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## PENNSYLVANIA BUSINESSES SUBJECT TO THE NEW 1099-MISC WITHHOLDING TAX REQUIREMENTS FOR PAYMENTS TO CERTAIN OUT-OF-STATE CONTRACTORS AND LESSORS

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Beginning January 1, 2018, Pennsylvania businesses required to file federal Form 1099-MISC (“Payors”) have additional reporting and withholding requirements in relation to payments of Pennsylvania source non-employee compensation and business income made to non-resident individuals or disregarded entities<sup>1</sup> with a non-resident member (“Payees”). In addition, anyone that leases Pennsylvania real estate in the course of a trade or business (a “Lessee”) from a non-resident lessor who is an individual, estate or trust (a “Lessor”) is also subject to additional reporting and withholding requirements.

Act 43 of 2017 expanded the requirements for Payors to file Form 1099-MISC with the Pennsylvania Department of Revenue (the “Department”), and created a withholding obligation for Payors to withhold Pennsylvania personal income tax (“PIT”) on certain payments of non-employee compensation and business income. Withholding is required when a Payor makes payments of Pennsylvania source non-employee compensation or business income totaling \$5,000 or more to a Payee during a calendar year and the payment is reported on a Form 1099-MISC. When withholding is required, the Payor must withhold from such payments to a Payee an amount equal to the PIT rate (currently, 3.07%). Withholding is optional if a Payor makes payments to a Payee totaling less than \$5,000 during a calendar year, but if a Payor is unsure of the total amount of payments that will be made to a Payee during the year, the Department encourages Payors to withhold and remit PIT from all payments. The United States government, the Commonwealth of Pennsylvania, their agencies, instrumentalities, and any political subdivision of Pennsylvania are excluded from this withholding requirement.

Act 43 of 2017 also expanded the withholding requirements in relation to Pennsylvania real estate lease payments by requiring Lessees to withhold PIT on certain lease payments made to Lessors. Lease payments include rents, royalties, bonus payments, damage rents and other payments made under the lease. Residential rental payments, however, are exempt from this withholding requirement. The amount required to be withheld by the Lessee is the amount equal to the PIT rate (currently, 3.07%), and withholding is optional for amounts totaling less than \$5,000 annually.

Payors and Lessees that currently withhold PIT from employee compensation can use the same payroll account to report, withhold and remit 1099-MISC withholdings. Payors and Lessees that currently do not withhold PIT from employee compensation, or Payors and Lessees who desire to segregate 1099-MISC withholding from regular employer withholding, will need to either register for



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a 1099-MISC withholding account using the online PA-100 (available at [www.pa100.state.pa.us](http://www.pa100.state.pa.us)) or work with their payroll provider to combine the filings. Withholding tax payments, quarterly returns, and annual reconciliations must be submitted electronically to the Department through e-TIDES, the Department's online business tax filing system (available at [www.etides.state.pa.us](http://www.etides.state.pa.us)).

The annual withholding statement (Rev-1667R), along with the individual Forms 1099-MISC, must be filed electronically with the Department by January 31 of the ensuing year. In addition, the Payor or Lessee must provide a copy of the Form 1099-MISC to the Payee or Lessor by January 31 of the ensuing year.

Payors and Lessees are liable for withheld taxes on payments of Pennsylvania source non-employee compensation, business income and lease payments to Payees and Lessors in the same manner as Pennsylvania employers withholding employee compensation. If the Payor or Lessee fails to withhold and remit the required PIT, the Department can collect the PIT from the Payor or Lessee. As a withholding tax, responsible persons of the Payor or Lessee may be held personally liable. If the Payee or Lessor pays the PIT, the Department cannot collect the PIT from the Payor or Lessee, but the Department may collect interest and penalties from the Payor or Lessee attributable to any late payment of PIT by the Payee or Lessor.

The withholding requirement applies to any individual with a non-Pennsylvania address who performs services in Pennsylvania, and any LLC with a non-resident single-member that is disregarded (for example, it has not made an election to be taxed as a corporation). Payors should request evidence or acknowledgment from any LLC<sup>2</sup> that it either (i) has more than one member; (ii) has only one member but that member is a Pennsylvania resident; or (iii) has elected to be taxed as a corporation. As to Lessees, they must withhold the tax only if the Lessor is a non-resident individual, estate or trust (disregarded entities are not included in the definition of Lessor).

If you have any questions with how these provisions may affect you or your business, contact [John W. Schmehl](#).

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<sup>1</sup> A single-member limited liability company is the most common form of disregarded entity.

<sup>2</sup> While less common, a partnership can be a disregarded entity so the same inquiries could be made of a partnership Payee.