

Withholding Tax on Owners of a Pass-Through Entity

The 2012 New Mexico Legislature has passed and the Governor has signed legislation that changes the withholding requirements for pass-through entities from the allocable share of net income of each of the nonresident owners, members or partners (owners). The withholding is paid annually, on Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*, due on or before the due date of the federal tax return required for the pass-through entity. Go to <http://www.tax.newmexico.gov/Online-Services/default.aspx>, to file online. Below is a summary of those revised reporting and withholding requirements.

*For the 2011 tax year, the requirement was to withhold and remit the withholding tax quarterly.

To establish that an owner is a New Mexico resident or maintains a principal place of business in New Mexico and that the PTE thus has reasonable cause not to withhold, the PTE may rely on an owner's New Mexico address on Form 1099Misc or RPD-41359, *Annual Statement of Pass-Through Entity Withholding*. If the 1099Misc, pro forma 1099Misc or Form RPD-41359 does not have a New Mexico address for the owner, the PTE may have the owner sign Form RPD-41354, *Declaration of Principal Place of Business or Residence in New Mexico*. See the instructions to Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*, for a complete listing of acceptable documentation to show cause for not withholding.

An owner can enter into an agreement with the PTE to pay the tax otherwise required to be withheld by the PTE. The agreement may be made by completing Form RPD-41353, *Owner's or Remittee's Agreement to Pay Withholding On Behalf of a Pass-Through Entity or Remitter*. Form RPD-41353 must be completed and on file with the PTE at the time it files its annual reports for the tax year to which the agreement pertains. The owner may remit the tax required to be withheld by making estimated payments and by filing a New Mexico income tax return and paying the tax due. If the Department notifies the PTE that the owner has failed to pay the required tax, 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 owner's share of New Mexico net income for periods that ended prior to the Department's notification.*

A PTE must continue to provide each owner annual statements of withholding before February 15th of the year following the year for which the statement is made, and other information sufficient to enable the owner to comply with the provisions of the Income Tax Act and the Corporate Income and Franchise Tax Act with respect to the owner's allocable share of net income.

New Mexico Taxation and Revenue Department
P.O. Box 630
Santa Fe, NM 87504-0630

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Visit the Department's web site at <http://www.tax.newmexico.gov/forms-publications.aspx> for all of the forms and instructions mentioned in this bulletin. For more information about withholding tax on owners of pass-through entities, please contact (505) 827-0825 or one of the local tax offices listed below.

ALBUQUERQUE (505) 841-6200
Taxation and Revenue Department
5301 Central NE
P.O. Box 8485
Albuquerque, NM 87198-8485

LAS CRUCES (575) 524-6225
Taxation and Revenue Department
2540 S. El Paseo Bldg. #2
P.O. Box 607
Las Cruces, NM 88004-0607

SANTA FE (505) 827-0951
Taxation and Revenue Department
1200 S. St. Francis Dr.
P.O. Box 5374
Santa Fe, NM 87502-5374

ROSWELL (575) 624-6065
Taxation and Revenue Department
400 Pennsylvania Ave., Suite 200
P.O. Box 1557
Roswell, NM 88202-1557

FARMINGTON (505) 325-5049
Taxation and Revenue Department
3501 E. Main St., Suite N
P.O. Box 479
Farmington, NM 87499-0479

Main Switchboard: (505) 827-0700 (Santa Fe)

General Information. FYIs and Bulletins present general information with a minimum of technical language. All FYIs and Bulletins may be obtained without charge from all local tax offices, the Tax Information and Policy Office in Santa Fe and the Department's Internet site.

This information is as accurate as possible at time of publication. Subsequent legislation, new state regulations and case law may affect its accuracy. For the latest information please check the Taxation and Revenue Department's web site at www.tax.newmexico.gov.

This publication provides instructions or general information to the taxpayer. It does not constitute a regulation or ruling as defined under Section 7-1-60, *New Mexico Statutes Annotated, 1978*. Taxpayers and preparers are responsible for being aware of New Mexico tax laws and rules. Consult the Department directly if you have questions or concerns about information provided in this Bulletin.