

taxation and revenue"; before "withheld", deleted "improperly"; and after "Native American veterans", added "domiciled on their respective tribal lands".

## **ARTICLE 3**

### **Income Tax Withholding**

#### **7-3-1. Short title.**

Chapter 7, Article 3 NMSA 1978 may be cited as the "Withholding Tax Act".

**History:** 1953 Comp., § 72-15-49, enacted by Laws 1961, ch. 243, § 1; 1979, ch. 29, § 1.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 602.

85 C.J.S. Taxation §§ 1779 to 1780.

#### **7-3-2. Definitions.**

As used in the Withholding Tax Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "employee" means either an individual domiciled within the state who performs services either within or without the state for an employer or, to the extent permitted by law, an individual domiciled outside of the state who performs services within the state for an employer;

C. "employer" means a person or an officer, agent or employee of that person having control of the payment of wages, doing business in or deriving income from sources within the state for whom an individual performs or performed any service as the employee of that person, except that if the person for whom the individual performs or performed the services does not have control over the payment of the wages for such services, "employer" means the person having control of the payment of wages;

D. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended;

E. "payee" means an individual to whom a payor is making a pension or annuity payment;

F. "payor" means a person making payment of a pension or annuity to an individual domiciled in New Mexico;

G. "payroll period" means a period for which a payment of wages is made to an employee by the employee's employer;

H. "person" means an individual, a club, a company, a cooperative association, a corporation, an estate, a firm, a joint venture, a partnership, a receiver, a syndicate, a trust or other association, a limited liability company, a limited liability partnership or a gas, water or electric utility owned or operated by a county or municipality and, to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, a department or an instrumentality thereof;

I. "wagerer" means any person who receives winnings that are subject to withholding;

J. "wages" means remuneration in cash or other form for services performed by an employee for an employer;

K. "winnings that are subject to withholding" means "winnings which are subject to withholding" as that term is defined in Section 3402 of the Internal Revenue Code;

L. "withholdee" means:

(1) an individual domiciled in New Mexico receiving a pension or annuity from which an amount of tax is deducted and withheld pursuant to the Withholding Tax Act;

(2) an employee; and

(3) a wagerer; and

M. "withholder" means a payor, an employer or any person required to deduct and withhold from winnings that are subject to withholding.

**History:** 1978 Comp., § 7-3-2, enacted by Laws 1990, ch. 64, § 1; 1996, ch. 16, § 3; 1999, ch. 14, § 1; 2000, ch. 33, § 3; 2002, ch. 9, § 1; 2010, ch. 53, § 3.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1990, ch. 64, § 1 repealed former 7-3-2 NMSA 1978, as amended by Laws 1986, ch. 20, § 54, and enacted the above section, effective July 1, 1990.

**Cross references.** — For Section 3402 of the Internal Revenue Code, see 26 U.S.C.S. § 3402.

**The 2010 amendment**, effective May 19, 2010, deleted former Subsection E, which defined "owner"; deleted former Subsection F, which defined "pass-through entity"; added Subsection E; in Subsection H, after "trust or other association", added "a limited liability company, a limited liability partnership or a gas, water or electric utility owned or operated by a county or municipality"; and relettered subsections accordingly.

**Applicability.** — Laws 2010, ch. 53, § 19 provided that the provisions of this act are applicable to taxable years beginning on or after January 1, 2011.

**The 2002 amendment**, effective May 15, 2002, added Paragraph F(4).

**The 2000 amendment**, effective May 17, 2000, substituted "pass-through-entity" for "business association, other than a sole proprietorship, not taxed as a corporation for federal income tax purposes for the taxable year" at the end of Subsection E.

**The 1999 amendment**, effective June 18, 1999, added present Subsections E and F, and redesignated former Subsections E through L as Subsections G through N.

**The 1996 amendment**, effective April 1, 1996, added Subsections H and J and redesignated former Subsections H through J as Subsections I through L, and added Paragraph K(3).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 85 C.J.S. Taxation §§ 1701 to 1705, 1721 to 1735.

### **7-3-3. Tax withheld at source.**

A. Every employer who deducts and withholds a portion of an employee's wages for payment of income tax under the provisions of the Internal Revenue Code shall deduct and withhold an amount for each payroll period computed from a state withholding tax table furnished by the department; provided:

(1) if the employee instructs the employer to withhold a greater amount, the employer shall deduct and withhold the greater amount;

(2) if the employee is not a resident of New Mexico and is to perform services in New Mexico for fifteen or fewer days cumulatively during the calendar year, the employer is not required to deduct and withhold an amount from that employee's wages; and

(3) if the aggregate monthly amount withheld under this section would be less than one dollar (\$1.00) for an employee, the employer shall not be required to deduct and withhold wages in regard to that employee.

B. The department shall devise and furnish a state withholding tax table based on statutes made and provided to employers required to withhold amounts under this

section. This table shall be devised to provide for a yearly aggregate withholding that will approximate the state income tax liability of average taxpayers in each exemption category.

C. If an individual requests in writing that the payor deduct and withhold an amount from the amount of the pension or annuity due the individual, the payor making payment of a pension or annuity to an individual domiciled in New Mexico shall deduct and withhold the amount requested to be deducted and withheld, provided that the payor is not required to deduct and withhold any amount less than ten dollars (\$10.00) per payment. The written request shall include the payee's name, current address, taxpayer identification number and, if applicable, the contract, policy or account number to which the request applies.

D. Every person in New Mexico who is required by the provisions of the Internal Revenue Code to deduct and withhold federal tax from payment of winnings that are subject to withholding shall deduct and withhold from such payment a tax in an amount equal to six percent of the winnings, except that an Indian nation, tribe or pueblo or an agency, department, subdivision or instrumentality thereof is not required to deduct or withhold from payments made to members or spouses of members of that Indian nation, tribe or pueblo.

**History:** 1953 Comp., § 72-15-51, enacted by Laws 1961, ch. 243, § 3; 1990, ch. 64, § 2; 1995, ch. 11, § 9; 1996, ch. 16, § 4.

## **ANNOTATIONS**

**Cross references.** — For the Internal Revenue Code, see 26 U.S.C. § 1 et seq.

**Temporary provisions.** — Laws 2020 (1st S.S.), ch. 4, § 4, effective June 29, 2020, provided:

A. Notwithstanding Sections 7-1-67 and 7-1-69 NMSA 1978, no interest shall accrue and no penalty shall be assessed to a taxpayer for:

(1) tax liabilities pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act for failure to pay the tax that became due April 15, 2020 through July 15, 2020; provided that the failure to pay the tax was made without intent to evade or defeat the tax; and provided further that payment for the unpaid payments is made in full on or before April 15, 2021;

(2) tax liabilities pursuant to the Withholding Tax Act for failure to pay the tax that became due March 25, 2020 through July 25, 2020; provided that the failure to pay the tax was made without intent to evade or defeat the tax; and provided further that payment for the unpaid taxes is made in full on or before April 25, 2021;

(3) gross receipts tax, local option gross receipts tax or compensating tax liabilities for failure to pay any of those taxes that became due March 25, 2020 through July 25, 2020; provided that the failure to pay the tax was made without intent to evade or defeat the tax; and provided further that payment for the unpaid taxes is made in full on or before April 25, 2021; and

(4) tax liabilities assessed between September 3, 2019 and January 3, 2020 as the result of a managed audit performed in accordance with a managed audit agreement pursuant to Section 7-1-11.1 NMSA 1978; provided that payment for those liabilities is made pursuant to terms of the managed audit agreement on or before December 31, 2020.

B. Notwithstanding Sections 7-38-49 and 7-38-50 NMSA 1978, no interest shall accrue and no penalty shall be assessed to a property owner for unpaid property taxes that became due April 10, 2020 pursuant to Section 7-38-38 NMSA 1978; provided that:

(1) the unpaid property taxes did not become delinquent because of an intent to defraud by the property owner;

(2) payment for the unpaid property taxes is made in full on or before May 10, 2021; and

(3) the subject property does not have property taxes that became delinquent pursuant to Section 7-38-46 NMSA 1978 prior to May 10, 2020.

**The 1996 amendment**, effective April 1, 1996, added Subsection D.

**The 1995 amendment**, effective July 1, 1995, designated the first sentence of Subsection A as Paragraph A(1) and added Paragraphs A(2) and A(3); designated the former second sentence of Subsection A as Subsection B and deleted a proviso at the end thereof which read "Provided that if that aggregate monthly amount withheld under this section would be less one dollar (\$1.00) for an employee, the employer shall not be required to deduct and withhold wages in regard to that employee"; and redesignated former Subsection B as Subsection C and made a stylistic change therein.

**The 1990 amendment**, effective July 1, 1990, designated the former section as Subsection A; added Subsection B; and, in present Subsection A, substituted "department, provided that, if the employee instructs the employer to withhold a greater amount, the employer shall deduct and withhold the greater amount" for "bureau of revenue" at the end of the first sentence, substituted "department" for "bureau" in the second sentence, and substituted "one dollar (\$1.00)" for "fifty cents (\$.50)" in the fourth sentence.

**New Mexico may not tax income and gross receipts of Indians residing on reservation** when the income and gross receipts involved are derived solely from activities within the reservation. *Hunt v. O'Cheskey*, 1973-NMCA-026, 85 N.M. 381, 512

P.2d 954, cert. quashed, 85 N.M. 388, 512 P.2d 961. See *also* case notes to 7-2-3 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 602.

85 C.J.S. Taxation §§ 1701 to 1705, 1721 to 1735.

### **7-3-4. Deductions considered taxes.**

Amounts deducted under the provisions of the Withholding Tax Act shall be a collected tax. No employee shall have a right of action against the employer for any amount deducted and withheld from the employee's wages. No individual who has instructed a payor to deduct and withhold an amount from the pension or annuity due that individual shall have a right of action against a payor for any amount deducted and withheld pursuant to the instruction. No wagerer who receives winnings that are subject to withholding shall have a right of action against the person who deducted and withheld an amount from the wagerer's winnings for the amount deducted and withheld.

**History:** 1953 Comp., § 72-15-52, enacted by Laws 1961, ch. 243, § 4; 1971, ch. 27, § 1; 1990, ch. 64, § 3; 1996, ch. 16, § 5.

### **ANNOTATIONS**

**Cross references.** — For right of action for gambling losses, see 44-5-1 NMSA 1978.

**The 1996 amendment,** effective April 1, 1996, added the last sentence.

**The 1990 amendment,** effective July 1, 1990, added the second sentence and made minor stylistic changes in the first sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 530, 531, 596 to 607.

Construction, application and effect, with respect to withholding, social security and unemployment compensation taxes, of statutes imposing penalties for tax evasion or default, 22 A.L.R.3d 8.

85 C.J.S. Taxation §§ 1756 to 1759, 1779 to 1780, 1763 to 1764.

### **7-3-5. Withholder liable for amounts deducted and withheld; exceptions.**

Every withholder shall be liable for amounts required to be deducted and withheld by the Withholding Tax Act regardless of whether the amounts were in fact deducted and withheld, except that:

A. if the withholder fails to deduct and withhold the required amounts and if the tax against which the required amounts would have been credited is paid, the withholder shall not be liable for those amounts not deducted and withheld; or

B. if the withholder's failure to deduct and withhold the required amounts was due to reasonable cause, the withholder shall not be liable for amounts not deducted and withheld.

**History:** 1953 Comp., § 72-15-53, enacted by Laws 1961, ch. 243, § 5; 1990, ch. 64, § 4; 1999, ch. 14, § 2; 2010, ch. 53, § 4.

## **ANNOTATIONS**

**The 2010 amendment**, effective May 19, 2010, in the introductory sentence, after "Every withholder", deleted "or pass-through entity"; in Subsection A, after "if the withholder", deleted "or pass-through entity"; and in Subsection B, after "if the withholder's", deleted "or pass-through entity", and after "reasonable cause, the withholder", deleted "or pass-through entity".

**Applicability.** — Laws 2010, ch. 53, § 19 provided that the provisions of this act are applicable to taxable years beginning on or after January 1, 2011.

**The 1999 amendment**, effective June 18, 1999, inserted "or pass-through entity" and "or pass-through entity's" throughout the section, and deleted "or not" following "of whether" in the introductory language.

**The 1990 amendment**, effective July 1, 1990, substituted "Withholder" for "Employer" in the section heading and throughout the section and made a minor stylistic change in Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 530, 531, 596 to 607.

Application of payments, made in satisfaction of employer's withholding tax liability, to employer's liability for penalties, 59 A.L.R. Fed. 484.

85 C.J.S. Taxation §§ 1719 to 1756.

### **7-3-6. Date payment due.**

Taxes withheld under the provisions of the Withholding Tax Act must be paid on or before the twenty-fifth day of the month following the month when the taxes were required to be withheld.

**History:** 1978 Comp., § 7-3-6, enacted by Laws 1969, ch. 25, § 1; 2000, ch. 33, § 4; 2010, ch. 53, § 5.

## ANNOTATIONS

**The 2010 amendment**, effective May 19, 2010, in the first sentence, deleted "Except for amounts withheld pursuant to the provisions of Section 7-3-12 NMSA 1978" and deleted the former last sentence, which provided that amounts withheld pursuant to Section 7-3-12 NMSA 1978 must be paid on or before the due date of the return for the pass-through entity.

**Applicability.** — Laws 2010, ch. 53, § 19 provided that the provisions of this act are applicable to taxable years beginning on or after January 1, 2011.

**The 2000 amendment**, effective May 17, 2000, added the exception for amounts withheld pursuant to the provisions of 7-3-12 NMSA 1978 from the time period that taxes must be paid, and added the stipulation that such amounts must be paid on or before the due date of the return for the pass-through entity.

### **7-3-7. Statements of withholding.**

A. Every employer shall file with the department an annual statement of withholding for each employee. The statement shall be in a form prescribed by the department, except employers with twenty-five or more employees shall file statements using a department-approved electronic medium. The statement shall be filed with the department on or before the last day of January of the year following that for which the statement is made. It shall include the total compensation paid the employee and the total amount of tax withheld for the calendar year or portion of a calendar year if the employee has worked less than a full calendar year.

B. Every payer shall file with the department an annual statement of withholding for each individual from whom some portion of a pension or an annuity has been deducted and withheld by that payer. The statement shall be in a form prescribed by the department, except employers with twenty-five or more employees shall file statements using a department-approved electronic medium. The statement shall be in a form prescribed by the department and shall be filed with the department on or before the last day of January of the year following that for which the statement is made. It shall include the total amount of pension or annuity paid to the individual and the amount of tax withheld for the calendar year.

C. Every person required to deduct and withhold tax from a payment of winnings that are subject to withholding shall file with the department an annual statement of withholding for each wagerer from whom some portion of a payment of winnings has been deducted and withheld by that person. The statement shall be filed using a department-approved electronic medium and shall be filed with the department on or before the last day of January of the year following that for which the statement is made. It shall include the total amount of winnings paid to the individual and the amount of tax withheld for the calendar year. The department may also require any person who is



required to submit an information return to the internal revenue service regarding the winnings of another person to submit copies of the return to the department.

**History:** 1953 Comp., § 72-15-56, enacted by Laws 1961, ch. 243, § 8; 1990, ch. 64, § 5; 1996, ch. 16, § 6; 2010, ch. 53, § 6; 2018, ch. 59, § 1.

## ANNOTATIONS

**The 2018 amendment**, effective May 16, 2018, required all employers to submit annually statements of withholding for each employee, and required certain employers to file statements of withholding electronically; in Subsection A, deleted "Except for employers required to file quarterly withholding information returns pursuant to the Withholding Tax Act or required to file a wage and contribution report to the workforce solutions department pursuant to Section 51-1-12 NMSA 1978", after "employer shall file", added "with the department", after "prescribed by the department", deleted "and" and added "except employers with twenty-five or more employees shall file statements using a department-approved electronic medium. The statement", and after "the last day of", deleted "February" and added "January"; in Subsection B, deleted "Except for payors who file the quarterly withholding information returns pursuant to the Withholding Tax Act", after "payor shall file", added "with the department", deleted "This" and added "The statement shall be in a form prescribed by the department, except employers with twenty-five or more employees shall file statements using a department-approved electronic medium. The", and after "before the last day of", deleted "February" and added "January"; and in Subsection C, after "shall file", added "with the department", after "The statement shall be", deleted "in a form prescribed by the department" and added "filed using a department-approved electronic medium", and after "before the last day of", deleted "February" and added "January".

**Applicability.** — Laws 2018, ch. 59, § 2 provided that the provisions of Laws 2018, ch. 59, § 1 apply to taxable years beginning on or after January 1, 2019.

**The 2010 amendment**, effective May 19, 2010, in Subsection A, in the first sentence, added the language preceding "every employer shall file an annual statement"; and in Subsection B, in the first sentence, added the language preceding "every payor shall file an annual statement".

**Applicability.** — Laws 2010, ch. 53, § 19 provided that the provisions of this act are applicable to taxable years beginning on or after January 1, 2011.

**The 1996 amendment**, effective April 1, 1996, added Subsection C.

**The 1990 amendment**, effective July 1, 1990, designated the former section as Subsection A, substituting therein "department" for "bureau" in two places and "the last day of February" for "February 15" in the second sentence, and added Subsection B.

### **7-3-8. Annual statement of withholding and information regarding state assistance for low-income New Mexicans to be provided to withholdees.**

On or before January 31 of the year following that for which the annual statement of withholding is made pursuant to Section 7-3-7 NMSA 1978, a withholder shall provide to a withholdee:

A. a copy of the annual statement of withholding; and

B. information regarding state assistance for low-income New Mexicans, including information regarding refundable tax rebates and credits for low-income filers provided by the state, such as the low-income comprehensive tax rebate and the working families tax credit. The information shall be provided in English and in Spanish on a form and in a manner required by the department, and the department shall make the information available on the department's website.

**History:** Laws 1999, ch. 205, § 1; 2003, ch. 2, § 7; 2019, ch. 270, § 14; 2021, ch. 116, § 3.

### **ANNOTATIONS**

**The 2021 amendment**, effective June 18, 2021, required withholders of the withholding tax to provide to withholdees information regarding state assistance for low-income New Mexicans from the taxation and revenue department; in the section heading, deleted "Copy of the" and added "annual", after "statement of withholding", added "and information regarding state assistance for low-income New Mexicans", and after "to be", deleted "furnished the withholdee" and added "provided to withholdees"; in the introductory clause, deleted "A copy of the annual statement of withholding shall be furnished to the withholdee by the withholder", added "annual" preceding "statement", and after "statement", added "of withholding", and after "is made", added "pursuant to Section 7-3-7 NMSA 1978, a withholder shall provide to a withholdee"; and added Subsections A and B.

**The 1990 amendment**, effective July 1, 1990, substituted "withholdee" for "employee" in the section heading and in the text, and substituted "to the withholdee by the withholder" for "the employee" and "January 31" for "February 15".

### **7-3-9. Withheld amounts credited against tax.**

The entire amount of income upon which tax was deducted and withheld shall be included in the gross income of the withholdee for state income tax purposes. The amount of tax deducted and withheld under the provisions of the Withholding Tax Act during the taxable year shall be credited against any state income tax liability for that taxable year.

**History:** 1953 Comp., § 72-15-59, enacted by Laws 1961, ch. 243, § 11; 1990, ch. 64, § 7.

### **ANNOTATIONS**

**The 1990 amendment**, effective July 1, 1990, deleted "from wages" following "amount of income" and substituted "withholdee" for "employee" in the first sentence and "tax deducted" for "wages deducted" in the second sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 258, 602.

85 C.J.S. Taxation §§ 1700, 1779 to 1780, 1782.

### **7-3-10. Voluntary submission to act.**

Any employee whose participation under the Withholding Tax Act is not mandatory may subject himself or herself to its provisions with the consent of the employer.

**History:** 1953 Comp., § 72-15-66, enacted by Laws 1961, ch. 243, § 18; 1990, ch. 64, § 8.

### **ANNOTATIONS**

**The 1990 amendment**, effective July 1, 1990, inserted "or herself" following "himself" and substituted "the employer" for "his employer".

### **7-3-11. Acts to be performed by agents; liability of third parties.**

A. When a fiduciary, agent or other person has the control, receipt, custody or disposal of or pays the wages of an employee or group of employees employed by one or more employers and the fiduciary, agent or other person has been designated by the United States secretary of the treasury to perform such acts as are required of employers for federal withholding purposes under the Internal Revenue Code, the fiduciary, agent or other person shall perform the acts required of employers by the provisions of the Withholding Tax Act. All provisions of Chapter 7 NMSA 1978 applicable in respect to an employer shall be applicable to a fiduciary, agent or other person so designated, but the employer, unless provided otherwise by law, for whom the fiduciary, agent or other person acts shall remain subject to the provisions of Chapter 7 NMSA 1978 applicable in respect to employers.

B. For purposes of the Withholding Tax Act, if a lender, surety or other person who is not an employer under the Withholding Tax Act with respect to an employee or group of employees, pays wages directly to the employee or group of employees employed by one or more employers or to an agent on behalf of the employee or employees, the lender, surety or other person shall be liable in its own person and estate to the state of

New Mexico in a sum equal to the taxes required to be deducted and withheld from those wages by the employer. Any amount paid pursuant to this subsection shall be credited against the liability of the employer.

**History:** 1978 Comp., § 7-3-11, enacted by Laws 1990, ch. 64, § 9.

### **ANNOTATIONS**

**Cross references.** — For the Internal Revenue Code, see Title 26 of the United States Code.

### **7-3-12. Repealed.**

**History:** Laws 1999, ch. 14, § 3; 2000, ch. 33, § 5; 2003, ch. 86, § 3; 2005, ch. 185 § 1; repealed by Laws 2010, ch. 53, § 18.

### **ANNOTATIONS**

**Repeals.** — Laws 2010, ch. 53, § 18 repealed 7-3-12 NMSA 1978, as enacted by Laws 1999, ch. 14, § 3, relating to information returns required from pass-through entities, effective May 19, 2010. For provisions of former section, see the 2009 NMSA 1978 on *NMOneSource.com*.

### **7-3-13. Withholding information return required; penalty.**

A. An employer that has more than fifty employees and is not required to file an unemployment insurance tax form with the workforce solutions department or a payor shall file quarterly a withholding information return with the department on or before the last day of the month following the close of the calendar quarter.

B. The quarterly withholding information return required by this section shall contain all information required by the department, including:

- (1) each employee's or payee's social security number;
- (2) each employee's or payee's name;
- (3) each employee's or payee's gross wages, pensions or annuity payments;
- (4) each employee's or payee's state income tax withheld; and
- (5) the workers' compensation fees due on behalf of each employee or payee.

C. Each quarterly withholding information return shall be filed with the department using a department-approved electronic medium.

D. Any employer or payor required to file the quarterly withholding information return who fails to do so by the due date or to file the return in accordance with Subsection C of this section is subject to a penalty in the amount of fifty dollars (\$50.00).

**History:** Laws 2010, ch. 53, § 7.

## **ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 53 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2010, ch. 53, § 19 provided that the provisions of this act are applicable to taxable years beginning on or after January 1, 2011.

### **7-3-14. Composite returns.**

A. A pass-through entity may file a composite income tax return on behalf of electing nonresident members reporting and paying income tax at the highest marginal rate provided in Section 7-2A-5 NMSA 1978 on the members' pro rata or distributive shares of income of the pass-through entity from doing business in, or deriving income from sources within, this state.

B. A nonresident member whose only source of income within a state is from one or more pass-through entities may elect to be included in a composite income tax return filed pursuant to this section.

C. A nonresident member that has been included in a composite income tax return may file an individual income tax return and shall receive credit for tax paid on the member's behalf by the pass-through entity.

D. As used in this section:

(1) "pass-through entity" means a corporation that for the applicable tax year is treated as an S corporation pursuant to Section 1362(a) of the Internal Revenue Code and any entity with one or more members that is not taxed as a corporation pursuant to Subchapter C of the Internal Revenue Code;

(2) "member" means a shareholder of an S corporation; a partner in a general partnership, a limited partnership or a limited liability partnership; a member of a limited liability company; or a beneficiary of a trust; and

(3) "nonresident" means an individual who is not a resident of or domiciled in the state, a business entity that does not have its commercial domicile in the state or a trust not organized in the state.