

New Mexico Taxation and Revenue Department  
**2016 PTW Detail Report For Annual  
 Withholding of Net Income From a  
 Pass-Through Entity,  
 Form RPD-41367**



File and pay online using the Department's website. Go to [www.tax.newmexico.gov](http://www.tax.newmexico.gov), click on Online Services.

For help completing this report, follow the instructions, or call (505) 827-0825 in Santa Fe or toll free at (866) 809-2335, option 4 .

Check if amended

Page 1 of \_\_\_\_\_

<b>Pass-through entity's name</b>		<b>PTE's FEIN</b>		<b>Line 1. Total New Mexico net income</b>	
PTEs Address - (Number and street)		City		State	Postal/ZIP code
If foreign address, enter country		Foreign province and/or state			
<b>FOR DEPARTMENT USE ONLY</b>					
Mark the type of New Mexico income tax return the pass-through entity files for the current tax year.					
<input type="checkbox"/> PTE <input type="checkbox"/> S-Corp <input type="checkbox"/> CIT-1 <input type="checkbox"/> Other _____					
<b>PTE's tax year if other than the full 2016 calendar year.</b>			<b>Due date of the PTE's federal return.</b>		
Beginning of tax year			Last day of tax year		
<input type="text"/> <input type="text"/> <input type="text"/>			<input type="text"/> <input type="text"/> <input type="text"/>		
MM    DD    CCYY			MM    DD    CCYY		
			Original Due Date <input type="text"/>		
			Extended Due Date <input type="text"/>		

**Withholding Tax Due**

Line 3. Total withholding from all supplemental pages ..... 3

**Payments**

Line 4. Tax withheld by the PTE, then passed to owners ..... 4   
 (Reported on your CIT, SCorp, or PTE return)

Line 5. Withholding tax paid by the PTE..... 5

Line 6. Amended Returns Only. Refunds received..... 6   
 (See instructions)

Line 7. Total tax payments. Subtract line 6 from the sum of lines 4 and 5 ..... 7

**Amount Due**

Line 8. Tax Due. If line 3 is greater than line 7, enter the difference here 8

Line 9. Penalty (see Instructions) ..... 9

Line 10. Interest (see Instructions) ..... 10

Line 11. Total due ..... 11

**Overpayment**

Line 12. Overpayment. If line 7 is greater than line 3, enter the difference here..... 12

**You must attach Form RPD-41373 to claim a refund of an overpayment.**

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 \_\_\_\_\_ Email address \_\_\_\_\_

New Mexico Taxation and Revenue Department  
**2016 PTW Detail Report For Annual  
 Withholding of Net Income From a  
 Pass-Through Entity, Form RPD-41367  
 Supplemental Page**



Pass-through entity's name	PTE's FEIN
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Page \_\_\_\_\_ of \_\_\_\_\_

Owner's Name, Street Address, City, State, and ZIP code (see Instructions, "Who Must File")	Column 2 Owner's SSN or FEIN	Column 3 Owner's share of allocable net income	Column 4 Owner's share of withholding tax	Col. 5 On file RPD-41353
Mark if outside the U.S. <input type="checkbox"/>	Mark one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN			<input type="checkbox"/> YES
Mark if outside the U.S. <input type="checkbox"/>	Mark one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN			<input type="checkbox"/> YES
Mark if outside the U.S. <input type="checkbox"/>	Mark one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN			<input type="checkbox"/> YES
Mark if outside the U.S. <input type="checkbox"/>	Mark one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN			<input type="checkbox"/> YES
Mark if outside the U.S. <input type="checkbox"/>	Mark one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN			<input type="checkbox"/> YES
Mark if outside the U.S. <input type="checkbox"/>	Mark one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN			<input type="checkbox"/> YES
Mark if outside the U.S. <input type="checkbox"/>	Mark one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN			<input type="checkbox"/> YES
Mark if outside the U.S. <input type="checkbox"/>	Mark one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN			<input type="checkbox"/> YES

If you need more space, print this 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 barcode on scanning equipment.

Line 2. Total withholding on this page. 2.

**2016 PTW Detail Report For Annual Withholding of Net Income From a Pass-Through Entity  
Form RPD-41367 Instructions**

**ANSWERS TO COMMONLY ASKED QUESTIONS:**

1. Does the pass-through entity (PTE) have to file a PTW-Detail Report (Form RPD-41367) if no tax is withheld for its owners?

The PTE must file a PTW Detail Report reporting all resident and non-resident owners who received New Mexico allocated net income, even when no tax has been withheld. Do not include owners who did not receive New Mexico allocated net income.

2. What is the withholding tax rate?

The effective rate is 4.9%. The rate table below shows the current tax rate. When the rate changes, the rate table below will reflect the new rate. The Department is required to give remitters a 90 day notice of a change in the rate.

3. If I have an overpayment amount on line 12 of the PTW-Detail Report, why must I file Form RPD-41373, *Application for Refund of Tax Withheld From Pass-Through Entities*, with the PTW Detail Report to obtain a refund?

According to Section 7-1-26 NMSA 1978, the PTW Detail Report is not a complete request for refund. Form RPD-41373 completes the requirements for a request for a refund pursuant to that section.

**WHO MUST FILE:** Annually, a pass-through entity (PTE) that is subject to withholding tax from the allocable net income of its owners, partners, or members (owners) 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 file Form RPD-41367, *PTW Detail Report For Annual Withholding of Net Income From a Pass-Through Entity*, (PTW Detail Report). On the PTW Detail Report, the PTE must:

- Report each owner’s share of net income allocable to New Mexico.
- List only payees who have New Mexico net allocable income (loss).
- Remit the New Mexico tax withheld for each non-resident owner.

The PTE reports all resident and non-resident owners on the PTW Detail Report, even when no tax has been withheld.

**Note:** 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.

Except for a PTE that is a personal services business, the PTE must mark the indicator box on PTW Detail Report, if the PTE entered into an agreement with the owner that the owner files and pays the tax due on the owners share of allocable net income of the PTE. A PTE that is a personal service business cannot enter into an agreement with its owners. See more about personal services businesses below.

**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 estate or trust is also required to withhold from the non-resident recipient’s share of the trust or estate’s taxable New Mexico net income.

The estate or trust must file and pay the tax withheld using the annual Schedule FID-D\*, *Annual Withholding of Net Income From a Fiduciary Detail Report*. It must report the details for all recipients to whom it distributes taxable New Mexico net income. If the distributed income is not taxable to the recipient, as in the case of some grantor trusts, including living trusts, the distributed income is not included on the FID-D schedule. See the FID-D Instructions for more details.

\*For tax years 2011 and 2012, estates and trusts which are pass-through entities were required to file Form RPD-41367, instead of Schedule FID-D.

**Personal Services Businesses:** 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.

Note: A PTE that is a personal services business cannot enter into an agreement with its owners using Form RPD-41353, *Owner’s or Remittee’s Agreement to Pay Withholding On Behalf of a Pass-Through Entity or Remitter*.

**WHEN TO FILE:** PTW Detail Report is due on or before the due date of the entity’s federal return for the tax year. If

<b>Pass-Through Entity Withholding Tax Rate Table</b>	
<b>If your report period begins on or after:</b>	<b>The effective rate is:</b>
Jan. 1, 2011 .....	4.9%

## 2016 PTW Detail Report For Annual Withholding of Net Income From a Pass-Through Entity Form RPD-41367 Instructions

a PTE is not required to file a federal income tax return for the tax year, the entity must file the PTW Detail Report 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.

If the PTE obtains a federal automatic extension, or a New Mexico extension is obtained for its return, the extension also applies to the filing of the PTW Detail Report. An extension waives penalty through the extension due date, but does not waive interest. You must complete the extended due date field on the PTW Detail Report and attach a copy of the extension request.

### HOW TO FILE:

- If a PTE has 51 or more owners who receive New Mexico net income, the PTE is required to file the PTW Detail Report online.
- The Department will reject a PTW Detail Report filed in paper format when a PTE is required to file online.

### Online Filing Options

**File online at no cost through the Department's website.** Go to <https://tap.state.nm.us>. You will be on the Department's Taxpayer Access Point (TAP) homepage and will file from there. First-time filers will need to create a login name and password. See **How-to Videos** on the TAP homepage to watch the **Signing Up for TAP** video. All TAP users must add access to their PTW Remitter account. Watch the **Adding Access to Accounts** video.

Two options are available in TAP for filing the PTW Detail Report electronically: A web application and bulk filing.

The web application allows you to complete the owners information on an Excel template and import the file. See "I Have a Question" on the TAP homepage and click on the Returns/Permits tab. Click on PTW for more information.

Bulk filing allows the filer to upload multiple returns and payments via an XML file into TAP for processing. Bulk filing is primarily used by tax preparers who are filing multiple returns and payments for their clients. See **How-to Videos** on the TAP homepage, and click on **Bulk Filing in TAP** to watch a video detailing the process of bulk filing.

**File online through tax preparation software approved by the State of New Mexico.**

To obtain the list of approved software:

- Go to <http://www.tax.newmexico.gov>, then
- Navigate to **Approved Software for Online Filing Income Tax Forms**

### File With Paper

If a PTE has 50 or fewer New Mexico payees, the PTE may file the PTW Detail Report using a paper form.

When filing using the paper PTW Detail Report, attach the schedule to your income tax return, if applicable, or mail the form and payment to:

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

A PTE that is required to file online may request Department approval to file by paper if it is unable to file online because a hardship exists. 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.

**HOW TO PAY:** To make a payment towards the tax due, you can either make a payment online or pay by check or money order.

- To make a payment online go to <https://tap.state.nm.us>. **On the TAP homepage**, click on **Make a Payment**. NOTE: You will need to click on **PTW Remitter** to pay the tax for the PTW Detail Report.
- You may pay by check or money order using payment vouchers. Use Form PTW-PV to make your payment, even when you are submitting the payment with the return. Use Form PTW-EXT when making an extension payment to avoid accrual of interest. Mail the payment and the payment voucher to the address on the voucher.

When you provide a check as payment, you authorize the Department to use information from your check to make a one-time electronic fund transfer from your account. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day you make your payment.

**Do not combine your payment** for your income tax return with your payment for the PTW Detail Report. The payment vouchers for your income tax return and the payment vouchers for the PTW Detail Report direct the payment to the correct tax account. If you combine payments, your payment may not be applied correctly, thereby causing delays.

## 2016 PTW Detail Report For Annual Withholding of Net Income From a Pass-Through Entity Form RPD-41367 Instructions

**REFUNDS:** If requesting a refund due to an overpayment of tax withheld, you also must file Form RPD-41373, *Application for Refund of Tax Withheld From Pass-through Entities*. Note: The Department may require that both the PTE's income tax return and its PTW Detail Report be filed before a refund can be verified.

**OTHER REPORTING REQUIREMENTS:** PTEs also are 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 owners' share of the net New Mexico income.

- A PTE that uses a Schedule K-1 or equivalent form to report to the owners their share of the net income must also provide its owners either federal form 1099-MISC, or *pro forma* 1099-MISC, or New Mexico Form RPD-41359 to report to the owners the allocable net income, and the required New Mexico tax withheld. The owners of a PTE may not use Schedule K-1 to obtain credit for New Mexico tax withheld.
- A PTE must provide either federal forms 1099-MISC, *pro forma* 1099-MISC, or Form RPD-41359 (*Annual Statement of Pass-Through Entity Withholding*) to owners by February 15th of the year following the year for which the statement is made.
- The PTE is not required to submit forms 1099-MISC, *pro forma* 1099-MISC, or Form RPD-41359 to the Department. The required information from these forms is provided to the Department when the PTW Detail Report is filed.

### Verification of Income Tax Information

The Department is required to compare the tax information received from the PTE with the records of the owners who file returns with New Mexico.

If the Department determines that an 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 a PTE and non-resident owner entered into an agreement, using Form **RPD-41353**, 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 PTW DETAIL REPORT:

**Enter the name and address of the PTE, its federal**

**identification number (FEIN) and its total New Mexico net income for the tax year of this report.**

If you have a foreign address, enter the street address, city name and postal code in the appropriate line. Also complete the spaces for the foreign province and/or state and country. Follow the country's practice for entering the foreign postal code, the province or state, and country. Do not abbreviate the country name.

**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, mark the "Other" box and indicate the type of entity or the reason no New Mexico income tax return is required. For example, a personal services business that is not required to file a New Mexico income tax return, marks the "Other" box, and enters "Personal Services Business" 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 the date falling 105 calendar days after the end of the entity's tax year.

If an **extension** was granted, enter also the extended due date. If you qualify for a federal automatic extension of time to file for your federal income tax return, the federal automatic extension due date also applies to the PTW Detail Report.

**Complete the Supplemental Form to calculate the amount that will be used to complete line 3 of the PTW Detail Report.**

Report every owner of the PTE on the Supplemental Form.

If you need more space, print Supplemental Forms **directly from the website to prevent delays in processing your forms.** Attach the additional Supplemental Forms to the first page of the PTW Detail Report.

Do not use a copy machine to make more forms, even if it is state-of-the-art. Poorly copied forms will delay the processing of your forms due to the difficulty high-throughput scanning machines have in reading poorly-copied barcodes on forms. Scanning machines read barcodes from printers better than they do from photocopiers.

- **Column 1.** Enter the name and address of each owner

## 2016 PTW Detail Report For Annual Withholding of Net Income From a Pass-Through Entity Form RPD-41367 Instructions

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. If the owner has a foreign address, enter the street address, city name and postal code on the appropriate line. Also complete the spaces for the foreign province or state. Do not abbreviate the country name. Follow the country's practice for entering the postal code and the name of the province, county, or state.

- **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. The total of column 3 for all supplemental pages must equal line 1, *Total New Mexico net income*, on the PTW Detail Report.
- **Column 4.** Enter each owner's share of withholding tax. It is equal to the owner's share of withholding tax paid by the PTE and reported to the owner.

**Important:** When a PTE requests a refund of overpayment of tax withheld on its New Mexico income tax return, the refund amount is NOT included in column 4 of the PTW Detail Report.

- **Column 5.** Mark the box in column 5, if the PTE has on file a valid signed Form RPD-41353, *Owner's or Remittee's Agreement to Pay Withholding on Behalf of a Pass-through Entity or Remitter*.

Form RPD-41353 is required documentation showing that the PTE and non-resident 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. The agreement must not be revoked and the PTE cannot be a personal services business. A PTE that is a personal services business cannot enter into an agreement with its owners.

**Do not submit Form RPD-41353 to the Department.** This agreement must be retained in the PTE's records. The PTE may be required to furnish a true and correct copy of this agreement upon the Department's request.

When determining the amount of tax to be withheld for each owner, see **Adjustments to the Amount Withheld**, and **Reasonable Cause for Not Withholding**, beginning on page 5 of these instructions.

### COMPLETE THE FIRST PAGE OF THE PTW DETAIL REPORT

**Line 3.** The amount reported on line 3 equals the total tax withheld. This number is obtained by adding line 2 from all supplemental pages.

### TO CALCULATE PAYMENTS

**Line 4.** Enter the amount of tax withheld by the PTE, and then passed to the owners of the PTE. This amount is reported on the New Mexico income tax return of the PTE. The PTE may be required to file one of the following forms:

- New Mexico Corporate Income and Franchise Tax Return (CIT),
- New Mexico S-corporate Income and Franchise Tax Return (SCorp), or
- New Mexico Pass-Through Entity Return (PTE).

### Additional Reporting Requirements For a PTE That Passes Income Tax Withheld to Owners

If a PTE has had tax withheld from 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 federal 1099-MISC, *pro forma* 1099-MISC or New Mexico Form RPD-41359, *Annual Statement of Pass-Through Entity Withholding*.

**Line 5.** Enter the withholding tax paid by the PTE for this report period. Include all payments the PTE has remitted to the Department on behalf of its owners. Include both payments made by the PTE before filing this report, and payments the PTE made with this report.

**Line 6. For Amended Returns Only.** If you are amending a previously filed 2016 PTW Detail Report, check the amended box at the top of the page. Enter the sum of any refunds the PTE has received for this report period for a previously filed PTW Detail Report. If the Department paid interest on a refund, do not include the interest paid. Enter the amount on line 6, PTW Detail Report.

**Line 7. Total tax payments.** Subtract line 6 from the sum of lines 4 and 5. Enter the result on line 7 of the PTW Detail Report.

### CALCULATE AMOUNT DUE

**Line 8: Tax Due.** If line 3 is greater than line 7, enter the difference here.

**Line 9:** Add penalty if the entity fails to file timely or to pay the amount on line 8 when due. Calculate the penalty by multiplying the unpaid amount on line 8 by 2%, then by the

## 2016 PTW Detail Report For Annual Withholding of Net Income From a Pass-Through Entity Form RPD-41367 Instructions

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 10:** Interest accrues daily on the unpaid principal of tax due. The interest accrual rate can change on a quarterly basis.

To obtain the interest accrual rates online:

- The annual and daily interest rate for each quarter is posted on the Department website at [www.tax.newmexico.gov](http://www.tax.newmexico.gov). In the black navigation bar at the top, click **INDIVIDUALS**. Then in the left navigation bar, click **File Your Taxes** and click **Penalty & Interest Rates**.

You can also obtain the effective interest rates by contacting the Department at (505) 827-0825 in Santa Fe or toll free at (866) 809-2335, option 4.

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 11: Total Due.** Add lines 8, 9 and 10 to compute the total due.

### CALCULATE THE OVERPAYMENT

**Line 12: Overpayment.** If line 7 is greater than line 3, enter the difference on line 12, of the PTW Detail Report.

**IMPORTANT: You must attach Form RPD-41373 to claim a refund of the overpayment reported on line 12, of the PTW Detail Report.**

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

*"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.

*"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.

*"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.

*"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.

### 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 \$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.

## 2016 PTW Detail Report For Annual Withholding of Net Income From a Pass-Through Entity Form RPD-41367 Instructions

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*, 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 before 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, a signed Form RPD-41354, *Declaration of Principal Place of Business or Residence in New Mexico*, is on file that declares that the individual is a resident of New Mexico and 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 declares 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 Secretary of State website 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 is on file 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 Section 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, Form RPD-41353 or the residency statement, Form RPD-41354, to support a valid reason to not withhold.
- A PTE that believes that it has a valid reason for not withholding from an owner, other than the reasons listed above, may do so if it obtains approval from the Secretary. The request must be approved before the return is filed, and include detailed information to support an alternative reasonable cause for not withholding.
- To request the Secretary's approval, submit a written request to the Taxation and Revenue Department, CIT Unit, P.O. Box 630, Santa Fe, NM 87504-0630. For assistance, call (505) 827-0825 or toll free: (866) 809-2335, option 4. Or, e-mail: [cit.taxreturnhelp@state.nm.us](mailto:cit.taxreturnhelp@state.nm.us).