

Check if amended ☐

<b>Pass-through entity's name</b>	<b>PTE's FEIN</b>	<b>Line 1. Total New Mexico net income</b>
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☐ PTE      ☐ S-Corp      ☐ FID-1      ☐ N/A - Reason \_\_\_\_\_

<b>PTE's tax year if other than the full 2011 calendar year.</b>			<b>Due date of the PTE's federal return.</b>		
Beginning of tax year			Last day of tax year		
MM	DD	CCYY	MM	DD	CCYY
Original Due Date			Original Due Date		
Extended 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 net income	Column 4 Tax withheld and paid by the PTE
<p>Check if outside the U.S. <input type="checkbox"/></p>	<p>Check one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN</p>		
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2.

3.

Phone number	E-mail address
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PTW-D

New Mexico Taxation and Revenue Department  
**2011 Annual Withholding of Net Income**  
**From a Pass-Through Entity Detail Report**  
**- Supplemental Form -**



<b>Pass-through entity's name</b>	<b>PTE's FEIN</b>
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Page \_\_\_\_\_ of \_\_\_\_\_

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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 this page.**

2.

**PTW-D**

## 2011 Annual Withholding of Net Income From a Pass-Through Entity Detail Report Instructions - Page 1 of 3

**Who Must File:** Pass-through entities (PTE) who are 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 (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 tax withheld for each remittee. The required annual report is RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*.

For tax years beginning on or after January 1, 2011, a pass-through entity (PTE) must deduct and withhold from each non-resident 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 see "Reasonable Cause for not Withholding" in these instructions and see also the instructions to Form RPD-41355.

**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 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.

**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 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.

**Penalty for Failure to File.** For tax years beginning on or after January 1, 2011, but before January 1, 2012, no penalty will be assessed for failure to file this report when due. For tax years beginning on or after January 1, 2012, a five dollar penalty will be assessed for failing to file this report timely. You may pay the penalty through the Department's web site at <https://efile.state.nm.us>, or submit your payment by attaching a check or money order to your paper return.

**Where to File:** File 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

e-filers will need to create a login and password. If you cannot electronically file this Form RPD-41367, you may submit this form to: New Mexico Taxation and Revenue Department, P.O. Box 25127, Santa Fe, NM 87504-5127. For assistance completing this return call (505) 827-0825.

**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 net income of the PTE, the Department will notify the PTE that the PTE must withhold from future net income of the owner. Once a PTE is notified that they must withhold, the PTE will be held responsible for the withholding tax that should be withheld from the owner.

**Fiscal Year Filers:** Even if you file your annual return on a fiscal year basis, you must complete Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*, on a calendar year basis and report the net income earned and the tax withheld based on a calendar year. The amounts will tie to the tax withheld and paid on Forms RPD-41355, *Quarterly Pass-Through Entity Withholding Tax Return*, but may not tie to the net income reported on the annual New Mexico income tax return.

To transition from the fiscal year basis reporting of owners net income and withholding to calendar year basis reporting, follow the instructions for the return. For example, if the fiscal year ends June 30, 2011, the owners net income will be paid on the 2010 Form, using Schedule PTE-D. For the remainder of the calendar year, tax withheld will be paid on Form RPD-41355, and the detail will be reported on the 2011 RPD-41367 Form, when the 2011 return is due.

### INSTRUCTIONS FOR COMPLETING THE FORM

Enter the name of the pass-through entity, the federal identification number (FEIN) and the total New Mexico net income for the calendar year of this return.

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 "N/A" 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 "N/A" 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,

## 2011 Annual Withholding of Net Income From a Pass-Through Entity Detail Report Instructions - Page 2 of 3

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 an extension was granted for the federal form, 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. If the owner is an individual who is a resident of New Mexico, or a corporation whose principal place of business is in New Mexico, enter the New Mexico address where the owner resides or conducts business. Mark the box if the address of an owner is outside the U.S..

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

**Column 3.** Enter the owner's share of the net income of the PTE for the calendar year. The total of column 3 for all pages must equal Line 1, *Total New Mexico net income*. If you file on a fiscal year basis, see "Fiscal Year Filers" on the previous page.

**Column 4.** Enter the owner's share of the required withholding tax paid by the PTE for the calendar year. The total of column 4 on all pages must be equal to the amount paid for the four calendar quarters for the tax year on Form RPD-41355, *Quarterly Pass-Through Entity Withholding Tax Return*.

If the total of column 4 for all pages does not equal the amount of withholding tax reported on Forms RPD-41355, *Quarterly Pass-Through Entity Withholding Tax Return*, filed for the calendar year, determine the quarter in which the withholding tax was incorrectly reported and amend that return. You must amend each return affected. If a refund is due, also attach Form RPD-41071, *Application for Tax Refund*, to the amended Form(s) RPD-41355.

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 and paid by the PTE, reported in column 4, from all pages.

**Amending:** Check the amended indicator box if you are amending a previously filed 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, see the instructions for column 4 above.

**About Tax Credits:** A PTE may not report tax credits on Form PTE or on this Form RPD-41367, *2011 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 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.

### 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

## 2011 Annual Withholding of Net Income From a Pass-Through Entity Detail Report Instructions - Page 3 of 3

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 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.
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.