

STATE OF NEW MEXICO
TAXATION AND REVENUE DEPARTMENT

QUARTERLY PASS-THROUGH ENTITY WITHHOLDING TAX RETURN

You are not required to file this return if reporting for a tax year after January 1, 2012, or a tax year ending before January 1, 2011. For tax years 2012 and after, you are required to report and remit the tax due annually using the Form or the web application for Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*. You may continue to use the web application for this form to pay the tax due, if paying before Form RPD-41367 for the tax year or the web application for the tax year is available.

Who Must File: For tax years beginning January 1, 2011, a pass-through entity (PTE) must deduct and withhold from each nonresident owner's share of New Mexico net income and remit the tax withheld to the Department using Form RPD-41355, *Quarterly Pass-Through Entity Withholding Tax Return*. For exceptions and adjustments to the requirement to withhold, and important definitions, see the instructions.

A PTE is also required to file annual returns to the Department, and to provide to each of its owners sufficient information to enable the owner 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 income. See "Other Reporting Requirements" on page 3 of the instructions to this form.

When to File: The withholding tax is due on or before the 25th day of the month following the close of the calendar quarter in which the net income was earned. If the due date of the return falls on a Saturday, Sunday or state or national legal holiday, the return is timely if the postmark bears the date of the next business day. If no net income was earned during a quarter, or no payment of pass-through entity withholding was due for a reporting period, no quarterly return is due.

Where to File: File and pay the tax due online using the Department's web site at <https://efile.state.nm.us>. See also "File and Pay" in these instructions. If you need additional information regarding forms or instructions, please visit www.tax.newmexico.gov. If you cannot electronically file, see the instructions. For assistance completing this return call (505) 827-0825.

FEIN:	
Name:	
Street/box:	
City, state, ZIP:	Check if address is outside the U.S. <input type="checkbox"/>

Quarterly report period:

	Beginning (mm-dd-yy)	Ending (mm-dd-yy)
1.		.00
2.		.00
3.		.00
4.		.00
5.		
6.		
7.		

1. Net income
2. Exceptions and adjustments
3. Net income subject to withholding
4. Amount withheld
5. Penalty
6. Interest
7. TOTAL

▽ PLEASE CUT AND RETURN BOTTOM PORTION WITH YOUR PAYMENT ▽

QUARTERLY PASS-THROUGH ENTITY WITHHOLDING TAX RETURN

FEIN:	
Name:	
Street/box:	
City, state, ZIP:	Check if address is outside the U.S. <input type="checkbox"/>

Quarterly report period:

	Beginning (mm-dd-yy)	Ending (mm-dd-yy)
1.		.00
2.		.00
3.		.00
4.		.00
5.		
6.		
7.		

1. Net income
2. Exceptions and adjustments
3. Net income subject to withholding
4. Amount withheld
5. Penalty
6. Interest
7. TOTAL

Check if amended

Signature _____ Date _____ E-mail address _____

Quarterly Pass-Through Entity Withholding Tax Return Instructions

IMPORTANT DEFINITIONS:

"Net Income" means, for any pass-through entity (PTE), the income reported to an owner, by the PTE for federal income tax purposes, including ordinary business income or loss, net rental income or loss, guaranteed payments to a partner of a partnership, dividends, royalties and capital gain or loss, less associated deductions, plus interest earned on a state or local bond, less interest earned on a bond issued by the State of New Mexico or its political subdivisions, less income from obligations of the United States less expenses incurred to earn that income; in the case of a subchapter S corporation, "net income" also includes income taxable to the corporation for federal income tax purposes. Net income also includes appropriate allocation and apportionment of that income to New Mexico in accordance with the Uniform Division of Income for Tax Purposes Act.

"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.

"Owner" means a partner in a partnership not taxed as a corporation for federal income tax purposes for the tax year, a shareholder of an S corporation or of a corporation other than an S corporation that is not taxed as a corporation for federal income tax purposes for the tax year, a member of a limited liability company or any similar person holding an ownership interest in any pass-through entity. Owner also means a performing artist to whom payments are due from a personal services business.

"Partnership" means a combination of persons, including a partnership, joint venture, common trust fund, association, pool or working agreement, or any other combination of persons treated as a partnership for federal income tax purposes.

Exceptions to the requirement to withhold.

For tax year 2011, the exceptions to the requirement to withhold are as follows. See the instructions to Form RPD-41367, 2012 Annual Withholding of Net Income From a Pass-Through Entity Detail Report, for the exceptions to the requirement to withhold for tax years beginning on or after January 1, 2012.

1. If the amount to be withheld from an owner's share of net income in any calendar quarter is less than \$30.00, no withholding is required.
2. At the option of a PTE, a PTE may agree with the owner that the owner pay the amount that the PTE would have been required to withhold and remit to the Department on behalf of the owner pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. The payments by the owner may be remitted on Form RPD-41356, Pass-Through Entity Owner's Quarterly Tax Payment, and on the due date of this return, or by another form of payment such as estimated payments. The owner can also satisfy the terms of the agreement by filing its New Mexico income tax return and paying the tax due. The PTE must have a completed Form RPD-41353, Owner's or Remittee's Agreement to Pay Withholding on Behalf of a Pass-Through Entity or Remitter, on file at the time it files its return for the tax year to which the agreement pertains. If the Department notifies the PTE that the owner has failed to remit the required payment, the agreement is no longer acceptable by the Department as reasonable cause for failure to withhold. The PTE is not responsible for withholding on the net income earned in quarters that ended prior to the Department's notification.
3. The owner maintains its place of business or residence in New Mexico:
 - If a corporation, a signed Form RPD-41354, Declaration of Principal Place of Business or Residence in New Mexico, is on file that the corporation's principal place of business is in New Mexico, or
 - If a corporation incorporated in New Mexico, the corporation's incorporation papers are on file, with sufficient portions of those papers to demonstrate incorporation in New Mexico, or information from the Public Regulation Commission web site indicating that the corporation is a New Mexico corporation in good standing and its address, or
 - If an individual, a signed Form RPD-41354, Declaration of Principal Place of Business or Residence in New Mexico, is on file that the individual is a resident of New Mexico and declaring the physical location of the individual's abode in New Mexico.

Pass-Through Entity Withholding Tax Rate Table

If your report period begins on or after:

the effective rate is:

Jan. 1, 2011 4.90%

Quarterly Pass-Through Entity Withholding Tax Return Instructions

4. Documentation is on file showing that the owner is granted exemption from the federal income tax by the United States Commissioner of Internal Revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code, including a copy of the owner's federal Form W-9, or a copy of the determination letter from the IRS;
5. Documentation is on file showing that the owner is the United States, New Mexico or any agency, instrumentality or political subdivision of either;
6. Documentation is on file showing that the owner is a federally recognized Indian nation, tribe or pueblo or any agency, instrumentality or political subdivision thereof;
7. Documentation showing the PTE's inability to make payment of withholding from net income for the quarter due to non-availability of cash or due to contracts and other binding written covenants with unrelated third parties, unless cash payments have been made to any owner during the quarter, in which case the PTE is liable for payment of the withholding amount due up to the extent of the cash payment made during the quarter;
8. The PTE made a timely election for federal income tax purposes that changes the net income of a pass-through entity in a prior quarter is reasonable cause for failure to withhold and deduct the required amounts on the change in net income due to the election, or
9. With respect to tax years 2014 through 2018, the PTE has elected pursuant to 26 USC 108(i) to defer income from the discharge of indebtedness in conjunction with the reacquisition after December 31, 2008 and before January 1, 2011 of an applicable debt instrument for the period 2014 through 2018 and the entity has insufficient cash to remit the withholding amount due on the deferred income reported in the year.

NOTE: A disregarded entity is NOT a PTE for the purposes of pass-through entity withholding. The PTE can accept from a disregarded entity the agreement or the residency statement to support a valid reason to not withhold.

If you believe that you have a valid reason for not withholding from an owner, other than the reasons listed above, you must obtain approval from the Secretary before you file your return. Please include with your request detailed information to support an alternative reasonable cause for not withholding. To request the Secretary's approval, submit a written request to the Albuquerque District Office at New Mexico Taxation and Revenue Department, Corporate Income Tax Audit Supervisor, P.O. Box 8485, Albuquerque, NM 87198-8485. For assistance call 505-841-6221.

Adjustments to the amount withheld:

- The amount of tax withheld from the owner's net income may be reduced, but not below zero, by the amount re-

quired to be withheld for oil and gas proceeds.

- If a PTE has deducted and withheld an amount pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act, from the net income of an owner that is also a PTE, the payee PTE may take credit for that amount in determining the amount the payee PTE must withhold and deduct.

When an adjustment occurs, include on line 2, the New Mexico net income from the eligible transaction to which the tax withheld was computed, thereby excluding that amount from net income subject withholding on line 3.

INSTRUCTIONS FOR COMPLETING THIS FORM: Complete all information requested. Round money amounts in lines 1 through 4 to the nearest whole dollar; for example; enter \$10.49 as \$10 and \$10.50 as \$11.

FEIN: Enter the PTE's federal employer identification number (FEIN).

Name: Enter the name and mailing address of the PTE. Mark the box if the address is outside the U.S..

Quarterly report period: Enter a quarterly report period that is based on a calendar quarter. Enter the month, day and year of the first and last day of the calendar quarter in which the tax was withheld. For example, if filing for the first quarter of 2011, enter 01-01-11 to 03-31-11 in the space provided.

Line 1: Enter the PTE's New Mexico net income earned for the quarter. If a PTE has been in existence for at least one full tax year prior to the current calendar year, the PTE may use one-fourth of its total New Mexico net income for the preceding full tax year to compute the amount required to be deducted and withheld each quarter. Enter the New Mexico net income on lines 1 and 3, then complete the remainder of the form as instructed.

Line 2: Enter the New Mexico net income that was not withheld because the owner(s) qualified for an exception or adjustment listed in these instructions on page 2. When an adjustment occurs, include on this line, the New Mexico net income from the eligible transaction to which the tax withheld was computed, thereby excluding that amount from net income subject withholding on line 3.

Line 3: Subtract line 2 from line 1, and enter the amount on line 3. This is the New Mexico net income subject to withholding.

Line 4: Enter the amount of tax withheld from the net income of the PTE subject to withholding and reported on line 3. Calculate withholding by multiplying the net income subject to withholding of the owner (line 3) by 0.049 or the current rate according to the Pass-Through Entity Withholding Tax Rate Table on the previous page.

Quarterly Pass-Through Entity Withholding Tax Return Instructions

The rate of withholding is 4.9% for report periods beginning on or after January 1, 2011. The withholding rates are set by Department directive, and may not exceed the higher of the maximum tax bracket rate set for the Personal Income Tax Act or the Corporate Income and Franchise Tax Act. The Department must give a 90-day notice of a change to the withholding rate.

Line 5: Add penalty if the entity fails to file timely or to pay the amount on line 4 when due. Calculate the penalty by multiplying the unpaid amount on line 4 by 2%, then by the number of months or partial months for which the return or payment is late, not to exceed 20% of the tax due. The penalty may not be less than \$5.00.

Line 6: Interest accrues daily on the unpaid principal of tax due, and can change on a quarterly basis. The effective annual and daily interest rates are posted on the Department's web page at www.tax.newmexico.gov or can be obtained by contacting the Department.

The formula for computing interest is:

Tax Due x the daily interest rate for the quarter x number of days late = interest due.

For example, say a taxpayer owes \$5,000 for the 1st quarter of 2011, due April 25th, 2011. The daily interest rate for the 2nd quarter of 2011 is 0.010958904% (annual rate 3%). If the tax-due date is April 25th, 2011, and he is paying on April 30th, 2011, the payment is 5 days late. Using the formula -- $\$5,000 \times 0.010958904 \times 5 = 2.74$.

Line 7: Add lines 4, 5 and 6 to compute the total due. Enter the sum on line 7.

Signature: The form is not complete until the PTE or the PTE's authorized agent has signed and dated the report. Enter the e-mail address of the PTE or the PTE's authorized agent.

Amending: Check the amended indicator box if you are amending a previously filed RPD-41355, *Pass-Through Entity Withholding Tax Return*. If requesting a refund due to an overpayment of tax withheld, complete Form RPD-41071, *Application for Tax Refund*, and submit it with the amended return.

File and Pay the tax due online using the Department's web site at <https://efile.state.nm.us>. A PTE filing this form for the first time, who has not previously filed any New Mexico tax return to the Taxation and Revenue Department using the PTE's name and federal employer's identification number as shown on this form, will need to file this form by paper. If you have previously filed this form or any New Mexico tax return, you are encouraged to file using the Department's web site. First-time filers will need to create a "Login Name" and "Password". If you need additional information regarding forms or instructions, please visit www.tax.newmexico.gov.

If you cannot electronically file, you may submit this form to: New Mexico Taxation and Revenue Department, P.O. Box 25127, Santa Fe, NM 87504-5127. Make the check or money order payable to New Mexico Taxation and Revenue Department. Indicate "PTW" and enter the owner's FEIN or SSN on the payment. PTW payments should not be sent with any other payments to the Department.

For assistance call (505) 827-0825.

Other Reporting Requirements

Pass-through entities (PTEs) who are required to withhold tax from their owners, partners, members, or beneficiaries (owners) net income according to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act (7-3A-1 through 7-3A-9 NMSA 1978) must submit annual reports to the Department reporting the owner's share of net income and the amount of tax withheld for each owner. The form used to fulfill the annual reporting requirement is RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*.

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 uses Form RPD-41359, *Annual Statement of Pass-Through Entity Withholding*, to report to the owners the 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. Form RPD-41359 does not need to be submitted to the Department.