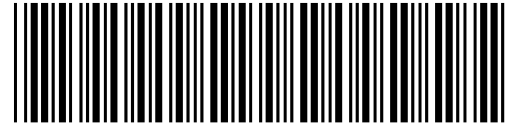


New Mexico Taxation and Revenue Department
**2012 Annual Withholding of Net Income
From a Pass-Through Entity Detail Report**



Page _____ of _____

Check if amended ☐

Pass-through entity's name	PTE's FEIN	Line 1. Total New Mexico net income
-----------------------------------	-------------------	--

Check the type of New Mexico income tax return that the pass-through entity files for the current tax year.

☐ PTE ☐ S-Corp ☐ FID-1 ☐ CIT-1 ☐ Other - _____

PTE's tax year if other than the full 2012 calendar year.

Due date of the PTE's federal return.

Beginning of tax year

MM	DD	CCYY

Last day of tax year

MM	DD	CCYY

Original Due Date

--	--	--

 Extended Due Date

--	--	--

Owner's name, street address, city, state, ZIP code	Column 2 Owner's SSN/FEIN	Column 3 Owner's share of allocable net income	Column 4 Owner's share of withholding tax	Col. 5 RPD-41353 on file
<div style="text-align: right; font-size: 8px;">Check if outside the U.S. <input type="checkbox"/></div>	Check one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN			<input type="checkbox"/> YES
<div style="text-align: right; font-size: 8px;">Check if outside the U.S. <input type="checkbox"/></div>	Check one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN			<input type="checkbox"/> YES
<div style="text-align: right; font-size: 8px;">Check if outside the U.S. <input type="checkbox"/></div>	Check one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN			<input type="checkbox"/> YES

File this report on-line using the Department's web site at <https://efile.state.nm.us>. If you cannot electronically file, see the instructions.

For assistance completing this return call (505) 827-0825.

Line 2. Total withholding this page	2.	
Line 3. Total withholding from all pages	3.	
Line 4. Withholding tax passed to owners	4.	
Line 5. Tax paid on Form RPD-41355	5.	
Line 6. Subtotal Subtract the sum of lines 4 and 5, from line 3. (May not be less than zero)	6.	
Line 7. Penalty	7.	
Line 8. Interest	8.	
Line 9. Total due Add lines 6, 7 and 8.	9.	

I declare I have examined this form and to the best of my knowledge and belief it is true, correct and complete.

Authorized signature _____ Date _____

Phone number _____ E-mail address _____

PTW-D

New Mexico Taxation and Revenue Department
2012 Annual Withholding of Net Income
From a Pass-Through Entity Detail Report
- Supplemental Form -



Pass-through entity's name	PTE's FEIN
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Page _____ of _____

Owner's name, street address, city, state, ZIP code	Column 2 Owner's SSN/FEIN	Column 3 Owner's share of allocable net income	Column 4 Owner's share of withholding tax	Col. 5 RPD-41353 on file
<div style="text-align: right;">Check if outside the U.S. <input type="checkbox"/></div>	<div>Check one: <input type="checkbox"/> FEIN</div> <div><input type="checkbox"/> SSN</div>			<input type="checkbox"/> YES
<div style="text-align: right;">Check if outside the U.S. <input type="checkbox"/></div>	<div>Check one: <input type="checkbox"/> FEIN</div> <div><input type="checkbox"/> SSN</div>			<input type="checkbox"/> YES
<div style="text-align: right;">Check if outside the U.S. <input type="checkbox"/></div>	<div>Check one: <input type="checkbox"/> FEIN</div> <div><input type="checkbox"/> SSN</div>			<input type="checkbox"/> YES
<div style="text-align: right;">Check if outside the U.S. <input type="checkbox"/></div>	<div>Check one: <input type="checkbox"/> FEIN</div> <div><input type="checkbox"/> SSN</div>			<input type="checkbox"/> YES
<div style="text-align: right;">Check if outside the U.S. <input type="checkbox"/></div>	<div>Check one: <input type="checkbox"/> FEIN</div> <div><input type="checkbox"/> SSN</div>			<input type="checkbox"/> YES
<div style="text-align: right;">Check if outside the U.S. <input type="checkbox"/></div>	<div>Check one: <input type="checkbox"/> FEIN</div> <div><input type="checkbox"/> SSN</div>			<input type="checkbox"/> YES
<div style="text-align: right;">Check if outside the U.S. <input type="checkbox"/></div>	<div>Check one: <input type="checkbox"/> FEIN</div> <div><input type="checkbox"/> SSN</div>			<input type="checkbox"/> YES
<div style="text-align: right;">Check if outside the U.S. <input type="checkbox"/></div>	<div>Check one: <input type="checkbox"/> FEIN</div> <div><input type="checkbox"/> SSN</div>			<input type="checkbox"/> YES

If more space is needed, print the Supplemental Form directly from the website and attach the additional supplemental forms to the first page of this form. Reproducing from a photocopy reduces the readability of the bar code on scanning equipment.

Line 2. Total withholding 2.
this page.

2012 Annual Withholding of Net Income From a Pass-Through Entity Detail Report Instructions

Page 1 of 4

Who Must File: 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 remittee. 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 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. 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.

Estates and Trusts: An estate or trust that distributes New Mexico net income that is taxable to its recipients is a pass-through entity (PTE) and subject to withholding pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act (Sections 7-3A-1 through 7-3A-9 NMSA 1978). As a PTE, the trust or estate is also required to withhold from the non-resident recipient's share of the trust or estates taxable New Mexico net income. The estate or trust must file and pay the tax withheld on the annual report, Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*, reporting the details for all recipients that it distributes taxable New Mexico net income. If the income distributed is not taxable to the recipient, as in the case of some grantor trusts, including living trusts, the distributed income is not included on this report.

Personal Service Businesses: A PTE that is a personal service business cannot enter into an agreement with its owners. A "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.

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. See "Where to File", later in these instructions. 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.

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 do not need to be submitted to the Department.

When to File: 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.

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.

Where to File: File online using the Department's web site at <https://efile.state.nm.us>. First-time e-filers will need to create a login name and password. If you wish to pay the tax to be remitted to the Department prior to the availability of the web application for the annual Form RPD-41367, you may make the payment electronically using the RPD-41355, *Pass-through Entity Withholding Tax Return Payment*, web application.

If granted an exemption to electronically file Form RPD-41367, or if you have 50 or fewer New Mexico payees and choose to file this form in paper format, submit this completed form to: New Mexico Taxation and Revenue Department, P.O. Box 25127, Santa Fe, NM 87504-5127.

To obtain specific information regarding electronically filing, log in to the web file page on the Department's web site at <https://efile.state.nm.us>.

Pass-through entities should be aware that the Department is required to compare the tax information received from the PTE with the records of the owners and if the Department determines that the owner is not paying the proper tax on net income, the Department may request that the PTE show reasonable cause for not withholding (see "Reasonable Cause for Not Withholding" in these instructions). If the Department determines that a non-resident owner is not paying New Mexico income tax on the allocable net income of the PTE, the Department will notify the PTE that the PTE must withhold from future net income of the owner. If the PTE did not withhold because the PTE and owner entered into an agreement

2012 Annual Withholding of Net Income From a Pass-Through Entity Detail Report Instructions

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pursuant to Section 7-3A-3(G) NMSA 1978, the agreement must be revoked and the PTE will be held responsible for future tax required to be withheld from the owner.

INSTRUCTIONS FOR COMPLETING THE FORM

Enter the name of the PTE, the federal identification number (FEIN) and the total New Mexico net income for the calendar year of this return. If the PTE is a trust or an estate, enter the total New Mexico net income distributed that is taxable to the recipient.

Mark the box indicating the type of New Mexico income tax return that the pass-through entity will file for the tax year. If no New Mexico income tax return is required to be filed, check the "Other" box and indicate the reason no New Mexico income tax return is required. For example, a grantor trust that is not required to file a New Mexico FID-1 return, marks the "Other" box, and enters "Grantor trust" on the line provided for an explanation.

If the PTE is filing for a tax year that is not a full calendar year, enter the first day and the last day of the tax year. The tax year for the New Mexico return must be the same as the tax year for the federal return. Enter the due date of the PTE's federal income tax return. If no federal income tax return for the tax year is due, enter 105 days after the end of the entity's tax year. If an extension was granted, enter also the extension due date.

Column 1. Enter the name and address of each owner of the PTE. If an individual, enter the first, middle initial and last name of the owner. Mark the box if the address of an owner is outside the U.S.. A trust or estate enters the name and address of each recipient of a taxable distribution of New Mexico net income.

Column 2. Enter the owner's federal identification number and mark the box indicating that the number is a federal employer identification number (FEIN) or a social security number (SSN).

Column 3. Enter the owner's share of the allocable net income of the PTE. If the PTE is a trust or estate, enter the recipient's taxable distribution of New Mexico net income. The total of column 3 for all pages must equal Line 1, *Total New Mexico net income*.

Column 4. Enter the owner's share of tax withheld for the tax year. The owner's share includes both the withholding tax that the PTE paid using this form (Form RPD-41367) and amounts paid on Form RPD-41355, *Pass-through Entity Withholding Tax Return Payment*, web application on our web site. The total of the owner's share of tax withheld for the

tax year, column 4 from all pages must equal the amount reported on line 1 of this form. When a PTE has tax withheld from the oil and gas proceeds received or the allocable net income of another PTE, the PTE may pass the tax withheld to its owners by issuing the owner a 1099-Misc, *pro forma* 1099-Misc or New Mexico Form RPD- 41359, *Annual Statement of Pass-Through Entity Withholding*. If the owner has both withholding tax passed from the PTE and tax withheld and paid by the PTE, the PTE may combine the withholding tax on the information reports filed. The withholding rate is 4.9%.

Column 5. Indicate if the PTE has a valid signed Form RPD-41353, *Owner's or Remittee's Agreement to Pay Withholding on Behalf of a Pass-through Entity or Remitter*, on file by marking the YES box. The agreement must not be revoked. Form RPD-41353 is required documentation showing that the PTE and owner have entered into an agreement that the non-resident owner agrees to pay the New Mexico tax on the owner's share of the allocable net income of the PTE.

Complete **line 2** for each page, entering the sum of column 4 for the page. Also complete **line 3** on the first page showing the total tax withheld by the PTE, reported in column 4, from all pages.

Amending: Check the amended indicator box if you are amending a previously filed Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*. If requesting a refund due to an overpayment of tax withheld, you must also attach Form RPD-41373, *Application for Refund of Tax Withheld From Pass-through Entities*. Please note that the Department must have both the PTE's income tax return and Form RPD-41367 filed before the refund can be verified.

Line 4. Enter the amount of *Withholding tax passed to owners*. If a PTE has had tax withheld from the oil and gas proceeds received or the allocable net income of another PTE, the PTE may pass the tax withheld to its owners by issuing the owner a 1099-Misc, *pro forma* 1099-Misc or New Mexico Form RPD-41359, *Annual Statement of Pass-Through Entity Withholding*. Do not include on this line, any tax that was withheld and paid by the PTE who files this report. The withholding tax passed to the owners must be subtracted from the total owner's share of withholding tax to determine the amount of tax due on this report.

About Tax Credits: A PTE may not report tax credits on Form PTE or on this Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*. The PTE is required to pass tax credits, that they have been approved for, to the owners. Each owner must apply the credit against its income tax liability. A PTE that passes tax credit

2012 Annual Withholding of Net Income From a Pass-Through Entity Detail Report Instructions

Page 3 of 4

to its owners, must refer the forms applicable to the specific tax credit to determine how the tax credit is passed from the PTE to its owners.

Line 5. Enter the payments made using Form RPD-41355, *Quarterly Pass-Through Entity Withholding Tax Return*, or the PTW-R, Pass-through Entity Withholding Tax Return Payment, web application on the Department's web site. Payments made using these payment methods must be subtracted to determine the amount due on this report.

Line 6. Subtract the sum of lines 4 and 5 from line 3. This is the amount of withholding tax due on this report. The amount entered should not fall below zero. If it does, check your figures or see the instructions for amending this report in these instructions.

Line 7: Add penalty if the entity fails to file timely or to pay the amount on line 6 when due. Calculate the penalty by multiplying the unpaid amount on line 6 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 8: 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:

$$\text{Tax due} \times \text{the daily interest rate for the quarter} \\ \times \text{number of days late} = \text{interest due.}$$

Line 9: Add lines 6, 7 and 8 to compute the total due.

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.

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.

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 required 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.

Reasonable Cause for Not Withholding.

1. If the amount to be withheld from an owner's allocable share of the net income in any calendar year is less than

2012 Annual Withholding of Net Income From a Pass-Through Entity Detail Report Instructions

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\$100, no withholding is required.

2. If the owner is an insurance company and falls under the provisions of Section 59A-6-6 NMSA 1978, no withholding is required.
3. 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 owner remits the tax required to be withheld using a form of payment such as estimated payments or withholding. 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 periods that ended prior to the Department's notification.
4. The owner maintains its place of business or residence in New Mexico:
 - If the owner's address on Form 1099-Misc, *pro forma* 1099-Misc or RPD-41359, *Annual Statement of Pass-Through Entity Withholding*, is a New Mexico address;
 - If an individual 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;
 - 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.
5. 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. The obligation to deduct and withhold from payments to organizations identified in this paragraph applies if that income constitutes unrelated income.

6. Documentation is on file showing that the owner is the United States, New Mexico or any agency, instrumentality or political subdivision of either;
7. 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;
8. Documentation showing the PTE's inability to make payment of withholding from net income for the tax year 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 tax year, 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 year;
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.

Pass-Through Entity Withholding Tax Rate Table

If your report period begins on or after:

the effective rate is:

Jan. 1, 2011 4.90%