

## Opinion No. 61-67

July 27, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General F. Harlan Flint, Assistant Attorney General

**TO:** Inez B. Gill, Legislative Fiscal Analyst, Room 206, State Capitol, Santa Fe, New Mexico

### QUESTION

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Does an employer operating in New Mexico and another State, with its principal office outside of New Mexico have to withhold state income tax from salaries paid for work in New Mexico by employees who are not domiciled in New Mexico?

#### CONCLUSION

No.

### OPINION

#### ANALYSIS

Chapter 243, Laws of 1961, approved March 31, 1961, effective July 1, 1961, establishes a system for income tax withholding by employers from wages paid to employees. However, the application of the statute is extremely limited. Section 2-C is the limiting provision of the statute and reads as follows:

"C. 'employees' means an individual **domiciled within the state** who performs services, either within or without the state, for an employer." (Emphasis supplied)

Thus the only statutory duty resting upon employers, regardless of the location of their principal office, is to withhold from salaries and wages from such employees as are domiciled in New Mexico, and regardless of the place of their employment, either within or without the state. The controlling factor is the **place of domicile** of the employee.