
2012 New Mexico Instructions for Form PTE Information Return for Pass-Through Entities

Please note that dollar rounding must be used when preparing all income tax returns. We also have listed the attachments required for your return to be complete. Each New Mexico General Fund recipient appreciates your cooperation and compliance.

FOR MORE INFORMATION ON . . .

- **Profit and Non-Profit Corporate Reporting**, go to:
<http://www.nmprc.state.nm.us/corporations/index.html>

Public Regulation Commission - Corporations Bureau
1120 Paseo de Peralta
P. O. Box 1269
Santa Fe, NM 87501

In Santa Fe, call (505) 827-4508, or toll free at (888) 427-5772

ALSO SEE THE FOLLOWING FORMS:

- PTE Form, New Mexico Information Return for Pass-Through Entities
 - PTE-A, New Mexico Apportionment Factors Schedule
 - PTE-B, Allocated Non-business Income Taxable to Owners
 - PTE-PV, Income Tax Payment Voucher
 - RPD-41373, Application for Refund of Tax Withheld From Pass-Through Entities
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IMPORTANT CHANGES FOR A PASS-THROUGH ENTITY (PTE)

For details about New Mexico tax law changes enacted during 2012, see [Bulletin B-100.24, 2012 Legislative Summary](#). Legislative summaries are available for each year, providing a brief description of new legislation passed during that year affecting the Taxation and Revenue Department. Visit our web page and click on "Forms and Publications", then search the "Bulletins" for the Legislative Summary for the year in which the legislation passed.

- **A new Form RPD-41373, Application for Refund of Tax Withheld From Pass-Through Entities**, is available to request a refund of tax withheld against the net income it receives from another PTE, reported on Form PTE,

New Mexico Information Return for Pass-Through Entities, or an overpayment of withholding tax paid and reported on Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*. **When requesting a refund from tax withheld shown on Form PTE, attach a completed Form RPD-41373 to the PTE return.**

WITHHOLDING AND ADDITIONAL REPORTING REQUIREMENT CHANGES

Beginning January 1, 2012, withholding from non-resident owners, members or partners (owners) of a pass-through entity (PTE) is required annually. For tax years beginning on or after January 1, 2011, a PTE was required to remit the tax quarterly. The requirement to remit the tax annually was reinstated for tax years beginning on or after January 1, 2012. The PTE files and pays the tax due when Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*, is submitted to the Department.

File Form RPD-41367, Electronically: If a PTE has more than 50 payees who receive New Mexico net income, the PTE is required to electronically file Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*, through the Department's web site. If the PTE has more than 50 New Mexico payees, and is unable to file electronically because a hardship exists and there is no reasonable access to the Internet in the taxpayer's community, the PTE may request Department approval to file by paper. The PTE may request approval by filing Form RPD-41350, *E-File Exception Request Form*. The request must be received by the Department at least 30 days before the taxpayer's electronic report is due.

Important Reminders

- If granted an exemption to electronically file Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*, or if you have 50 or fewer New Mexico payees and choose to file Form RPD-41367 in paper format, submit that form separately from Form PTE, *New Mexico Information Return for Pass-Through Entities*.
- New Mexico approved tax credits may not be passed to the owners using Form PTE or a Schedule K-1 equivalent form. Refer to the forms and instructions for the tax credit for information on how to pass tax credits to owners.
- Do not submit Schedule K-1 or equivalent forms with Form PTE.
- When requesting a refund, attach Form RPD-41373, *Application for Refund of Tax Withheld From Pass-Through Entities*, to the PTE return.
- To receive proper credit for withholding, all annual statements of income and withholding must be issued to the entity filing the New Mexico return.
- Entities that file Form 2012 S-Corp, *New Mexico Sub-Chapter S Corporate Income and Franchise Tax Return*, do not also file Form 2012 PTE, *New Mexico Information Return for Pass-Through Entities*. An entity that files the S-Corp return may be required to file Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*, instead.
- A non-resident owner's and remittee's requirement to file a New Mexico personal income tax return is met when the PTE or remitter withholds from oil and gas proceeds and or pass-through entity withholding and the owner or remittee has no other income from New Mexico sources.

Your Electronic Services

- ◆ **Direct Deposit** - Taxpayers due a refund may have their refunds deposited directly into their bank accounts through "Refund Express." See Form PTE.
- ◆ **Pay via credit card or electronic check** - Taxpayers may pay taxes over the Internet with Visa, MasterCard, Discover or American Express cards. A 2.49% convenience fee calculated on the amount of the transaction covers costs that the companies bill the state when you use your card. **You may also pay by electronic check at no charge.** An electronic check authorizes TRD to debit your checking account in the amount and on the date you specify.
- ◆ **Download forms, publications and brochures or ask a question** - Taxpayers may access forms, publications and brochures from our website.
- ◆ **Ask a question** - You can ask general questions about New Mexico taxes using the e-mail address policy.office@state.nm.us, or ask about your tax return at cit.taxreturnhelp@state.nm.us.
- ◆ **New Mexico Taxpayer Access Point: TAP is a secure resource that allows taxpayers to check the status of tax accounts online, make payments, and change their address.** Access our web site and select the Taxpayer Access Point (TAP) link. This resource is currently available for the following tax programs: Personal Income Tax (PIT), Corporate Income and Franchise Tax (CIT), Pass Through Entity (PTE), S Corporate Income and Franchise Tax (S-Corp), Combined Reporting System (CRS), E911 Services Surcharge (911), Combined Fuel Tax (CFT), Cigarette Tax (CIG), Fiduciary Income Tax (FID), Bingo and Raffle Tax (BRT), Conservation Tax (CNS), Gaming Operator Tax (GMO), Gaming MFG and Distributor Tax (GMD), Water Conservation Fee (H2O), OGP Withholding Tax (OGP), PTE Withholding Tax (PTW), Local Liquor Excise Tax (LLQ), Liquor Excise Tax (LIQ), Resource Excise Tax (RES), Severance Tax (SEV), Alternative Fuels Excise Tax (AFD), Tobacco Products Tax (TPT), Telecommunications Relay Service Surcharge (TRS), Weight Distance Tax (WDT), and Workers' Compensation Fee (WKC). **The status of your refund is available through the "Where is my Refund" link** -- for PIT, CIT, S-Corp and CRS tax programs. You will need your Social Security Number (SSN), Federal Employer Identification Number (FEIN) or CRS Identification Number and the amount of refund due.

Privacy Notification

The New Mexico Taxation and Revenue Department requires taxpayers to furnish federal employer identification numbers as a means of taxpayer identification. All information supplied electronically by taxpayers is protected using encryption and fire walls. Taxpayer information on returns is protected in accordance with the confidentiality provisions of the Tax Administration Act (NMSA 1978, Section 7-1-8).

GENERAL INSTRUCTIONS

READ THE INSTRUCTIONS CAREFULLY. They will answer most questions, save time and may save money.

File your return as early as possible. If you have additional questions, our contact information is:

Call (505) 827-0825 in Santa Fe, or toll free (866) 809-2335, select option 4,

or send us an e-mail: cit.taxreturnhelp@state.nm.us

or write to:

New Mexico Taxation and Revenue Department
ATTENTION: Corporate Income and Franchise Tax
P. O. Box 25127
Santa Fe, New Mexico 87504-5127

ENTITIES REQUIRED TO FILE A NEW MEXICO INFORMATION RETURN FOR PASS-THROUGH ENTITIES

Pass-through entities doing business in the state must file a New Mexico Information Return for Pass-Through Entities (PTE). This requirement includes entities registered to do business in the state, transacting business in, into or from the state, or receiving any income from property or employment within the state, and includes any partnership, joint venture, common trust fund, limited association, pool or working agreement, limited liability company or any other combination of persons or interests required to file a federal partnership return.

“Pass-through entity” means a personal services business or any other business association other than:

- a sole proprietorship;
- an estate or trust that does not distribute income to beneficiaries;
- a corporation, limited liability company, partnership or other entity not a sole proprietorship taxed as a corporation for federal income tax purposes for the tax year;
- a partnership that is organized as an investment partnership in which the partner's income is derived solely from interest, dividends and sales of securities;
- a single member limited liability company that is treated as a disregarded entity for federal income tax purposes, or
- a publicly traded partnership as defined in Subsection (b) of Section 7704 of the Internal Revenue Code.

“Personal Services Business” means a business organization that receives payments for the services of a performing artist for purposes of the film production tax credit.

An estate or trust that distributes income to beneficiaries is also a pass-through entity, but files Form FID-1, instead of Form PTE.

WHICH RETURN TO FILE

FISCAL YEAR TAXPAYERS must file a 2012 return for a fiscal year beginning in 2012 and ending in 2013. Use the Form PTE applicable to the tax year in which the short year or fiscal year begins. For example, if the tax year begins in June 30, 2012, use Form 2012 PTE, regardless of the ending date of the tax year.

In general, the federal return that you are required or elect to file determines the New Mexico income tax return that you file.

If your business does not file a New Mexico *Information Return for Pass-Through Entities* (PTE), New Mexico may require you to file one of the following forms for New Mexico instead:

- New Mexico *Corporate Income and Franchise Tax Return* (CIT-1),
- New Mexico *Sub-Chapter S Corporate Income and Franchise Tax Return* (S-Corp),
- New Mexico *Personal Income Tax Return* (PIT-1), or
- New Mexico *Fiduciary Income Tax Return* (FID-1).

NOTE: Entities that file Form 2012 S-Corp, *New Mexico Sub-Chapter S*

Corporate Income and Franchise Tax Return, do not also file Form 2012 PTE, *New Mexico Information Return for Pass-Through Entities*. However, an entity that files the S-Corp return may be required to file Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*.

Every entity having income from activities or sources within New Mexico that is required to file a Federal Corporation Income Tax Return or equivalent return must file a New Mexico CIT-1 return. These include all corporations organized under the laws of the State of New Mexico and corporations exempt from federal income tax under the Internal Revenue Code which have unrelated business income.

Corporations and Limited Liability Companies (LLCs) electing to be taxed as S corporations for federal income tax purposes must file a New Mexico *S Corporate Income and Franchise Tax Return* (S-Corp) if the entity is registered to do business in the state, transacts business in, into or from the state, or derives any income from property or employment within the state.

Each owner of the partnership, limited liability corporation, S corporation or similar business association must include his or her share of the pass-through entity income on the New Mexico personal or corporate income tax return.

A Real Estate Investment Trust (REIT), which does business in New Mexico and files a federal Form 1120-REIT, must file a New Mexico PTE return.

Asingle-owner LLC or similar organization doing business in New Mexico who is required to or elects to file a federal Form 1040 Schedule C instead of a federal corporate income tax return or a federal pass-through entity return, must file a New Mexico PIT-1 return. No franchise tax is due.

Estates and trusts are subject to New Mexico personal income tax. The fiduciary for an estate or trust must file Form FID-1.

Each beneficiary of an estate or trust must include his or her share of the estate or trust income on the New Mexico personal or corporate income tax return even if the estate or trust was not required to file Form FID-1.

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.

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. This includes non-residents who have income from wages, rents, royalties, businesses, estates...every New Mexico source. Even 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.

NOTE: All New Mexico Taxation and Revenue Department forms, instructions and information brochures are available on the Department's Internet home page. Our address is: www.tax.newmexico.gov. Forms are also available at any New Mexico Taxation and Revenue Department district office. You may also request forms by calling (505) 827-2206 in Santa Fe or toll free (866) 809-2335, select option 4.

WITHHOLDING AND ADDITIONAL REPORTING REQUIREMENTS FOR PASS-THROUGH ENTITIES

A pass-through entity (PTE) who is subject to withholding tax from its owners, partners, members, or beneficiaries (owners) net income according to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act (Sections 7-3A-1 through 7-3A-9 NMSA 1978) must annually report each owner's share of net income allocable to New Mexico and remit* the New Mexico tax withheld for each owner. The required annual report is Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*. The PTE must report for all owners and except for personal services businesses, mark the indicator box on Form RPD-41367, if the PTE entered into an agreement with the owner that the owner files and pays the tax due on the allocable net income of the PTE. A PTE that is a personal service business cannot enter into an agreement with its owners. Form RPD-41367 is due, even if no tax was withheld.

*For tax years beginning on or after January 1, 2011, a PTE was required to remit the tax quarterly. The requirement to remit the tax annually was reinstated for tax years beginning on or after January 1, 2012.

File Electronically: If a PTE has more than 50 payees who receive New Mexico net income, the PTE is required to electronically file Form RPD-41367 through the Department's web site. If the PTE has more than 50 New Mexico payees, and is unable to file electronically because a hardship exists and there is no reasonable access to the Internet in the taxpayer's community, the PTE may request Department approval to file by paper. The PTE may request approval by filing Form RPD-41350, *E-File Exception Request Form*. The request must be received by the Department at least 30 days before the taxpayer's electronic report is due.

Certain exceptions to the requirement to withhold are allowed, and documentation must be maintained in the PTE's records to establish that the PTE had

reasonable cause for not withholding. A complete list of exceptions is provided in the instructions for Form RPD-41367.

Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*, is due on or before the due date of the entity's federal return for the taxable year. If a pass-through entity is not required to file a federal income tax return for the tax year, the entity must file Form RPD-41367 with the Department no later than 105 days after the end of its taxable year. The report is filed separately from the PTE return.

Other Reporting Requirements: PTEs are also required to provide sufficient information to enable the owners to comply with the provisions of the Income Tax Act and the Corporate Income and Franchise Tax Act, with respect to the owner's share of the net New Mexico income. A PTE may use federal Forms 1099-Misc, *pro forma* 1099-Misc, or Form RPD-41359, *Annual Statement of Pass-Through Entity Withholding*, to report to the owners the allocable net income and the New Mexico tax withheld. These forms must be provided to the owner by February 15th of the year following the year for which the statement is made. **These forms are not required to be submitted to the Department.**

APTE uses a Schedule K-1 equivalent form to report to the owners, their share of the net income. A Schedule K-1 is not submitted with Form PTE.

NOTE: New Mexico approved tax credits may not be passed to the owners using Form PTE or a Schedule K-1 equivalent form. Refer to the forms and instructions for the tax credit for information on how to pass tax credits to owners.

NOTE: A non-resident owner's and remittee's requirement to file a New Mexico personal income tax return is met when the PTE or remitter withholds from oil and gas proceeds and or pass-through entity withholding and the owner or remittee has no other income from New Mexico sources.

REQUIRED ATTACHMENTS TO FORM PTE

NOTE: We can process your return more quickly if you submit your forms, schedules and attachments in the following sequence:

- **PTE Form:** *New Mexico Information Return for Pass-Through Entities*.
- **PTE-A:** *New Mexico Apportionment Factors*, if the entity has income from sources both inside and outside New Mexico.
- **PTE-B:** *Allocated Non-business Income Taxable to Owners*, if the entity has non-business taxable income.
- **RPD-41373:** *Application for Refund of Tax Withheld From Pass-Through Entities*, if the entity requests a refund of tax withheld against the net income it receives from another PTE, or withholding on New Mexico oil and gas proceeds received.
- **Federal Form 1065, pages 1 through 5.**
- **Other attachments** as required by instruction.

NOTE: If any of these forms are omitted when required, the New Mexico return is incomplete.

If your return is filed late, complete **Form PTE-PV, Payment Voucher**, to include with your check or money order for the \$5 late filing penalty.

Other Forms or Attachments You May Have to File

A copy of the **approved federal extension or the approved New Mexico extension** if the return is filed after the original due date of the return. If a copy is omitted, a late-filing penalty will be assessed.

All annual information returns and withholding statements issued to the entity. Attach a copy of all annual information returns and withholding statements showing income and New Mexico income tax withheld, if reporting amounts withheld on lines 1 or 2, Form PTE. Attach Forms RPD-41359, *Annual Statement of Pass-Through Entity Withholding*, federal Form 1099-Misc, or New Mexico Form RPD-41285, PTE

Annual Statement of Withholding of Oil and Gas Proceeds.

IMPORTANT: To receive proper credit for withholding, all annual statements of income and withholding must be issued to the entity filing the New Mexico return.

Federal Forms and Schedules. The Department may require you to furnish a true and correct copy of your federal tax return and attachments.

PAYMENT OF LATE FILING PENALTY

If you are filing a late return you may pay the five dollar penalty on the Department's web site, or by using Form PTE-PV, *Payment Voucher*. Complete Form PTE-PV, *Payment Voucher*, and attach it to your check or money order.

Mail the return, payment voucher PTE-PV, payment and required attachments to:

**Taxation and Revenue Department
P.O. Box 25127
Santa Fe, New Mexico 87504-5127**

NOTE: When printing a payment voucher from the Internet or from a software product, the printer setting "Page Scaling" should be set to 'none' to prevent resizing. The payment vouchers are processed through high-speed scanners, so it is important that you do not cut the bottom portion of the payment voucher, except where indicated, or resize the voucher in any way. If the payment voucher has a scanline, do not write in the area around the scanline, which is located within the bottom 1-1/2 inch of the voucher.

Make your check or money order payable to New Mexico Taxation and Revenue Department. Do not mail cash.

To avoid misapplication of funds write "2012 PTE" and your federal employer identification number on the check or money order.

A check that is not paid by the financial institution on which it is drawn does not constitute payment, and a minimum penalty of \$20 is assessed in addition to

other applicable penalties and interest.

DUE DATE

For pass-through entities that file on a calendar year basis, the 2012 New Mexico *Information Return for Pass-Through Entities* is due on or before April 15, 2013. For fiscal year filers, the return is due on the fifteenth day of the fourth month after the end of the fiscal year.

A New Mexico income tax return is timely if the United States Post Office postmark on the envelope bears a date on or before the due date. If the due date falls on a Saturday, Sunday, state or national legal holiday, the return is timely if the postmark bears the date of the next business day. Delivery through a private delivery service is timely if the date recorded or marked by the private delivery service is on or before the due date.

EXTENSION OF TIME TO FILE

TRD accepts an extension of time granted by the Internal Revenue Service if a copy of the automatic or approved federal extension accompanies the PTE return at the time of filing.

If the entity needs an extension of time to file the New Mexico Form PTE but has not obtained a federal extension, or if additional time to file the New Mexico return is needed beyond the federal extension date, the entity should request an extension by letter or by filing New Mexico **Form RPD-41096, Extension of Time to File**, on or before the due date of the return.

REFUND

A pass-through entity (PTE) who is subject to withholding tax from its owners, partners, members or beneficiaries (owners) net income according to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act, may use Form RPD-41373, *Application for Refund of Tax Withheld From Pass-Through Entities*, to request a refund of tax withheld against the net income it receives from another PTE, reported on Form PTE, *New Mexico Information Return for Pass-*

Through Entities, or an overpayment of withholding tax paid and reported on Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*.

For filers of Form PTE, New Mexico Information Return for Pass-Through Entities. If you have received a 1099-Misc, Form RPD-41359, *Annual Statement of Pass-Through Entity Withholding*, or Form RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*, showing income tax withheld on the net income of the pass-through entity or withholding on New Mexico oil and gas proceeds received, and you wish to obtain a refund of the tax withheld, then you must submit a completed Form RPD-41373, *Application for Refund of Tax Withheld From Pass-Through Entities*, to the Department. The forms 1099-Misc, RPD-41359, or RPD-41285, must be issued to the PTE.

IMPORTANT: To validate the claim for refund, the Department may require both Form PTE, New Mexico Information Return for Pass-Through Entities, and Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*, to be filed. The Department may be required to compare the information provided on both forms to verify that the claim for refund is valid.

When requesting a refund, attach Form RPD-41373 to the PTE return and submit it with the PTE return.

For filers of Form RPD-41367, Annual Withholding of Net Income From a Pass-Through Entity Detail Report. If you have overpaid the tax to be withheld from the owners allocable net income of a PTE on Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*, you must amend Form RPD-41367 and submit a completed Form RPD-41373, *Application for Refund of Tax Withheld From Pass-Through Entities*, to the Department. If the PTE overpaid the tax by filing Form RPD-41355, *Pass-Through Entity Withholding Tax Return*, then the PTE must amend Form RPD-41355, and indicate that Form RPD-41355 was amended, in the "Basis

for Refund" portion of this form. Form RPD-41373, *Application for Refund of Tax Withheld From Pass-Through Entities*, may be submitted separately if amending these forms online.

PENALTY

If Form PTE is not filed when due because of negligence or disregard of rules or regulations, but without intent to defraud, the entity is liable for a five dollar penalty. The penalty does not apply if there is an extension of time to file and the return is filed by the extended due date.

AMENDED RETURNS

Submit an amended return on Form PTE for the year being amended and check the "amended" box. Attach all required schedules.

If the New Mexico amended return reports changes as the result of filing an amended federal return, attach copies of the applicable federal forms and schedules. In all other cases, attach an explanation of the changes. If the New Mexico amended return shows changes as the result of a Revenue Agent Report (RAR), the changes must be reported within 90 days of the date the federal adjustments are final. Attach a copy of the RAR.

NOTE: Generally, you do not need to attach a copy of the previously filed state Form PTE as backup for the amended return. If you do attach a copy of the state Form PTE as backup, write "DO NOT PROCESS" across the face of the return.

LINE INSTRUCTIONS FOR COMPLETING FORM PTE

Computerized schedule(s) WILL NOT be accepted in lieu of completing the appropriate forms, All applicable line items on Form PTE and Schedules PTE-A, PTE-B, and federal Form 1065, pages 1 through 5 must be completed for the return to be processed.

NOTE: References to federal form line numbers correspond to the most recent federal forms available as of the

date these instructions were finalized. If the references do not correspond to the federal form, use the applicable line from the federal form for the item described.

Round all dollar amounts to the nearest whole dollar.

Complete the taxpayer information at the top of Form PTE. Type or print the correct name, address, ZIP code and identification numbers in the spaces provided. Indicate if the return is an original or amended return by marking the appropriate box.

If the due date has been extended, **write in the extended due date.** A copy of the extension must be attached to the return.

Enter the **NAICS (North America Industrial Classification System) Code.** The business activity code reported for New Mexico filing purposes will be the same as reported for federal purposes. If you don't know your NAICS code, refer to the instructions for your federal return. Federal forms and instructions can be downloaded from the IRS website, www.irs.gov.

NOTE: The Department cannot process a return without the Federal Employer Identification Number (FEIN). Failure to provide the FEIN will result in processing delays and may cause the return to be rejected.

If the pass-through entity does not have a New Mexico CRS identification number, an application for a New Mexico CRS identification number, Form ACD-31015, *Application for Business Tax Identification Number*, may accompany the tax return when filed. If the pass-through entity does not require a New Mexico CRS identification number because the entity has no gross receipts, withholding or compensating tax due, the New Mexico CRS identification number may be left blank.

Fiscal year or short year filers should enter beginning and ending dates (month and year only). No entry is required for calendar year filers.

Complete Questions A through D.

SECTION 1, LINES 1-2. - TAX WITHHELD FROM THE PASS-THROUGH ENTITIES (PTE) INCOME

Line 1. Tax withheld from oil and gas proceeds received. Enter the total of all New Mexico income tax withheld from oil and gas proceeds received as shown on your annual withholding statements, 1099-Misc, or Form RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*. Be sure to include a copy of the forms with your PTE return.

An entity that has had tax withheld cannot pass a withholding statement directly to any other taxpayer. Generally, the recipient must file and report the tax withheld on its New Mexico income tax return. However, if the recipient is also a remitter, the tax withheld on the oil and gas proceeds may be passed to the remitees by issuing the remitees an annual withholding statement, Form RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*, or a *pro forma* 1099-Misc. The remitees may then claim the withholding on their income tax return.

Line 2. Tax withheld on PTE allocable net income. Enter the total of all New Mexico income tax withheld on the pass-through entity's allocable net income as shown on Forms 1099-Misc or RPD-41359, *Annual Statement of Pass-Through Entity Withholding*. Be sure to include a copy of the forms with your PTE return.

An entity that has had tax withheld cannot pass a withholding statement directly to its owners, members, partners or beneficiaries (owners). Generally, the recipient must file and report the tax withheld on its New Mexico income tax return. However, if the recipient is also a pass-through entity, the tax withheld may be passed to the owner of the recipient by issuing the owner an annual withholding statement, Form RPD-41359, *Annual Statement of Pass-Through Entity Withholding*, or a *pro forma* 1099-Misc. The owner may then claim the withholding on their income tax return.

SECTION 2, LINES 3-4. - OTHER WITHHOLDING INFORMATION REPORTING

Line 3. Amount from lines 1 and 2 passed to owners on Form 1099-Misc or RPD-41359. Enter the amount of tax withheld from the PTE, and reported on lines 1 and 2 in Section 1, which was subsequently passed on to the owners of the PTE. A PTE may not take credit for tax withheld on its annual income tax return. A PTE passes withholding tax to its owners by issuing them Form RPD-41359, *Annual Statement of Pass-Through Entity Withholding*, Form 1099-Misc or a *pro-forma* Form 1099-Misc. The owners may then take credit for the withholding on their corporate or personal income tax return.

See "Refund" on page 5 of these instructions if the PTE is requesting a refund of tax withheld.

When a PTE passes tax withheld to its owners, the income tax withheld is also reported on Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*. **Copies of Forms 1099-Misc and RPD-41359 do not need to be submitted to the Department.**

Line 4. Tax withheld and paid by the PTE on the owner's allocable net income. Enter the tax withheld and paid by the PTE on the owner's share of the allocable net income for the tax year, and paid with Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*, or RPD-41355, *Pass-through Entity Withholding Tax Return Payment*. These forms may be filed and tax remitted using the Department's web file application. Do not include tax withheld from the pass-through entity and passed to its owners, reported in line 3.

SECTION 3, LINES 5-16. COMPUTATION OF NET INCOME TAXABLE TO OWNERS

Line 5. Ordinary income. Enter the ordinary income or loss as recognized from federal tax return Form 1065, Schedule K.

Line 6. Other income. Enter the summation of all other income or losses recognized on federal tax return Form 1065, Schedule K.

Line 7. Interest income from municipal bonds. Enter interest income from non-New Mexico state and local bonds not subject to federal income tax under IRC Section 103.

Line 9. Interest from U.S. government obligations. Interest or dividend income from U.S. government obligations is deductible from an entity's taxable income only if, and to the extent that, it was included in taxable income on line 5. Expenses related to income from U.S. obligations must be subtracted and the net amount entered.

NOTE: Income from Fannie Mae, Ginnie Mae, Freddie Mac and other U.S. guarantee entities is not deductible. Income from repurchasing agreements of U.S. obligations (REPOs) is not deductible. Interest on notes issued by the Federal Home Loan Bank obligations are deductible, but not dividends issued by the Federal Home Loan Bank. That portion of income paid by mutual funds, unit investment trusts, and simple trusts which is derived from investments in U.S. obligations may be deducted.

Interest income from bonds issued by the State of New Mexico or its political subdivisions may also be deducted on this line to the extent that income was included in federal taxable income.

Line 10. Allowable deductions from Schedule K. Enter the allowable deductions recognized on the federal tax return Form 1065, Schedule K. Neither net operating loss carryover nor oil and gas depletion deductions are allowed to be claimed at the entity level on the PTE return.

Line 11. Allocated income. Enter total allocated income from PTE-B, column 1, line 8, if applicable.

Line 13. Average New Mexico percentage. Enter the **Average New Mexico Percentage** from PTE-A, line 5.

Line 15. New Mexico allocated in-

come. Enter New Mexico allocated income from PTE-B, column 2, line 9, if applicable.

Line 16. New Mexico net income. Enter the sum of lines 14 and 15.

SIGNATURE BOX

SIGNATURE. The return must be signed and dated by an officer, member or partner of the entity. Complete all information, including a phone number and e-mail address.

Any person, other than an employee of the entity, preparing the return for compensation must also sign and date the return. A preparer other than an employee of the entity must enter the paid preparer's identifying information in the section, "*Paid preparer's use only*", next to the taxpayer's signature. Enter the preparer's New Mexico CRS identification number, if the preparer has one, and the Federal Employer Identification Number (FEIN), if applicable. All paid preparers must enter their Preparer's Taxpayer Identification Number (PTIN).

An improperly signed or unsigned return will be considered invalid for filing purposes, and penalty and interest may be assessed.

SCHEDULE PTE-A LINE INSTRUCTIONS

LINES 1 - 5. APPORTIONMENT OF INCOME

PTE-A must be used by an entity to apportion its income from the entity's regular trade or business activities when income is derived from both inside and outside New Mexico.

Complete lines 1 through 5 of PTE-A.

Calculate each percentage to four decimal places (example, 22.4653%).

The average percentage on line 5 must be supplied to all owners of the entity. Also enter this percentage on PTE, line 13.

All filers who have business activity outside New Mexico, including filers:

- who have no nexus in New Mexico;
- whose activities in New Mexico are immune from corporate income tax under P.L. 86-272, and
- who have no business activity in New Mexico during the tax year, must complete Schedule PTE-A in its entirety in order for your return to be processed.

On lines 1 through 5, columns 1 and 2, all entries must be either a positive number or a zero. Negatives are not allowed. Column 1 must be completed to compute the factors. For the sales factor only, if you have either a federal taxable income or loss, you must have a positive number in the denominator (Column 1, Gross Receipts line) of the sales factor.

"Apportionable income" means income arising from transactions and activities in the regular course of an entity's trade or business. Apportionable income includes income from both tangible and intangible property if the acquisition, management or disposition of the property constitutes integral parts of the entity's regular trade or business. It includes investment income related to or used in the entity's overall business operations. The following sources of income are considered apportionable income and must be included:

- Dividend income from the investment of working capital or dividend income from an investment which is functionally connected to the entity's trade or business.
- Interest income from the investment of working capital, or interest income from capital investments used in the overall business operations, or interest income from an investment which is functionally connected to the entity's trade or business.
- Royalty income and fees from patents, copyrights, franchises, trademarks and licenses developed in the regular course of the entity's trade or business, or royalty income and fees from a product or mineral interest used in the regular course of the entity's trade or business.

- Rental or subrental income from property purchased, leased or used in the regular course of the entity's trade or business.
- Gains or losses from the sale of assets used in the regular course of the entity's trade or business or assets sold which had been treated as business assets in prior years.
- Income from a partnership or non-corporate entity if held within the regular course of the corporation's trade or business.

Line 1. Property Factor. This factor is a percentage determined as follows:

Divide: The average value of the real and tangible personal property owned or rented and used in New Mexico during the tax year to produce apportionable income (column 2)

By: The average value of all real and tangible personal property owned or rented everywhere and used during the tax year to produce apportionable income (column 1). If the percentage is negative, enter zero.

Property shall be valued according to the following rules:

Inventory shall be valued according to the valuation method used for federal income tax purposes.

Value property owned during the tax year at its original cost before the allowance for depreciation amount at the time of acquisition by the taxpayer and adjusted by subsequent capital additions, improvements and partial dispositions.

Value property which was rented from others at eight (8) times the net annual rental rate. The net annual rate is the annual rent paid less any annual rent received from subrentals of the same property. If property owned by others is used by the entity at no charge or rented by the entity at a nominal rate, the net annual rental rate is determined on the basis of a reasonable market rental rate for the property.

Determine the average value of property by adding the total value of property

held by the taxpayer at the beginning of the tax period to the total value of property held at the end of the tax period. Divide by two.

A taxpayer may be required to compute an average value on a monthly basis if the Department determines that a monthly average is necessary to correctly reflect the average value of the taxpayer's property.

Line 2. Payroll Factor. This factor is a percentage determined as follows:

Divide: The total amount paid as compensation to employees in New Mexico during the tax year (column 2)

By: The total amount paid as compensation to employees everywhere during the tax year (column 1).

"Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Only amounts paid directly to employees are included in the payroll factor. "Employees" include leased employees where the taxpayer is considered an employer for payroll tax purposes, but "employees" are not independent contractors to whom the taxpayer issues federal Form 1099.

Only compensation that is attributable to business operations subject to apportionment is included in the payroll factor.

Compensation of any employee whose primary activities relate to the production of non-business income is excluded from the payroll factor, but may be included as a related expense of the allocated activity.

Line 3. Sales Factor. This factor is a percentage determined as follows:

Divide: The total gross receipts attributable to New Mexico during the tax year, excluding returns, allowances and allocated income (column 2)

By: The total gross receipts everywhere during the tax year, excluding returns, allowances and allocated income (column 1). If the percentage is negative, enter zero.

"Gross receipts" means all income earned from transactions and activities in the regular course of business, including income from licensing of intangible personal property.

Sales of tangible personal property are New Mexico sales if:

- A. the property is delivered or shipped to a purchaser, other than the United States government, within the state regardless of the F.O.B. point or other conditions of the sale, or
- B. the property is shipped from an office, store, warehouse, factory or other place of storage in this state and
 1. the purchaser is the United States government, or
 2. the taxpayer is not taxable in the state of the purchaser.

Sales other than sales of tangible personal property are New Mexico sales if:

- A. the income-producing activity was performed in New Mexico, or
- B. the income-producing activity was performed both inside and outside New Mexico, but a greater proportion was performed within New Mexico than in any other single state (the proportion shall be determined by the cost of performance in each state),
- C. the gross receipts were from the rental, lease, licensing or any other use of either real or tangible personal property during the time the property was in New Mexico, or
- D. the gross receipts were from the performance of personal services in New Mexico.

Lines 4, 4a and 5. Total Factors. New Mexico uses an evenly weighted three-factor formula for all taxpayers except certain manufacturers. Taxpayers whose principal activity is manufacturing may use a four-factor formula (sales x 2, plus property, plus payroll) for tax years beginning on or after January 1, 1995 and before January 1, 2020. Once elected, the manufacturer must continue to use the four-factor method for a total of three consecutive tax years covering at least 36 calendar months.

"Manufacturing" means for the purposes of electing the four-factor apportion-

ment method, combining or processing components or materials to increase their value for sale in the ordinary course of business. Manufacturing does not include construction, farming, processing natural resources and most power generation. A taxpayer may not use this option unless: (a) its tax liability is greater than it would have been for the previous year if the same apportionment method was used, **or** (b) the taxpayer has increased its combined property and payroll factor percentages in the state over its 1991 levels.

The election to use the four-factor method must be made in writing no later than the filing date of the first return to which the election will apply. Statutory authority for this elective method is in Section 7-4-10(B) NMSA 1978.

Qualified manufacturers electing the four-factor method should complete the statements on line 4a and make the following adjustments when calculating the New Mexico apportionment percentage on the Schedule PTE-A:

- LINE 3, Sales Factor. Divide column 2 by column 1 and multiply the result by 200, not 100.
- LINE 5, Average Percent. Divide the total factors on line 4 by 4.

Elimination of Factor(s)

If the allocation and apportionment provisions of the Uniform Division of Income for Tax Purposes Act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may without prior approval or the Department may require - if reasonable - the exclusion of any one or more of the factors (property, payroll or sales). This would include removal of one or more of the factors whose factor is insignificant. A factor is insignificant if the denominator (column 1) is between 0% and 3% of net income. Use the number of significant factors included to compute the average. If you include an insignificant factor, attach an explanation.

SCHEDULE PTE-B LINE INSTRUCTIONS

LINES 1 - 9. ALLOCATED NON-BUSINESS INCOME TAXABLE TO OWNERS

PTE-B must be used by entities to allocate income not connected to the entity's regular trade or business.

Direct and indirect expenses related to allocated income must be deducted from the related income. Expenses related to allocated income are determined by the entity's books and records. If the entity's books and records do not reflect proper amounts for expenses, the entity may rely on other reasonable methods.

If you have an entry in column 2, you must also have an entry in column 1. The allocation cannot be correctly computed if both columns are not completed correctly.

Enter the following information on the appropriate lines of PTE-B to allocate income:

Line 1. Allocated Non-business Dividends. Column 2: Total amount in column 1 is allocated to New Mexico if the taxpayer's commercial domicile is in New Mexico.

"Commercial domicile" means the principal place from which the taxpayer's trade or business is directed or managed.

Line 2. Allocated Non-business Interest. Column 2: Total amount in column 1 is allocated to New Mexico if the taxpayer's commercial domicile is in New Mexico.

Lines 3 and 4. Allocated Non-business Rents and Royalties. Column 2: The following net rent and royalty income should be allocated to New Mexico if it is non-business income:

1. Income from real property located in New Mexico;
2. Income from all tangible personal property if the taxpayer's commercial domicile is in New Mexico and the entity is not organized under the laws of or taxable in the state where the property is used;

3. Income from tangible personal property that is used in New Mexico;
4. Income from intangibles (patents, copyrights, franchises, trademarks and licenses) used in New Mexico, and
5. Income from intangibles if the taxpayer's commercial domicile is in New Mexico but the income from the intangible is not taxable in the state where the intangible is used.

A patent is used in New Mexico if it is used in production, fabrication, manufacturing or other processing in New Mexico.

A copyright is used in New Mexico if printing or other production occurs in New Mexico.

LINE 5. Allocated Net Profit or Loss on the Sale or Exchange of Non-business Assets. Column 2: The net gain or loss from the sale or exchange of the following should be allocated to New Mexico if it is non-business income:

1. Real property located in New Mexico;
2. Tangible personal property located in New Mexico at the time it was sold;
3. Tangible personal property not located in New Mexico at the time it was sold if:
 - a. the entity's commercial domicile is within New Mexico, and
 - b. the gain was not taxable in the state where the tangible personal property was located, and
4. Intangible personal property if the entity's commercial domicile is in New Mexico.

Line 6. Allocated Non-business Partnership Income (Loss). Column 2: Non-business partnership income should be allocated to New Mexico to the extent the partnership conducts business in this state.

Line 7. Other Allocated Non-business Income (Loss). Attach a schedule to identify all other allocated income.

CONSISTENCY IN REPORTING

An entity is required to be consistent in:

- classifying income as allocable or apportionable;
- the valuation of property and its inclusion in the property factor;
- the treatment of compensation for the payroll factor; and
- the exclusion or inclusion of receipts in the sales factor for returns filed in all states.

Any change or inconsistency from prior year returns must be disclosed in a statement attached to the return. Identify the amounts and reasons for the changes or inconsistencies.

PETITION PROCEDURE OPEN TO TAXPAYER

If the above procedures for allocation and apportionment do not fairly represent the extent of the taxpayer's business activity in New Mexico, the taxpayer may petition, or the Secretary of Taxation and Revenue may require, that another method be used to apportion or allocate all or any part of the taxpayer's business income.

AFTER YOU FILE YOUR RETURN

At any time after filing your return, it may be subject to further review, verification or correction. The State of New Mexico, pursuant to reciprocal information exchange agreements, exchanges information with the Internal Revenue Service, certain other state agencies and taxing authorities in other states. If your tax return is adjusted or an assessment of additional tax is issued, you will be provided a description of your rights as a taxpayer. Our Publication [FYI-400, Tax Audits and Protest Procedures - Your Rights as a Taxpayer](#), describes in detail how to dispute an adjustment or assessment made by the Department through either the claim for refund procedure or the protest procedure. Publication FYI-400 is available by contacting your local district tax office or by downloading from the Department web site at www.tax.newmexico.gov. Click on "Forms and Publications".

New Mexico Taxpayer Bill of Rights

Most tax transactions happen without incident. In an imperfect world, however, occasional disagreements occur through misunderstanding, mathematical error, missed deadlines, misplaced papers, high volume of transactions and many other situations. Over the years the Legislature and the Department have established ways to handle difficulties according to the provisions of the state tax code. Following are some of your rights. Should you wish to consult the law itself, you will find it in Sections 7-1-4.1 through 4.3 NMSA 1978:

- The right to available public information and prompt and courteous tax assistance;
- The right to representation and advice by counsel or other qualified representatives at any time during your interactions with us according to provisions of Section 7-1-24 NMSA 1978;
- The right to have audits, inspections of records and meetings conducted at a reasonable time and place according to Sec. 7-1-11 NMSA 1978;
- The right to simple, non-technical information explaining procedures, remedies and rights during audit, protest and collection proceedings under the Tax Administration Act;
- The right to receive an explanation of audit results and the basis for audits, assessments or denials of refunds that identify tax, interest or penalty due;
- The right to seek review through formal or informal proceedings of findings or unfavorable decisions arising from determinations during audit or protest procedures according to Sec. 7-1-24 NMSA 1978;
- The right to have your tax information kept confidential unless otherwise specified by law in Sec. 7-1-8 NMSA 1978;
- The right to an abatement of an assessment of taxes incorrectly, erroneously or illegally made (Sec. 7-1-28 NMSA 1978) and a right to seek a compromise of an asserted tax liability. When the Secretary

of Taxation and Revenue in good faith doubts that you owe us what we claim you owe, you also have the right to seek a compromise if one exists in your particular case (Sec. 7-1-20 NMSA 1978);

- The right to clear information of the consequences if a tax assessment is not paid, secured, protested or otherwise provided for according to Sec. 7-1-16 NMSA 1978. If you become a delinquent taxpayer, upon notice of delinquency you have the right to timely notice of collection actions that require sale or seizure of your property under the Tax Administration Act, and
- The right to pay your tax obligations by installment payment agreements according to the provisions of Sec. 7-1-21 NMSA 1978.

Confidentiality Provisions:

Statutes regulating the confidentiality of your taxes continue to be strict. Sec. 7-1-8 NMSA 1978 requires the department to answer questions about whether a taxpayer is registered to do business in this state or is registered for other tax programs, but it does not allow employees to reveal whether you have filed a return. A hearing officer's written ruling on questions of evidence or procedure according to Sec. 7-1-24 NMSA 1978 may be made public, but not the name and identification number of the taxpayer requesting the ruling. Now included in public record are the monthly gasoline tax reports of numbers of gallons of gasoline and ethanol-blended fuels received and deducted, and the tax paid by each filer or payer of the tax. Identities of rack operators, importers, blenders, suppliers or distributors and the number of gallons of gasoline and other fuels are public record. The department may make known to the Gaming Control Board the tax returns of license applicants and their affiliates.

Audit Provisions:

We must provide you with written, dated notice that an audit

is about to begin on a specific date, and the notice must tell you which tax programs and reporting periods will be covered. We must issue a second notice, which states any outstanding records or books of account requested and not yet received, between 60 and 180 days after the audit begins. If you do not produce the records within 90 days, the department can issue an assessment of tax on the basis of the information as it stands. If you need additional time, you must submit a specific request in writing. Interest on outstanding liabilities accrues if the department does not issue an assessment within 180 days of the notice of outstanding records or books, or within 90 days after time has expired under your request for additional time; however, you are entitled to an abatement of interest for the period of time after you have complied with department requests and the department has not acted on the audit.

Administrative Hearing Procedures:

A department hearing officer may not engage as an employee in enforcing or formulating general tax policy other than to conduct hearings. You may request the Secretary to determine if a hearing officer's activities have affected his or her impartiality, and the Secretary may assign the case to another hearing officer. Hearing officers may not communicate unilaterally about a matter you have protested while that matter is still pending. The Secretary may appoint another hearing officer if that occurs. You may request a written ruling on any contested question of evidence in matters in which you have filed a pending written protest. You also may request that two or more protests on related issues be combined and heard jointly, and the hearing officer shall grant the request unless it creates an unreasonable burden on the department.

Credit Claims:

The department has 180 days from the filing date to approve or deny a statutory tax credit. If it does not act, the credit is approved. The

Secretary decides whether a refund of tax due you may be offset against your other tax liabilities, and you will receive notice that the refund will be made accordingly. You are entitled to interest until the tax liability is credited with the refund amount. Please see the paragraph above on "Audit Provisions" for interest due you if the department does not offset a refund or credit against your other tax liabilities within the prescribed time. The department may make a direct refund of overpaid taxes to the taxpayer without requiring the taxpayer to file a refund claim. The department does not have to pay inter-

est on credits or refunds if it applies the amount to a tax interception program, to an estimated payment, or to offset prior liabilities of the taxpayer.

Awarding of Costs and Fees:

If you prevail in an administrative or court proceeding brought by you or against you after July 1, 2003, under the Tax Administration Act, you will receive a judgment or a settlement for reasonable administrative costs connected to the action.

Penalty:

The department may not assess penalty against you if you fail to pay tax when due because of a mistake of law made in good faith and on reasonable grounds. If the Secretary determines that it is unfair to hold a spouse or former spouse liable for payment of unpaid taxes, the Secretary may decline to take action against the spouse or former spouse of the person who actually owes the tax. In extreme cases of delinquency under Sec. 7-1-53 the department may enjoin a taxpayer from continuing in business after a hearing and until the delinquency is cleared.

***Reminder:
Write your correct federal employer
identification number (FEIN) on ALL forms,
schedules, payments and correspondence.***

Contact our local offices . . .

Local Taxation and Revenue Department Offices: Local tax offices can provide full service and information about New Mexico's taxes, programs and forms and specific information about your filing situation. If you have questions or require additional information, you may contact your local Taxation and Revenue Department Office.

ALBUQUERQUE:

Taxation & Revenue Department
Bank of the West Building
5301 Central Ave., NE
P.O. Box 8485
Albuquerque, NM 87198-8485
Telephone: **(505) 841-6200**

FARMINGTON:

Taxation & Revenue Department
3501 E. Main Street, Suite N
P.O. Box 479
Farmington, NM 87499-0479
Telephone: **(505) 325-5049**

LAS CRUCES:

Taxation & Revenue Department
2540 S. El Paseo, Building #2
P.O. Box 607
Las Cruces, NM 88004-0607
Telephone: **(575) 524-6225**

ROSWELL:

Taxation & Revenue Department
400 North Pennsylvania, Suite 200
P.O. Box 1557
Roswell, NM 88202-1557
Telephone: **(575) 624-6065**

SANTA FE:

Taxation & Revenue Department
*Visitors go to 2968 Rodeo Park Drive West**
1200 South St. Francis Drive
P.O. Box 5374
Santa Fe, NM 87502-5374
Telephone: **(505) 827-0951**

*The physical office location in Santa Fe has relocated during a renovation of the existing building. While the renovation is in progress, special delivery packages shipped through Fed Ex and UPS should continue to be sent to the 1200 South St. Francis Drive address and mailing through USPS should be sent to the P. O. Box 5374 address.

In addition . . .

Forms, instructions and general information brochures are available on the Department's Internet home page.

Our address is:

www.tax.newmexico.gov

Call (505) 827-0825 in Santa Fe, or toll free at (866) 809-2335, select option 4.

E-mail us at cit.taxreturnhelp@state.nm.us.

Electronic Services . . .

You can electronically pay through the Internet.

- **Electronic Check**
- **Tax Payments Using Visa, Mastercard, American Express or Discover***

* 2.49% convenience fee added for credit card payments

Other Internet Services . . .

- **Ask a Question** - Select "Contact Us" at the top of each page.
- **TAP - Taxpayer Access Point** -
Find the status of your refund,
Manage your tax account history, or
Register your business.

Visit the Department's web file service page at:

www.tax.newmexico.gov/Online-Services/Pages/Home.aspx