

NEW MEXICO BULLETIN



New Mexico
Taxation and Revenue Department

Withholding Tax on Owners of a Pass-Through Entity

Are you required to file New Mexico Form PTE, *Income and Information Return for Pass-through Entities*, because the pass-through entity (PTE) is registered to do business in New Mexico, transacts business in, into or from this state, or derives any income from property or employment within this state? If yes, beginning in 2011 you must remit quarterly withholding from the net income of the nonresident owners, members or partners (owners). The withholding must be reported on Form RPD-41355, *Quarterly Pass-Through Entity Withholding Tax Return*, due on or before the 25th day of the month following the close of the calendar quarter in which the net income was earned.

Certain exceptions to the requirement to withhold are allowed, and documentation must be maintained in the PTE's records to establish that the PTE had reasonable cause for not withholding. A complete list of exceptions is provided in the instructions to Form RPD-41355

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 have the owner sign and notarize Form RPD-41354, *Declaration of Principal Place of Business or Residence in New Mexico*. To ease the transition to the new requirements, a PTE may rely on reasonable documentation showing that the owner is a New Mexico resident or has a business with a principal place of business in New Mexico for calendar quarters ending prior to January 1, 2012. Reasonable documentation can include a New Mexico address. For calendar quarters beginning on or after January 1, 2012, the PTE must maintain Form RPD-41354 on file or, if it is a corporation, copies of incorporation papers or information from the New Mexico Public Regulation Commission web site indicating that the corporation is a New Mexico corporation in good standing and including its address.

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, *Nonresident 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 must remit the tax required to be withheld using Form RPD-41356, *Pass-through Entity Owner's Quarterly Tax Payment*, or by another form of payment such as estimated payments. 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.**

A PTE also must submit annual returns to the Department, including details of the net income of each owner and the withholding tax paid on that income. A PTE must provide each owner sufficient information 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 share of the net income. The Department plans to release in the last quarter of 2011 the forms to be used for these submissions.

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-and-Publications/Pages/Home.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
Manuel Lujan Sr. Bldg.
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.