

## New Pennsylvania Personal Income Tax Withholding Requirements

Effective December 29, 2017, Pennsylvania imposes new Personal Income Tax (PIT) withholding obligations on certain lessees of non-residential real property and non-employer payors of Pennsylvania source compensation and business income.

### New Rules for Lessees of Real Estate

Every lessee of Pennsylvania real estate (other than a lessee of residential property) that makes a lease payment to a nonresident landlord, or an agent thereof, is required to withhold PIT at the rate of 3.07 percent on each such lease payment. For purposes of the withholding requirements, a nonresident landlord means an individual, estate, or trust that is not a resident of Pennsylvania for PIT purposes. Thus, it is incumbent on the lessee to confirm with their landlord whether such landlord is a resident of Pennsylvania. A lease payment includes, but is not limited to, rents, royalties, bonus payments, damage payments, delay rents, and other payments made pursuant to a lease.

The withholding requirement is mandatory if the lessee pays the lessor \$5,000 or more annually on a lease; however, a lessee may choose to make such withholdings even if the total annual payments are less than \$5,000. If a lessee is unsure of the total amount of payments that will be made to a nonresident lessor during the year, it is recommended that the lessee withhold and remit the PIT from all payments made to the nonresident lessor.

Failure of a lessee to withhold and remit the required amount of PIT will result in the lessee becoming personally liable for the amount of PIT it failed to properly withhold, plus interest and penalties thereon. If the lessee does not withhold PIT as required and the tax is later paid by the landlord, the lessee will still be liable for any applicable interest and penalties.

### New Rules for Business & Individuals Making Payments of Certain Pennsylvania Source Income

Beginning January 1, 2018, any business or individual that (1) makes payment of Pennsylvania source non-employee compensation or business income to either (a) an individual who is a nonresident of Pennsylvania or (b) an entity that is disregarded for PIT purposes and such entity has a member that is a nonresident of Pennsylvania, and (2) is required to file a Form 1099-MISC with the IRS and the PA DOR with respect to such payments, is required to withhold PIT at the rate of 3.07 percent on each such payment. Generally, a payment is considered "non-employee compensation" if it is made to someone who is not your employee for services provided to you in the course of your trade or business.

The withholding requirement is mandatory if the business or individual makes payments of \$5,000 or more annually to a particular payee. However, the business or individual may choose to make such withholdings even if the total annual payments are less than \$5,000. If a business or individual payor is unsure of the total amount of payments that will be made to a nonresident payee during the year, it is recommended that the payor withhold and remit the PIT from all payments made to the nonresident payee.

Failure of a payor to withhold and remit the required amount of PIT will result in the payor (as well as any representative thereof or any other person receiving any portion of the withheld amounts) becoming personally liable for the amount of PIT it failed to properly withhold, plus interest and penalties thereon. If the payor does not withhold PIT as required and the tax is later paid by the nonresident payee, the payor will still be liable for any applicable interest and penalties.



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### Related Practice Areas

- Tax

## Registration and Due Dates

A lessee that withholds PIT on lease payments to Pennsylvania nonresident lessors and any individual or business that withholds PIT on payments of Pennsylvania source non-employee compensation or business income to nonresident payees is required to:

1. Apply for a 1099-MISC withholding account by completing electronically a Pennsylvania Enterprise Registration Form (Form PA-100);
2. Electronically file quarterly withholding returns and annual reconciliations with the Pennsylvania Department of Revenue (PA DOR) via e-TIDES;
3. Electronically remit the withheld monies via e-TIDES; and
4. File an annual withholding statement (Form 1099-MISC) with the nonresident lessor or nonresident payee (as applicable) and the PA DOR showing the total amount of payments made and the amount of PIT withheld. The nonresident lessor or payee will need to file a copy of the withholding statement with its PIT return.

Quarterly withholding returns for the quarters ending on the last day of March, June, September, and December must be filed on or before the last day of April, July, October, and January, respectively. Annual withholding reconciliations and the Forms 1099-MISC must be filed on or before January 31 of the year following the tax year during which the payments and withholdings were made. The withheld monies must be remitted to the PA DOR 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). Due dates are listed on the Form REV-1716 published annually by the PA DOR.

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**To discuss any questions you may have regarding this Alert, or how it may apply to your particular circumstances, please contact a member of Cozen O'Connor's Tax Team.**