Indian Nation, Tribe or Pueblo

The income of Indians who worked or lived on lands outside the Indian nation, tribe or pueblo of which they are members is subject to New Mexico personal income tax.

Enrolled members of an Indian nation, tribe or pueblo who lived on the lands of the Indian nation, tribe or pueblo where they are members and whose entire income was earned from work on those lands do not need to file a New Mexico income tax return. The income of a spouse or dependent of an "Enrolled member" is also exempt, provided the spouse or dependent lives and works within the boundaries of the member's nation, tribe or pueblo.

Lands include formal and informal reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States.

Military pay of an enrolled member is exempt for periods in which the member's home of record is on the lands of the member's Indian nation, tribe or pueblo.

Retirement or pension income is exempt only when the enrolled member lives within the boundaries of the member's nation, tribe or pueblo, and the retirement or pension is the result of employment on the member's Indian nation, tribe or pueblo. Retirement or pension income from employment off the lands of the nation, tribe or pueblo may not be exempted.

Resident, Part-Year Resident, First-Year Resident and Non-resident Defined

For income tax purposes, your resident status depends on **where you were domiciled** during the tax year *and* whether you were **physically present in New Mexico for a total of 185 days or more** during the tax year.

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 of New Mexico.

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.

Physical Presence

To determine whether you were physically present in New Mexico for a total of 185 days, count each day that you were here for 24 hours. For example, a person who resides in Texas but works in New Mexico was physically present in New Mexico for 185 partial days during the tax year. Because he was not here for 24 hours for any day, he is not a resident for New Mexico income tax purposes. **NOTE:** The 185 days do not have to be consecutive.

Resident

For purposes of the Income Tax Act, you are a New Mexico **resident** if your domicile was in New Mexico for the entire year, or if you were physically present in this state for a total of 185 days or more during the tax year, regardless of your domicile.

Residents include persons temporarily residing in New Mexico who plan to return to their out-of-state residence and who are physically present in New Mexico for 185 days or more.

Included are students, persons vacationing in New Mexico, and those temporarily assigned to work in New Mexico. Military personnel temporarily assigned to New Mexico who have established residency outside New Mexico are not New Mexico residents. Spouses who accompany military personnel to New Mexico must report as residents of New Mexico, regardless of domicile, if they are physically present in New Mexico for 185 days or more.

First-year resident

You are a **first-year resident** if you moved to New Mexico during the tax year with the intent of making New Mexico your permanent place of residence. A first-year resident need not have been physically present in New Mexico for at least 185 days. A former New Mexico resident who returns to the state may file as a first-year resident if that person has been a non-resident for at least one full tax year.

Part-year resident

A New Mexico **part-year resident** is a person who was a New Mexico resident for part of the year and was not physically present in New Mexico for 185 days or more, but, on December 31, was no longer domiciled in New Mexico and had moved to another state, intending to maintain domicile status in that other state.

Part-year residents and first-year residents who change domicile during the year are not residents of New Mexico for income tax purposes for periods when the taxpayer's domicile is outside New Mexico. For example: If you moved to New Mexico during the tax

year, intending to make New Mexico your permanent place of residence, your income is taxed as non-resident for the period before your move to New Mexico. Additionally, if you were a New Mexico resident for fewer than 185 days during the tax year, and prior to December 31 you moved to another state, intending to maintain domicile status in that other state, your income is non-resident income for periods after your change of abode.

Non-resident

You are a New Mexico **non-resident** if you were not domiciled in New Mexico for any part of the tax year and you were not physically present in New Mexico for at least 185 days. Military personnel who are temporarily assigned to New Mexico, but who have established residence in another state, should claim non-resident filing status.

NOTE: Except for certain military personnel and first-year residents, you must indicate "R" in the Residency Status box on page 1 of Form PIT-1 if you were physically present in New Mexico for more than 185 days during the tax year. For income tax purposes you are a resident of New Mexico.

Taxpayers Domiciled in Another State and Filing Form PIT-1 as Residents of New Mexico.

If you are required to file a New Mexico personal income tax return as a New Mexico resident, but you are also required to file and pay tax to another state because your domicile is in another state, complete Schedule PIT-B to allocate and apportion your income to New Mexico. Then, claim a credit for taxes paid to another state on Form PIT-1, line 17, for income taxed by both states.

Refunds, Rebates and Credits

Even if you do not have to file a return, you should file for a refund if New Mexico income tax was withheld. You also may qualify for one or more credits or rebates offered by New Mexico. Attach Schedule PIT-RC if you are eligible to claim the low income comprehensive tax rebate, the property tax rebate for persons 65

years of age or older, an additional low income property tax rebate for Los Alamos or Santa Fe County residents, or New Mexico child day care credit. The **general qualifications** for an individual claiming these credits or rebates are:

- you were a resident of New Mexico during the tax year, **and**
- you were physically present in New Mexico for at least six months during the tax year, **and**
- you were **not** eligible to be claimed as a dependent of another taxpayer for the tax year **and**
- you were **not** an inmate of a public institution for more than six months of the tax year.

You may also use Schedule PIT-RC if you are eligible to claim:

- refundable medical care credit for persons 65 or older,
- approved film production tax credit,
- working families tax credit,
- special needs adopted child tax credit, or
- renewable energy production tax credit.

There are other eligibility requirements for the various refundable rebates and credits. For details see the specific line item in the Schedule PIT-RC instructions.

Royalty Income of Non-residents

Non-resident taxpayers who elect to compute tax on **gross** royalty income under \$5,000 in lieu of filing a complete Form PIT-1 and Schedule PIT-B must mark the box under line 15, Form PIT-1, with a "Y", instead of an "R" for computing tax using the rate table, or "B" for computing tax using Schedule PIT-B. The indicator lets the Department know that you have gross royalty income from New Mexico sources of less than \$5,000, that you do not have any other income sourced to New Mexico and that you have elected to compute New Mexico income tax due based on the **gross** royalty income received.

To complete Form PIT-1 using this election, complete lines 1 through 6, 14, 15, 19, 20 and 22 through 36.

Lines 7 through 13 must be left blank. Enter your total **gross** royalty income from New Mexico sources on line 14 and follow the instructions for lines 15, 19, 20 and 22 through 36. You cannot reduce your income by the standard deduction or exemption amounts when you compute your tax in this way.

Representatives of Deceased Taxpayers

If a taxpayer dies before filing a return for 2009, the taxpayer's spouse or personal representative may have to file and sign a return for that taxpayer. A personal representative can be an executor, administrator or anyone in charge of the deceased taxpayer's property. If a taxpayer did not have to file a federal return, but New Mexico income tax was withheld, the representative must file a New Mexico return to claim a refund. File a joint New Mexico return if a joint federal income tax return was filed for the deceased taxpayer and the surviving spouse. The filing date is the same as if the taxpayer had lived.

The person filing the return for the deceased should put an "X" in the appropriate box on page 1, Form PIT-1, indicating that the taxpayer or the taxpayer's spouse is deceased. Enter the month, day and year of death. Enter the claimant's name and social security number **ONLY** if the refund check must be made payable to someone other than the spouse or to the estate of the taxpayer.

If the return shows an overpayment, and you are a court-appointed or certified personal representative requiring the refund to be made payable to you, enter the claimant's name and social security number. Attach Form RPD-41083, *Affidavit to Obtain Refund of New Mexico Tax Due a Deceased Taxpayer*, to the taxpayer's refund claim. Include a copy of the death certificate or other proof of death.

Pass-Through Entities and S Corporations

Partnerships and other pass-through non-corporate entities, including limited liability partnerships (LLP) and

limited liability investment companies (LLIC) — but excluding estates and trusts — are not subject to New Mexico personal income tax, but individual members of the partnership or company are. If the entity has any partner or owner who is a New Mexico resident, or if the entity has any income from New Mexico sources, it must provide each partner or owner with the information necessary to file a New Mexico personal income tax return. A pass-through entity reports and pays withholding tax on behalf of all non-resident partners or owners having New Mexico source income unless the partner or owner has completed Form PTE-TA assuming responsibility for filing a New Mexico personal income tax return. See the instructions for Form PTE for details on pass-through entity filing requirements.

Estates and Trusts

Estates and trusts are subject to the New Mexico personal income tax. Except for grantor trusts, the fiduciary for an estate or trust files Form FID-1, *Fiduciary Income Tax Return*. See the instructions for Form FID-1 for more details. Each beneficiary of an estate or trust includes his or her share of the estate or trust income on the New Mexico personal income tax return even if the estate or trust itself was not required to file Form FID-1.

Community Property and Division of Income

New Mexico is a community property state, and all assets and liabilities acquired during a marriage are the community property of both spouses, unless the property is separate property. Debt established during a marriage is the liability of both spouses, even after the marriage is dissolved. Debt established before or after a marriage is considered separate debt, and only 50% of community property may be pursued to clear separate debt.

When a couple files Married Filing Separately, 50% of community income and all separate property is claimed on each spouse's return. A spouse may not have to report half of certain combined community income (e.g.,

wages, salaries, professional fees, pay for professional services, partnership income, trade or business income and Social Security benefits) if all of the following conditions exist:

- You and your spouse lived apart all year;
- You and your spouse did not file a joint return;
- You and your spouse had wages, salaries, and professional fees that are community income; and
- You and your spouse did not transfer, directly or indirectly, any of the wages, salaries or professional fees between you during any part of the year.

Report half the total of all other types of community income (dividends, rents, royalties or gains) if you meet all of the above criteria. See FYI-310, *Community Property, Divorce, Separation and Your New Mexico Income Tax*, for further details.

Married Filing Separately

For married persons filing separate, persons separated or divorced during the year, or married persons filing joint, claiming the exemption for income of persons 100 years or older, both your New Mexico and federal returns **MUST** reflect a correct division of **community and separate income and payments**. If your income and payments are not evenly distributed, attach a copy of a statement reflecting a correct division of community and separate income and payments.

See also the instructions for Schedule PIT-B for allocation and apportionment rules for the community property, when one spouse is a resident (but not both spouses), the couple is filing a joint return, and they have income from sources both in and out of New Mexico.

Innocent or Injured Spouse Relief, Separation of Liability and Equitable Relief

If you believe a joint federal tax liability should be paid solely by your spouse due to an understatement of tax, divorce or separation, you may be

able to claim Innocent Spouse Relief, Separation of Liability or Equitable Relief from the Internal Revenue Service. If you file a joint tax return and all or part of your portion of the overpayment (community property) was or is expected to be applied (offset) to your spouse's legally enforceable past-due liability, you may be able to claim Injured Spouse Relief from the Internal Revenue Service. Please refer to IRS Publications 971, *Innocent Spouse Relief (and Separation of Liability and Equitable Relief)* and Publication 504, *Divorced or Separated Individuals*.

Although state law prohibits the Department from forgiving state taxes due, the Department Secretary has the discretion to decline to bring collection action against an "innocent or injured

spouse" when it is unfair to hold that spouse liable. When relief is granted in writing by the IRS, the spouse receiving the relief may provide the documentation of the relief to the Department and request the Department decline to bring or to cease collection action against them to the extent they are granted relief by the IRS.

Additionally, you may request from the Secretary that collection action not be brought against you for:

- liabilities established by your spouse when the income that established the liability was not claimed as community property;
- your portion of community property that is expected to be offset to clear the spouse's separate debt, or

- business related debt, when you can show that you had no knowledge of the business, did not benefit from the business and that the income from the business was not claimed as community property.

To request relief from the Department, submit a written request to Taxation and Revenue Department, P.O. Box 630, Santa Fe, NM 87504-0630, or to your local district office. The addresses of the district offices are behind the front cover of the Personal Income Tax Form Packet. Do not attach the request for relief with your New Mexico Personal Income Tax Return. You must provide proof that you qualify for relief.

FILING METHODS

New Mexico offers taxpayers the choice of filing their tax returns in the traditional paper format or using computers to file electronic returns. We describe the options below to assist you in choosing the method that makes filing your New Mexico PIT return most convenient for you.

The Department encourages all taxpayers to file electronically whenever possible. Electronic filing is fast and secure. It provides the fastest turnaround for a refund and saves tax dollars, costing less to process than a paper return. *Taxpayers who file and pay electronically receive an extension of the filing deadline to April 30, 2010.* The filing deadline is April 15, 2010 for all other taxpayers. See *WHEN AND WHERE TO FILE AND PAY* on page 10 for details.

Filing by Paper Form

1) TRD provides **hard-copy New Mexico tax forms** to fill out by hand and mail back to the Department. These forms are in the personal income tax packet mailed to taxpayers. You can also ask for them at the TRD local offices listed inside the front cover. Some local libraries also may carry supplies of New Mexico tax forms.

2) You may **download tax forms** using Adobe Acrobat from TRD's Internet web site, where you will find personal income tax forms you can print and mail to TRD. TRD's web address is: www.tax.state.nm.us. Click on "individuals" on the home page.

3) You can buy **software** to complete your income tax return on your personal computer (PC). You can then print and mail the tax return to TRD.

Caution: Submit only high-quality, printed, original forms to the Department. A poor print or photocopy of a form obtained from our web site or an approved software product will delay the processing of your return and your refund, credit or rebate.

File Returns on Approved State Forms. Always submit personal income tax returns on official state forms provided or approved by the Department. If you use a software product to generate your forms, the Department must first have approved the software company.

Computer-generated Returns. The New Mexico Taxation and Revenue Department approves companies who follow specifications and format requirements for the printed form. Acceptance of the software company

does not imply endorsement by the Department or assurance of the quality of services provided. See the list of approved software developers and vendors on the TRD web site, www.tax.state.nm.us. Click on "Tax professionals" and select "2009 New Mexico Form Vendors", or call (505) 827-2481.

When using any computer-generated personal income tax form, you must comply with the printing and legibility requirements of the software developer. **Hint:** If your printer can print a logo clearly, then it can print a quality tax form.

Reminder: Never submit a *photocopy* of the form the software generates. Always submit the original computer-generated form and *retain a copy* for your records.

Filing Electronically

TRD offers two ways to file your PIT return electronically, both allowing you to file either a refund return or a tax-due return. File electronic returns through TRD's Internet web site or the Federal/State Electronic Filing Program.

Certain **restrictions** on who may file and the types of returns eligible for electronic filing may apply depend-