

STATE OF NEW MEXICO  
TAXATION AND REVENUE DEPARTMENT

**QUARTERLY OIL AND GAS PROCEEDS WITHHOLDING TAX RETURN**

**Who Must File:** Remitters of oil and gas proceeds from oil and gas production from a well located in New Mexico who have withheld tax from payments according to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act (7-3A-1) NMSA 1978) must submit to the Department the tax withheld on this form, RPD-41284, *Quarterly Oil and Gas Proceeds Withholding Tax Return*. For exceptions and adjustments to the requirement to withhold and important definitions, see the instructions.

Remitters are also required to file annual information returns to the Department, and provide sufficient information to enable the remitees to comply with the provisions of the Income Tax Act and the Corporate Income and Franchise Tax Act, with respect to the remittee's share of the gross oil and gas proceeds. See "Other Reporting Requirements" on page 3 of these instructions.

**When to File:** The oil and gas proceeds withholding tax is due on or before the 25th day of the month following the close of the calendar quarter in which the oil and gas proceeds were paid. 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 payment of oil and gas proceeds was made for a reporting period, no return is due.

**Where to File:** File and pay the tax due online using the Department's web site at <https://tap.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](http://www.tax.newmexico.gov). If you cannot electronically file, see the instructions. For assistance completing this return call (505) 827-0825.

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

**Quarterly report period:**

1. Gross oil and gas proceeds
2. Exceptions and adjustments
3. Oil and gas proceeds subject to withholding
4. Amount withheld
5. Penalty
6. Interest
7. TOTAL

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

▽ PLEASE CUT AND RETURN BOTTOM PORTION WITH YOUR PAYMENT ▽

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<b>Remitter FEIN or SSN:</b>	Check one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN
<b>Name:</b>	
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7. TOTAL

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

Check if amended

Signature \_\_\_\_\_ Date \_\_\_\_\_ E-mail address \_\_\_\_\_

File on-line at <https://tap.state.nm.us>

**OGP**

# STATE OF NEW MEXICO - TAXATION AND REVENUE DEPARTMENT

## Quarterly Oil and Gas Proceeds Withholding Tax Return Instructions

**ABOUT THIS TAX:** Effective October 1, 2003, remitters of oil and gas proceeds from oil and gas production from a well located in New Mexico must deduct and withhold tax from each payment of oil and gas proceeds to a nonresident of New Mexico (remittee). To calculate the withholding amount, multiply the effective rate for the reporting period by the gross amount of oil and gas proceeds that otherwise would have been payable to the remittee. Effective January 1, 2011, legislation combines reporting and withholding provisions for pass-through entities with the Oil and Gas Proceeds Withholding Tax Act. The name of the act changes to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. Bulletin B-100.22, *2010 Legislative Summary*, provides a summary of all changes that occurred with this legislation. In 2012, legislation was passed that clarified and modified the requirements to withhold from oil and gas proceeds. Bulletin B-100.24, *2012 Legislative Summary*, provides a summary of all changes that occurred with that legislation.

**Important: Effective January 1, 2011, a remitter may no longer use Form RPD-41286, *New Mexico Nonresident Recipient of Oil and Gas Proceeds Income Tax Agreement*, but may instead use Form RPD-41353, *Owner's or Remittee's Agreement to Pay Withholding on Behalf of a Pass-Through Entity or Remitter*, to show that a remittee agrees to pay the tax due.**

**IMPORTANT DEFINITIONS:**

*"Remittee"* means a person who is entitled to payment of oil and gas proceeds by a remitter.

*"Remitter"* means a person who pays oil and gas proceeds to any remittee.

*"Oil and gas"* means crude oil, natural gas, liquid hydrocarbons or any combination thereof, or carbon dioxide.

For definitions of *"Oil and gas proceeds"* see "What are gross oil and gas proceeds?" below.

**What are gross oil and gas proceeds?**

"Oil and gas proceeds" means any amount derived from oil and gas production from any well located in New Mexico and payable as royalty interest, overriding royalty interest, production payment interest, working interest or any other obligation expressed as a right to a specified interest in the cash proceeds received from the sale of oil and gas production or in the cash value of that production. Oil and

gas proceeds excludes "net profits interest" and other types of interest the extent of which cannot be determined with reference to a specified share of the oil and gas production and excludes any amounts deducted by the remitter from payments to interest owners or paid by interest owners to the remitter that are for expenses related to the production from the well or cessation of production from the well for which the interest owner is liable.

*"Gross oil and gas proceeds"* means the amount of oil and gas proceeds subject to oil and gas proceeds withholding tax and includes amounts deducted by the remitter for expenses and severance taxes, but does not include amounts deducted for expenses or taxes prior to receipt by the remitter. If a taxpayer receives a Form 1099-Misc for its oil and gas proceeds, the gross amount is the amount reported on federal Form 1099-Misc in box 2--royalties, and in box 7--non-employee compensation.

**The following payments are not subject to the oil and gas proceeds withholding tax:**

- "net profits interest" and other types of interest which cannot be linked to a specified share of the oil and gas production.
- advance royalty payments, bonus payments, minimum royalty payments, shut-in payments and rental payments, provided that the payments are not offset against a share of future production.

**The well must be located in New Mexico**, but if the production is from a well subject to a unit or communitization agreement whose area crosses state boundaries, the amount attributable to "oil and gas production from any well located in New Mexico" may be derived through the allocation methodology set out in the agreement.

**Adjustments to the amount withheld:** If a remitter receives oil and gas proceeds from which an amount has been deducted and withheld pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act, the remitter may take credit for that amount in determining the amount the remitter must withhold and deduct. When an adjustment occurs, include on line 2, the gross oil and gas proceeds from the eligible transaction to which the tax withheld was computed, thereby excluding that amount from oil and gas proceeds subject to withholding in line 3.

**Oil and Gas Proceeds Withholding Tax Rate Table**

If your report period falls between:	the effective rate is:
Oct. 1, 2003 and Dec. 31, 2004.....	6.75%
Jan. 1, 2005 and Dec. 31, 2005 .....	5.70%
Jan. 1, 2006 and Dec. 31, 2006 .....	5.30%
Jan. 1, 2007 and Dec. 31, 2007 .....	5.30%
Jan. 1, 2008 and Thereafter .....	4.90%

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### Exceptions to the requirement to withhold.

- If the amount to be withheld from the payment is less than ten dollars (\$10) or if the sum of all payments made to that remittee by the remitter, including the subject payment, in the calendar quarter is thirty dollars (\$30) or less.
- If the remittee is an insurance company and falls under the provisions of Section 59A-6-6 NMSA 1978, no withholding is required.
- At the option of a remitter, a remitter may agree with the remittee that the remittee pay the amount that the remitter would have been required to withhold and remit to the Department on behalf of the remittee pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. The remittee remits the tax required to be withheld using a form of payment such as estimated payments or withholding. The remittee can also satisfy the terms of the agreement by filing its New Mexico income tax return and paying the tax due. The remitter 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 annual reporting requirements for the tax year to which the agreement pertains. If the Department notifies the remitter that the remittee has failed to remit the required payment, the agreement is no longer acceptable by the Department as reasonable cause for failure to withhold. The remitter is not responsible for withholding on oil and gas proceeds paid to the remittee prior to the Department's notification.
- The remittee maintains its place of business or residence in New Mexico:
  - If the remittee's address on Form 1099-Misc, *pro forma* 1099-Misc or RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*, 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 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.
- Documentation is on file showing that the remittee 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 remittee'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.

- Documentation is on file showing that the remittee is the United States, New Mexico or any agency, instrumentality or political subdivision of either.
- Documentation is on file showing that the remittee is a federally recognized Indian nation, tribe or pueblo or any agency, instrumentality or political subdivision thereof.
- Documentation is on file showing that the remitter's payment to the remittee is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners and/or production payment interest owners. Acceptable proof includes --but is not limited to-- written notification from a remittee or internal documentation such as signed division orders demonstrating that the payment is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners and/or production payment interest owners.

If you believe that you have a valid reason for not withholding from a remittee, 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.

### 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.

**Remitter FEIN or SSN:** Enter the remitter's federal employer identification number (FEIN) or social security number (SSN) and mark the box indicating the type of identification number entered.

**Remitter name:** Enter the name and mailing address of the remitter. 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

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of 2012, enter 01-01-12 to 03-31-12 in the space provided.

**Line 1:** Enter the total gross New Mexico oil and gas proceeds paid during the report period regardless of production date.

**Line 2:** Enter the gross New Mexico oil and gas proceeds paid but not withheld because those proceeds qualified for one of the exceptions or adjustments listed in these instructions. When an adjustment occurs, include on this line, the gross oil and gas proceeds from the eligible transaction to which the tax withheld was computed, thereby excluding that amount from oil and gas proceeds subject to withholding in line 3. See "Adjustments to the amount withheld:" on the previous page.

**Line 3:** Subtract line 2 from line 1 and enter the amount on line 3. This is the oil and gas proceeds subject to withholding.

For report periods prior to January 1, 2011, you must file the original or amended return by paper using the current version of Form RPD-41284. If the report period is prior to January 1, 2011, then enter the same gross oil and gas proceeds in lines 1 and 3, and skip the instructions for line 2.

**Line 4:** Enter the amount of tax withheld from the oil and gas proceeds subject to withholding on line 3. Calculate withholding by multiplying the gross amount of oil and gas proceeds subject to withholding (line 3) by 0.049 or the current rate according to the Oil and Gas Proceeds Withholding Tax Rate Table in these instructions. The rate of withholding is set by Department directive; but may not exceed the higher of the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the tax year or set by Section 7-2A-5 NMSA 1978 for the tax year, and provided that remitters are given ninety days' notice of a change in the 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](http://www.tax.newmexico.gov) or can be obtained by contacting the Department.

The formula for computing interest is:

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

For example, say a taxpayer owes \$5,000 for the 1st quarter of 2012, due April 25th, 2012. The daily interest rate for the 2nd quarter of 2012 is 0.008196721% (annual rate 3%). If the tax-due date is April 25th, 2012, and he is paying on April

30th, 2012, the payment is 5 days late. Using the formula --

$$\$5,000 \times 0.008196721 \times 5 = 2.04.$$

**Line 7:** Add lines 4, 5 and 6 to compute the total due.

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

**Amending:** Check the amended indicator box if you are amending a previously filed Form RPD-41284, *Quarterly Oil and Gas Proceeds 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://tap.state.nm.us>. A remitter 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 remitter'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](http://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 "OGP" and enter the remitter's FEIN or SSN on the payment. OGP payments should not be sent with any other payments to the Department.

For assistance call (505) 827-0825.

**Other Reporting Requirements:**

For tax year 2011, but not after 2012, remitters of oil and gas proceeds from oil and gas production from a well located in New Mexico who are required to withhold tax from payments according to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act (7-3A-1 through 7-3A-9 NMSA 1978) are required to submit information to the Department annually. On Form RPD-41360, *Annual Withholding of Oil and Gas Proceeds Detail Report*, report total oil and gas proceeds paid and the amount of New Mexico tax withheld for each remittee. Form RPD-41360 can be filed electronically on the Department's web site. The requirement to file is also satisfied if the remitter both: 1) submits 1099-Misc forms by electronic transmission through the Combined Federal/State Filing Program with IRS approval (state records must be included and must bear codes for forwarding to New Mexico), and 2) provide the Department with an electronic file, using a Department specific File Data Format and input

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source. If the remitter cannot file using one of these electronic methods, the remitter must file this paper Form RPD-41360, *Annual Withholding of Oil and Gas Proceeds Detail Report*. See the instructions for Form RPD-41360 for more information on the File Data Format.

For tax years beginning in 2012 and thereafter, remitters who have more than 50 New Mexico payees are required to electronically file Forms 1099-Misc, *pro forma* 1099-Misc or New Mexico Form RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*, and provide the Department with an electronic report of the non-resident remittees who have entered into an agreement with the remitter to pay New Mexico tax on the oil and gas proceeds. The new form is RPD-41374, *Annual Report of Non-Resident Remittees Holding an Agreement to Pay Tax on Oil and Gas Proceeds*.

If the remitter has 50 or fewer New Mexico payees, remitters may choose to mail paper Forms 1099-Misc, *pro forma* 1099-Misc, New Mexico Forms RPD-41285 and RPD-41374 to the Department. If the remitter has more than 50 New Mexico payees, these forms must be electronically filed unless the taxpayer obtains prior approval from the Department 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.

Remitters are also required to provide sufficient information to enable the remittees to comply with the provisions of the Income Tax Act and the Corporate Income and Franchise Tax Act, with respect to the remittee's share of the gross oil and

gas proceeds. A remitter may use federal Form 1099-Misc, if required to be filed by the IRS, a *pro-forma* 1099-Misc, or Form RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*, to report to the remittees the gross oil and gas proceeds paid and New Mexico tax withheld. These forms must be provided to the remittee by February 15th of the year following the year for which the statement is made.

NOTE: For tax years beginning on or after January 1, 2011, Form RPD-41283, *Annual Summary of Oil and Gas Proceeds Withholding Tax*, is no longer required.

A remitter who is also a pass-through entity (PTE), may also need to file forms for PTE withholding. As a PTE, similar withholding requirements are imposed on the allocated net income of the pass-through entity. If you earn net income for the owners, members, partners or beneficiaries of your organization, then pass-through entity net income and withholding tax is reported on Forms RPD-41355, *Quarterly Pass-Through Entity Withholding Tax Return*, RPD-41359, *Annual Statement of Pass-Through Entity Withholding*, and RPD-41367, *Annual Withholding of Net Income of a Pass-Through Entity Detail Report*.

This form and Forms RPD-41374, *Annual Report of Non-Resident Remittees Holding an Agreement to Pay Tax on Oil and Gas Proceeds*, and RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*, described in this document, are used only when oil and gas proceeds are paid to a remittee.