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## 2016 New Mexico Instructions for Form PTE Information Return for Pass-Through Entities

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Our contact information is:

Telephone: (505) 827-0825 in Santa Fe or toll free (866) 809-2335, select option 4

E-mail: [CIT.TaxReturnHelp@state.nm.us](mailto:CIT.TaxReturnHelp@state.nm.us)

Mailing address:

New Mexico Taxation and Revenue Department  
ATTENTION: Corporate Income and Franchise Tax  
P. O. Box 25127  
Santa Fe, New Mexico 87504-5127

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### These Instructions Cover the Following Forms:

- PTE, *New Mexico Information Return for Pass-Through Entities*
- PTE-A, *New Mexico Apportionment Factors Schedule*
- PTE-B, *Allocated Non-business Income Taxable to Owners*
- PTE-PV, *Pass-Through Entity Penalty Payment Voucher*
- RPD-41373, *Application for Refund of Tax Withheld From Pass-Through Entities*
- RPD-41367, *PTW Detail Report For Annual Withholding of Net Income From a Pass-Through Entity*
- PTW-PV, *PTW Detail Report For Annual Withholding of Net Income From a Pass-Through Entity Payment Voucher*
- PTW-EXT, *PTW Detail Report For Annual Withholding of Net Income From a Pass-Through Entity Extension Payment Voucher*

Call (505) 827-4508 in Santa Fe or toll free (800) 477-3632

### DUE DATES:

#### Calendar Year Filers Filing and Paying Online:

Filing deadline is on or before March 30, 2017 to avoid penalty and interest, you must electronically file your return, Form RPD-41367 **and** electronically pay your tax due.

#### Fiscal Year Filers and Calendar Year Filers Filing Paper Returns and Payments:

Filing deadline is on or before March 15th, 2017, or on or before the 15th day of the third month following the end of the tax year.

### FILING FORM PTE ONLINE:

- ◆ **File 2016 Form PTE Online** using Taxpayer Access Point (TAP). On the Department's web site at [www.tax.newmexico.gov](http://www.tax.newmexico.gov), click on **Online Services** and then **File a Return**. 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 FID account. Watch the **Adding Access to Accounts** video.
- ◆ **Pay via credit card** using Visa, MasterCard, Discover or American Express cards. A 2.40% convenience fee calculated on the amount of the transaction covers costs that the companies bill the state when you use your card.
- ◆ **Pay via electronic check at no charge.** An electronic check authorizes TRD to debit your checking account in the amount and on the date you specify.

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### 2016 Legislative Summary

For information about New Mexico tax law changes enacted during 2016, see Bulletin B-100.28, *2016 Legislative Summary*. Legislative summaries are available for each year, providing a brief description of new legislation passed during that year affecting the Taxation and Revenue Department. Access our web page at [www.tax.newmexico.gov](http://www.tax.newmexico.gov), and click on "Forms & Publications", then search the "Publications" for the Legislative Summary for the year in which the legislation passed.

### For More Information On . . .

**Profit and Non-Profit Corporate Reporting, go to:**  
[http://www.sos.state.nm.us/Business\\_Services/](http://www.sos.state.nm.us/Business_Services/)

Office of the New Mexico Secretary of State  
Corporations Bureau  
325 Don Gaspar, Suite 300  
Santa Fe, NM 87501

E-mail: [corporations@state.nm.us](mailto:corporations@state.nm.us)

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## Contact our local offices . . .

**Local Taxation and Revenue Department Offices** can provide full service and information about New Mexico's taxes, programs and forms and specific information about your filing situation.

### ALBUQUERQUE:

Taxation & Revenue Department  
Bank of the West Building  
5301 Central Ave., NE  
P.O. Box 8485  
Albuquerque, NM 87198-8485  
Telephone: (505) 841-6200

### FARMINGTON:

Taxation & Revenue Department  
3501 E. Main Street, Suite N  
P.O. Box 479  
Farmington, NM 87499-0479  
Telephone: (505) 325-5049

### LAS CRUCES:

Taxation & Revenue Department  
2540 S. El Paseo, Building #2  
P.O. Box 607  
Las Cruces, NM 88004-0607  
Telephone: (575) 524-6225

### ROSWELL:

Taxation & Revenue Department  
400 North Pennsylvania, Suite 200  
P.O. Box 1557  
Roswell, NM 88202-1557  
Telephone: (575) 624-6065

### SANTA FE:

Taxation & Revenue Department  
1200 South St. Francis Drive  
P.O. Box 5374  
Santa Fe, NM 87502-5374  
Telephone: (505) 827-0951

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## Your Electronic Services

**Access the Department's Online Services Page At: <http://tap.state.nm.us>**

- ◆ **Pay via credit card or electronic check** - Taxpayers may pay taxes over the Internet with Visa, MasterCard, Discover or American Express cards. A 2.40% convenience fee calculated on the amount of the transaction covers costs that the companies bill the state when you use your card. **You may also pay by electronic check at no charge.** An electronic check authorizes TRD to debit your checking account in the amount and on the date you specify.
- ◆ **Download forms, publications and brochures or ask a question** - Taxpayers may access forms, publications and brochures from our website.
- ◆ **Ask a question** - You can ask general questions about New Mexico taxes using the e-mail address [policy.office@state.nm.us](mailto:policy.office@state.nm.us), or ask about your tax return at [cit.taxreturnhelp@state.nm.us](mailto:cit.taxreturnhelp@state.nm.us).
- ◆ **New Mexico Taxpayer Access Point: TAP is a secure resource that allows taxpayers to check the status of tax accounts online, file certain returns, make payments, and change their address.** Access our website and select the Taxpayer Access Point (TAP) link. **The status of your refund is available through the "Where is my Refund" link** -- for PIT, CIT, and CRS tax programs. You will need your Social Security Number (SSN), or your Individual Taxpayer Identification Number (ITIN), and the amount of refund due. TAP is currently available for the following tax programs:

- |                                   |   |  |
|-----------------------------------|---|--|
| • Alternative Fuels Excise Tax    | • Gaming Operator Tax                   | • Severance Tax                                    |
| • Bingo and Raffle Tax            | • International Fuel Tax (IFTA)         | • Sub-Chapter S Corporate Income and Franchise Tax |
| • Cigarette Tax                   | • International Registration Plan (IRP) | • Telecom Relay Service Surcharge                  |
| • Combined Fuel Tax               | • Liquor Excise Tax                     | • Tobacco Products Tax                             |
| • Combined Reporting System (CRS) | • Local Liquor Excise Tax               | • Water Conservation Fee                           |
| • Conservation Tax                | • Oil and Gas Proceeds                  | • Weight Distance Tax and Permits                  |
| • Corporate Income Tax            | • Pass-Through Withholding              | • Workers' Compensation Tax                        |
| • E911 Services Surcharge         | • Personal Income Tax                   |  |
| • Fiduciary Income Tax            | • Railroad Car Company Tax              |  |
| • Gaming MFG and Distributor Tax  | • Resource Excise Tax                   |  |

# GENERAL INSTRUCTIONS

## ANSWERS TO COMMONLY ASKED QUESTIONS

When requesting a refund of tax withheld and reported on the PTE return, attach Form RPD-41373, *Application for Refund of Tax Withheld From Pass-Through Entities*, to the PTE return. Enter the amount to be refunded on Form PTE, line 5.

To receive credit for tax withheld on your PTE return, all annual statements of income and withholding must be issued to the entity filing the New Mexico return.

**Do not** submit Schedule K-1 or equivalent forms with a PTE return.

Entities that file an S-Corp, *New Mexico Sub-Chapter S Corporate Income and Franchise Tax Return*, **do not** also file a PTE, *New Mexico Information Return for Pass-Through Entities*. An entity that files the S-Corp return may be required to file RPD-41367, instead.

New Mexico approved tax credits may not be passed to the owners using a PTE return or a Schedule K-1 equivalent form. Refer to the forms and instructions for the tax credit for information on how to pass tax credits to owners.

When the PTE or remitter withholds from oil and gas proceeds and or pass-through entity withholding and the owner or remittee has no other income from New Mexico sources, the non-resident owner's or remittee's requirement to file a New Mexico personal income tax return is met.

Each New Mexico General Fund recipient appreciates your cooperation and compliance.

## DEFINITION OF A PASS-THROUGH ENTITY

*"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.

An estate or trust that distributes income to beneficiaries is also a pass-through entity, but files a FID-1 return instead of a PTE return.

## ENTITIES REQUIRED TO FILE A NEW MEXICO INFORMATION RETURN FOR PASS-THROUGH ENTITIES

Pass-through entities doing business in the state must file a, *New Mexico Information Return for Pass-Through*

*Entities* (Form PTE). This requirement includes entities registered to do business in the state, transacting business in, into or from the state, or receiving any income from property or employment within the state, and includes any partnership, joint venture, common trust fund, limited association, pool or working agreement, limited liability company or any other combination of persons or interests required to file a federal partnership return.

## DUE DATES:

For entities that file on a calendar year basis, the 2016 New Mexico PTE return is due on or before March 15, 2017, together with payment of taxes due.

For entities that file on a fiscal year basis, or file a short year return, the New Mexico PTE return is due on or before the 15th day of the third month following the close of the tax year with payment of taxes due.

Calendar year filers qualify for an extended due date if they file both their 2016 PTE return and Form RPD-41367, electronically and pay any tax due electronically. The extended due date is March 31, 2017. To avoid penalty and interest, you must electronically file your return and electronically pay your tax due.

Fiscal-year returns are due on or before the 15th day of the third month following the close of the tax year. The extended due date for electronic filing and paying the tax due does not apply to fiscal-year filers.

A New Mexico income tax return is timely if the United States Post Office postmark on the envelope bears a date on or before the due date. If the due

If you file <b>Federal form...</b>	You must file <b>New Mexico form...</b>
1065 U.S. Return of Partnership Income	PTE Information Return for Pass-Through Entities
1120 U.S. Corporation Income Tax Return	CIT-1 Corporate Income and Franchise Tax Return
1120S U.S. Income Tax Return for an S Corporation	S-Corp Sub-Chapter S Corporate Income and Franchise Tax Return
1040 U.S. Individual Income Tax Return	PIT-1 Personal Income Tax Return
1041 U.S. Income Tax Return for Estates and Trusts	FID-1 Fiduciary Income Tax Return

date falls on a Saturday, Sunday, state or national legal holiday, the return is timely if the postmark bears the date of the next business day. Delivery through a private delivery service is timely if the date recorded or marked by the private delivery service is on or before the due date.

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## EXTENSION OF TIME TO FILE

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TRD accepts an extension of time granted by the Internal Revenue Service if a copy of the automatic federal extension accompanies the PTE return at the time of filing.

If the entity needs an extension of time to file the New Mexico PTE return but has not obtained a federal extension, or if additional time to file the New Mexico return is needed beyond the federal extension date, the entity should request an extension by letter or by filing New Mexico **Form RPD-41096, *Extension of Time to File***, on or before the due date of the return.

If a federal automatic extension or a New Mexico extension is obtained for the PTE return, the extension also applies to the filing of Form RPD-41367.

An extension of time to file your return does not also extend the time to pay. If tax is due, interest continues to accrue.

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## WHICH RETURN TO FILE

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**FISCAL YEAR FILERS AND SHORT YEAR FILERS** use the PTE return applicable to the tax year in which the fiscal year or short year begins. For example, if the tax year begins on June 30, 2016, use the 2016 PTE return, regardless of the ending date of the tax year.

In general, the federal return that you are required or elect to file determines the New Mexico income tax return that you file. See chart on previous page.

If your business does not file a *New Mexico Information Return for Pass-Through Entities* (PTE), New Mexico may require you to file one of the following forms for New Mexico instead:

- CIT-1, *New Mexico Corporate Income and Franchise Tax Return*,

- S-Corp, *New Mexico Sub-Chapter S Corporate Income and Franchise Tax Return*,
- PIT-1, *New Mexico Personal Income Tax Return*, or
- FID-1, *New Mexico Fiduciary Income Tax Return*.

**NOTE:** Entities that file a 2016 S-Corp, *New Mexico Sub-Chapter S Corporate Income and Franchise Tax Return*, **do not** also file a 2016 PTE, *New Mexico Information Return for Pass-Through Entities*. **NOTE:** An entity that files the S-Corp return may be required to file Form RPD-41367, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report*.

### If You File Federal Form 1120

Every entity having income from activities or sources within New Mexico that is required to file a federal corporation income tax return or equivalent return must file a New Mexico CIT-1 return. These include all corporations organized under the laws of the State of New Mexico and corporations exempt from federal income tax under the Internal Revenue Code which have unrelated business income.

### If You File Federal Form 1120S

Corporations and Limited Liability Companies (LLCs) electing to be taxed as S corporations for federal income tax purposes must file a New Mexico *S Corporate Income and Franchise Tax Return* (S-Corp) if the entity is registered to do business in the state, transacts business in, into or from the state, or derives any income from property or employment within the state.

Each owner of the partnership, limited liability corporation, S corporation or similar business association must include his or her share of the pass-through entity income on the New Mexico personal or corporate income tax return.

**If You File Federal Form 1120-REIT** A Real Estate Investment Trust (REIT), which does business in New Mexico and files a federal Form 1120-REIT, must file a New Mexico S-Corp return.

### If You File Federal Form 1041

Estates and trusts are subject to New Mexico personal income tax. The fiduciary for an estate or trust must file a FID-1 return.

Each beneficiary of an estate or trust must include his or her share of the estate or trust income on the New Mexico personal or corporate income tax return even if the estate or trust was not required to file FID-1.

### If You File Federal Form 1040, 1040A or 1040EZ

If you are a New Mexico resident, you must file a New Mexico return if you meet any of the following conditions:

- You have to file a federal return.
- You want to claim a refund of any New Mexico state income tax withheld from your pay.
- You want to claim any New Mexico rebates or credits.

New Mexico's law says every person who has income from New Mexico sources and who is required to file a federal income tax return must file a personal income tax return in New Mexico. This includes non-residents who have income from wages, rents, royalties, businesses, estates...every New Mexico source. Even foreign nationals and persons who reside in states that do not have income taxes must file here when they have a federal filing requirement and have income from any New Mexico source whatsoever.

A single-owner LLC or similar organization doing business in New Mexico who is required to or elects to file a federal Form 1040 Schedule C instead of a federal corporate income tax return or a federal pass-through entity return, must file a New Mexico PIT-1 return. No franchise tax is due.

A non-resident owner's and remittee's requirement to file a New Mexico personal income tax return is met when the PTE or remitter withholds from oil and gas proceeds and/or pass-through entity withholding, and the owner or remittee has no other income from New Mexico sources.



## Obtaining Forms

All New Mexico Taxation and Revenue Department forms, instructions and information brochures are available on the Department's Internet home page. Our address is: [www.tax.newmexico.gov](http://www.tax.newmexico.gov). Forms are also available at any New Mexico Taxation and Revenue Department district offices listed on page 2 of these instructions. You may also request forms by calling (505) 827-2206 in Santa Fe or toll free (866) 809-2335, select option 4.

### **IMPORTANT: File Returns on Approved State Forms.**

Always submit 2016 Pass-Through Entity Returns on official state forms provided by or approved by the Department. Never submit a return with a form that has been **photocopied** or **photo shopped** as it will not be accepted.

## **WITHHOLDING AND ADDITIONAL REPORTING REQUIREMENTS FOR PASS-THROUGH ENTITIES**

A pass-through entity (PTE) who is subject to withholding tax from its non-resident owners, partners, members, or beneficiaries (owners) net income 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 annually report each owner's share of net income allocable to New Mexico and remit the New Mexico tax withheld for each owner. The required annual report is Form RPD-41367, *PTW Detail Report For Annual Withholding of Net Income From a Pass-Through Entity*.

The PTE must report for all owners and except for personal services businesses, mark the indicator box on Form RPD-41367, if the PTE entered into an agreement with the owner that the owner files and pays the tax due on the allocable net income of the PTE. A PTE that is a personal service business cannot enter into an agreement with its owners. Form RPD-41367 is due, even if no tax was withheld.

**File Electronically:** If a PTE has 51 or more payees who receive New Mexico net income, the PTE is required to electronically file Form RPD-41367 through TAP or approved third party software. If the PTE has 51 or more New Mexico payees, and is unable to file electronically because a hardship exists, the PTE may request Department approval to file by paper. 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.

If the PTE has 50 or fewer beneficiaries who receive New Mexico taxable net income, the PTE may choose to submit the completed RPD-41367 electronically or in paper format.

When required to file electronically, a paper filed Form RPD-41367 will be rejected by the Department.

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 for Form RPD-41367.

Form RPD-41367, *PTW Detail Report For Annual Withholding of Net Income From a Pass-Through Entity*, is due on or before the due date of the entity's federal return for the taxable year. If a pass-through entity is not required to file a federal income tax return for the tax year, the entity must file Form RPD-41367 with the Department no later than 105 days after the end of its taxable year.

If a federal automatic extension or a New Mexico extension is obtained for the PTE return, the extension also applies to the filing of Form RPD-41367. An extension waives penalty through the extension due date, but does not waive interest.

To make an extension payment, go to TAP and complete Form PTW-EXT, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report Extension Payment Voucher*. The payment and the voucher can also be mailed to the address on the voucher.

### **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 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 federal Forms 1099-Misc, *pro forma* 1099-Misc, or Form RPD-41359, to report to the owners the allocable net income and the New Mexico tax withheld. A Schedule K-1 may not be used by the owners to obtain credit for New Mexico tax withheld.

Forms 1099-Misc, *pro forma* 1099-Misc, or Form RPD-41359, *Annual Statement of Pass-Through Entity Withholding*, must be provided to the owner by February 15th of the year following the year for which the statement is made. **The PTE is not required to submit these forms to the Department.**

## **REQUIRED ATTACHMENTS TO FORM PTE**

**NOTE:** We can process your return more quickly if you submit your forms, schedules and attachments in the following sequence:

- **PTE:** *New Mexico Information Return for Pass-Through Entities*.
- **PTE-A:** *New Mexico Apportionment Factors*, if the entity has income from sources both inside and outside New Mexico.
- **PTE-B:** *Allocated Non-business Income Taxable to Owners*, if the entity has non-business taxable income.

### **Reminder:**

**Write your correct federal employer identification number (FEIN) on ALL forms, schedules, payments and correspondence.**

- **RPD-41373: Application for Refund of Tax Withheld From Pass-Through Entities**, if the entity requests a refund of tax withheld against the net income it receives from another PTE, or withholding on New Mexico oil and gas proceeds received.
- **Federal Form 1065, pages 1 through 5.**
- **Other attachments** as required by instruction.

**NOTE: If any of these forms are omitted when required, the New Mexico return is incomplete.**

If your return is filed late, complete **PTE-PV, Pass-Through Entity Penalty Payment Voucher**, to include with your check or money order for the \$5 late filing penalty.

Note: 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.

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#### Other Forms or Attachments You May Have to File

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If the PTE is not required to electronically file Form RPD-41367 because it has 50 or fewer payees or has obtained an exception for electronically filing Form RPD-41367 from the Department, submit the completed RPD-41367 with the PTE return. If payment is due, also complete Form PTW-PV, *Annual Withholding of Net Income From a Pass-Through Entity Detail Report Payment Voucher*, and submit the check and payment voucher attached to Form RPD-41367, to the address on the voucher.

If a PTE has 51 or more payees who receive New Mexico net income, the PTE is required to electronically file Form RPD-41367 in TAP or approved third party software.

A copy of the **approved federal extension or the approved New Mexico extension** if the return is filed after PTE

the original due date of the return. If a copy is omitted, a late-filing penalty will be assessed.

**All annual information returns and withholding statements issued to the entity.** Attach a copy of all annual information returns and withholding statements showing income and New Mexico income tax withheld, if reporting amounts withheld on lines 1 or 2 of the PTE return. Attach New Mexico Forms RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*, or RPD-41359, *Annual Statement of Pass-Through Entity Withholding*, or federal Form 1099-Misc or equivalent.

**IMPORTANT:** To receive proper credit for withholding, all annual statements of income and withholding must be issued to the entity filing the New Mexico return. A Schedule K-1 or equivalent is not sufficient evidence of New Mexico income tax withheld.

**Federal Forms and Schedules.** The Department may require you to furnish a true and correct copy of your federal tax return and attachments.

To claim **Approved Film Production Tax Credit**, you must attach **Form RPD-41228, Film Production Tax Credit Claim Form**, to the return. Report the amount of approved film production tax credit on the PTE return, line 18.

**NOTE:** New Mexico approved tax credits may not be passed to the owners using a PTE return or a Schedule K-1 or equivalent form. Refer to the forms and instructions for the tax credit for information on how to pass tax credits to owners.

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#### PAYMENTS

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If you are filing a late return you may pay the \$5 penalty on the Department's website, or by using PTE-PV, *Pass-Through Entity Penalty Payment Voucher*.

If you are making a payment towards your Form RPD-41367, *PTW Detail Report For Annual Withholding of Net Income From a Pass-Through Entity*, you may pay by using PTW-PV, *Annual Withholding of Net Income From*

*a Pass-Through Entity Detail Report Payment Voucher*, or through TAP.

Do not combine payments towards the PTE return and the Form RPD-41367 on the same check or money order. If you combine payments, it is likely they will not be credited to your account in the way you would wish.

**Making Payment Through the Internet.** Using the Department website, you may pay by electronic check at **no charge**. Your electronic check authorizes the Taxation and Revenue Department to debit your checking account in the amount and on the date you specify. Directions are available on the website. Pay your tax due online using the Department's website at <https://tap.state.nm.us>.

You may also make tax payments using any of these credit cards--Visa, MasterCard, American Express, or Discover Card--for your online payment. A convenience fee of 2.40% is applied for using a credit card. The State of New Mexico uses this fee, calculated on the transaction amount, to pay charges from the credit card companies.

**Making Payment By Check.** Whether submitting payment separately or attached to your return, complete the PTE-PV or PTW-PV and include your check or money order.

Make your check or money order payable to New Mexico Taxation and Revenue Department. Do not mail cash.

Mail the return, payment voucher, payment and required attachments to:

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

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.

**NOTE:** Because the Department uses high-speed scanners when processing payment vouchers, a quality form helps ensure accuracy. Do not photocopy. The scanners can read only one page size to process vouchers, therefore it is important that you **cut on the dotted line only**. When printing the voucher from the Internet or a software product, prevent resizing by setting the printer's page scaling function to **none**. If your payment voucher has a scanline (a very long row of numbers) within the bottom 1 and 1/2 inch of the voucher do not write in the area around the scanline.

To avoid misapplication of funds write "2016 PTE" or "2016 PTW-PV", and your federal employer identification number on the check or money order.

A check that is not paid by the financial institution on which it is drawn does not constitute payment, and a minimum penalty of \$20 is assessed in addition to other applicable penalties and interest.

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## REFUND

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A pass-through entity (PTE) may use Form RPD-41373, *Application for Refund of Tax Withheld From Pass-Through Entities*, to request a refund of tax withheld from its net income according to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. If tax was withheld from the net income received from another PTE, **or** tax was withheld from oil and gas proceeds received, the PTE may request a refund or pass the tax withheld to its owners. A refund can be obtained by attaching Form RPD-41373 to the PTE return, *New Mexico Information Return for Pass-Through Entities*.

If requesting a refund from withholding tax paid by the PTE, attach Form RPD-41373 to the PTE's Form RPD-41367, *PTW Detail Report For Annual Withholding of Net Income From a Pass-Through Entity*.

**IMPORTANT:** To validate the claim for refund, on Form RPD-41367, the Department may require both the PTE and Form RPD-41367 to be filed. The Department compares the information

provided on both forms to verify that the claim for refund is valid.

**Specific Instructions for Claiming a Refund on the PTE Return.** If you have received a 1099-Misc, Form RPD-41359, *Annual Statement of Pass-Through Entity Withholding*, or Form RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*, showing income tax withheld on your net income from another pass-through entity or withholding on New Mexico oil and gas proceeds received, and you wish to obtain a refund of the tax withheld, then you must submit a completed Form RPD-41373 to the Department and enter the refund amount on line 5 of the PTE return. The forms 1099-Misc, RPD-41359, or RPD-41285 must be issued to the PTE.

When requesting a refund, enter the amount of refund claimed on Form PTE, line 5, and attach a completed Form RPD-41373 to the PTE return.

**Specific Instructions for Claiming a Refund on Form RPD-41367.** If you have overpaid the tax to be withheld from the owner's allocable net income of a PTE on RPD-41367, you must submit a completed Form RPD-41373, *Application for Refund of Tax Withheld From Pass-Through Entities*, to the Department.

On Form RPD-41373, under **Basis For Refund**, indicate the reason for overpayment.

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## PENALTY

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If a PTE return is not filed when due because of negligence or disregard of rules or regulations, but without intent to defraud, the entity is liable for a five dollar penalty. The penalty does not apply if there is an extension of time to file and the return is filed by the extended due date.

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## AMENDED RETURNS

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Submit an amended return on a PTE return for the year being amended and check the "amended" box. Attach all required schedules.

If the New Mexico amended return reports changes as the result of filing

an amended federal return, attach copies of the applicable federal forms and schedules. In all other cases, attach an explanation of the changes. If the New Mexico amended return shows changes as the result of a Revenue Agent Report (RAR), the changes must be reported within 180 days of the date the federal adjustments are final. Attach a copy of the RAR.

**NOTE:** Generally, you do not need to attach a copy of the previously filed state PTE return as backup for the amended return. If you do attach a copy of the state Form PTE as backup, write "DO NOT PROCESS" across the face of the return.

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## LINE INSTRUCTIONS FOR COMPLETING PTE RETURN

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**Computerized schedule(s) WILL NOT be accepted in lieu of completing the appropriate forms. All applicable line items on the PTE return and Schedules PTE-A, PTE-B, RPD-41367, and federal Form 1065, pages 1 through 5 must be completed for the return to be processed.**

**NOTE:** References to federal form line numbers correspond to the most recent federal forms available as of the date these instructions were finalized. If the references do not correspond to the federal form, use the applicable line from the federal form for the item described.

Round all dollar amounts to the nearest whole dollar.

Complete the taxpayer information at the top of the PTE return. Type or print the correct name, address, ZIP code and identification numbers in the spaces provided. Indicate if the return is an original or amended return by marking the appropriate box.

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.



Fiscal-year and short year return filers must enter the beginning and ending dates (month, day, and year) of their tax year. No entry is required for calendar year filers.

If the due date has been extended, **write in the extended due date**. A copy of the extension must be attached to the return.

Enter the **NAICS (North America Industrial Classification System) Code**. The business activity code reported for New Mexico filing purposes will be the same as reported for federal purposes. If you don't know your NAICS code, refer to the instructions for your federal return. Federal forms and instructions can be downloaded from the IRS website, [www.irs.gov](http://www.irs.gov).

**NOTE:** The Department cannot process a return without the Federal Employer Identification Number (FEIN). Failure to provide the FEIN will result in processing delays and may cause the return to be rejected.

The New Mexico CRS identification number may be left blank if the pass-through entity does not require a New Mexico CRS identification number because the entity has no New Mexico gross receipts, withholding or compensating tax reporting requirements.

If the pass-through entity needs a New Mexico CRS identification number, you may register the business online at <https://tap.state.nm.us>, to obtain a CRS identification number.

## Complete Questions A through D.

### SECTION 1, LINES 1-3 -- TAX WITHHELD FROM THE PASS-THROUGH ENTITIES (PTE) INCOME

**Line 1. Tax withheld from oil and gas proceeds received.** Enter the total of all New Mexico income tax withheld from oil and gas proceeds received as shown on your annual withholding statements, 1099-Misc, or Form RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*. Be sure to include a copy of the forms with your PTE return.

PTE

On this line, only report New Mexico tax withheld on oil and gas proceeds you received. The tax withheld must be reported on one of the annual withholding statements mentioned above, and must be issued to you.

An entity that has had tax withheld cannot pass a withholding statement directly to any other taxpayer. Generally, the recipient must file and report the tax withheld on its New Mexico income tax return. However, if the recipient is also a remitter, the tax withheld on the oil and gas proceeds may be passed to the remitees by issuing the remitees an annual withholding statement, Form RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*, or a *pro forma* 1099-Misc. The remitees may then claim the withholding on their income tax return.

**Line 2. Tax withheld on PTE allocable net income.** Enter the total of all New Mexico income tax withheld on the pass-through entity's allocable net income as shown on Forms 1099-Misc or RPD-41359, *Annual Statement of Pass-Through Entity Withholding*. Be sure to include a copy of the forms with your PTE return.

On this line, only report New Mexico tax withheld on net income from a pass-through entity that you received. The tax withheld must be reported on one of the annual withholding statements mentioned above, and must be issued to you.

An entity that has had tax withheld cannot pass a withholding statement directly to its owners, members, partners or beneficiaries (owners). Generally, the recipient must file and report the tax withheld on its New Mexico income tax return. However, if the recipient is also a pass-through entity, the tax withheld may be passed to the owner of the recipient by issuing the owner an annual withholding statement, Form RPD-41359, *Annual Statement of Pass-Through Entity Withholding*, or a *pro forma* 1099-Misc. The owner may then claim the withholding on their income tax return.

**Line 3. Amount from lines 1 and**

**2 passed to owners, Reported on Form RPD-41367.** Enter the amount of tax withheld from the income of the PTE, reported on lines 1 and 2, which is subsequently passed on to the owners of the PTE.

A PTE passes withholding tax to its owners by issuing them Form RPD-41359, *Annual Statement of Pass-Through Entity Withholding*, Form 1099-Misc or a *pro-forma* Form 1099-Misc. Then, the owners may then take credit for the withholding on their corporate or personal income tax return.

When a PTE passes tax withheld to its owners, the income tax withheld is also reported on Form RPD-41367, *PTW Detail Report For Annual Withholding of Net Income From a Pass-Through Entity*. Because the information is reported on Form RPD-41367, **the PTE does not need to submit copies of Forms 1099-Misc and RPD-41359 to the Department.**

**Line 4. Subtotal.** Subtract line 3 from the sum of lines 1 and 2.

**Line 5. Refund of overpayment of tax withheld.** If applicable, enter the amount of overpayment of tax withheld from the PTE, and reported on lines 1 and 2. **You must also attach a completed Form RPD-41373, *Application for Refund of Tax Withheld From Pass-Through Entities*, to the PTE return.** If you wish to obtain a refund of any of the withholding tax, you must attach Form RPD-41373, or your refund will be denied.

When a PTE requests a refund of overpayment of tax withheld on Form PTE, the withholding is **NOT** reported on Form RPD-41367, *PTW Detail Report For Annual Withholding of Net Income From a Pass-Through Entity*. The PTE claims the refund of the overpayment of tax withheld on the PTE return and does not report that amount with the withholding of its owners.

See also the section on **REFUND**, on page 8 of these instructions.

### SECTION 2, LINES 6-17 -- COMPUTATION OF NET INCOME TAXABLE TO OWNERS



**Line 6. Ordinary income.** Enter the ordinary income or loss as recognized on federal tax return Form 1065, Schedule K.

**Line 7. Other income.** Enter the summation of all other income or losses recognized on federal tax return Form 1065, Schedule K.

**Line 8. Interest income from municipal bonds.** Enter interest income from non-New Mexico state and local bonds not subject to federal income tax under IRC Section 103.

**Line 10. Interest from U.S. government obligations.** Interest or dividend income from U.S. government obligations is deductible from an entity's taxable income only if, and to the extent that, it was included in taxable income on line 6. Expenses related to income from U.S. obligations must be subtracted and the net amount entered.

**NOTE:** Income from Fannie Mae, Ginnie Mae, Freddie Mac and other U.S. guarantee entities is not deductible. Income from repurchasing agreements of U.S. obligations (REPOs) is not deductible. Interest on notes issued by the Federal Home Loan Bank obligations are deductible, but not dividends issued by the Federal Home Loan Bank. That portion of income paid by mutual funds, unit investment trusts, and simple trusts which is derived from investments in U.S. obligations may be deducted.

Interest income from bonds issued by the State of New Mexico or its political subdivisions may also be deducted on this line to the extent that income was included in federal taxable income.

**Line 11. Allowable deductions from Schedule K.** Enter the allowable deductions recognized on the federal tax return Form 1065, Schedule K. Neither net operating loss carryover nor oil and gas depletion deductions are allowed to be claimed at the entity level on the PTE return.

**Line 12. Allocated income.** Enter total allocated income from Schedule PTE-B, column 1, line 8, if applicable.

**Line 14. Average New Mexico per-**

**centage.** Enter the **Average New Mexico Percentage** from Schedule PTE-A, line 5.

**Line 16. New Mexico allocated income.** Enter New Mexico allocated income from PTE-B, column 2, line 9, if applicable.

**Line 17. New Mexico net income.** Enter the sum of lines 15 and 16.

#### **SECTION 4, LINE 18 -- ALLOWABLE CREDIT**

**Line 18. Approved film production tax credit.** Enter the amount of approved film production tax credit that you are eligible to claim. You must also complete and attach Form RPD-41228, *Film Production Tax Credit Claim Form*. For a description of the credit, see Form RPD-41228.

**NOTE:** The amount of film production tax credit you may claim against your tax due on this return and the amount that you may receive as a refund (based on your claim for the film production tax credit) are subject to certain limitations governing the payment of film production tax credit claims. See the instructions for RPD-41228, *Film Production Tax Credit Claim Form*, for details regarding these limitations and how your refund may be impacted.

#### **SIGNATURE BOX**

**SIGNATURE. The return must be signed and dated by an officer, member or partner of the entity.** Complete all information, including a phone number and e-mail address.

Any person, other than an employee of the entity, preparing the return for compensation must also sign and date the return. A preparer other than an employee of the entity must enter the paid preparer's identifying information in the section, "*Paid preparer's use only*", next to the taxpayer's signature. Enter the preparer's New Mexico CRS identification number, if the preparer has one, and the Federal Employer Identification Number (FEIN), if applicable. All paid preparers must enter their Preparer's Taxpayer Identification

Number (PTIN).

An improperly signed or unsigned return will be considered invalid for filing purposes, and penalty may be assessed.

#### **SCHEDULE PTE-A LINE INSTRUCTIONS**

#### **LINES 1 - 5. NEW MEXICO APPORTIONMENT FACTORS**

Schedule PTE-A must be used by an entity to apportion its income from the entity's regular trade or business activities when income is derived from both inside and outside New Mexico.

Complete lines 1 through 5 of PTE-A.

Round each percentage to four decimal places (for example, 22.6270%).

The average percentage on line 5 must be supplied to all owners of the entity. Also enter this percentage on the PTE return, line 14.

All filers who have business activity outside New Mexico, including filers:

- who have no nexus in New Mexico;
- whose activities in New Mexico are immune from corporate income tax under P.L. 86-272, and
- who have no business activity in New Mexico during the tax year, must complete Schedule PTE-A in its entirety in order for your return to be processed.

On lines 1 through 5, columns 1 and 2, all entries must be either a positive number or a zero. Negatives are not allowed. Column 1 must be completed to compute the factors. For the sales factor only, if you have either a federal taxable income or loss, you must have a positive number in the denominator (column 1, Gross Receipts line) of the sales factor.

**"Apportionable income" means income arising from transactions and activities in the regular course of an entity's trade or business. Apportionable income includes income from both tangible and intangible property if the acquisition,**

**management or disposition of the property constitutes integral parts of the entity's regular trade or business. It includes investment income related to or used in the entity's overall business operations. The following sources of income are considered apportionable income and must be included:**

- Dividend income from the investment of working capital or dividend income from an investment which is functionally connected to the entity's trade or business.
- Interest income from the investment of working capital, or interest income from capital investments used in the overall business operations, or interest income from an investment which is functionally connected to the entity's trade or business.
- Royalty income and fees from patents, copyrights, franchises, trademarks and licenses developed in the regular course of the entity's trade or business, or royalty income and fees from a product or mineral interest used in the regular course of the entity's trade or business.
- Rental or subrental income from property purchased, leased or used in the regular course of the entity's trade or business.
- Gains or losses from the sale of assets used in the regular course of the entity's trade or business or assets sold which had been treated as business assets in prior years.
- Income from a partnership or non-corporate entity if held within the regular course of the corporation's trade or business.

**Line 1. Property Factor.** This factor is a percentage determined as follows:

**Divide** the average value of the real and tangible personal property owned or rented and used in New Mexico during the tax year to produce apportionable income (column 2)

**By** the average value of all real and tangible personal property owned or rented everywhere and used during the tax year to produce apportionable income (column 1). If the percentage

is negative, enter zero.

Property shall be valued according to the following rules:

Inventory shall be valued according to the valuation method used for federal income tax purposes.

Value property owned during the tax year at its original cost before the allowance for depreciation amount at the time of acquisition by the taxpayer and adjusted by subsequent capital additions, improvements and partial dispositions.

Value property which was rented from others at eight (8) times the net annual rental rate. The net annual rate is the annual rent paid less any annual rent received from subrentals of the same property. If property owned by others is used by the entity at no charge or rented by the entity at a nominal rate, the net annual rental rate is determined on the basis of a reasonable market rental rate for the property.

Determine the average value of property by adding the total value of property held by the taxpayer at the beginning of the tax period to the total value of property held at the end of the tax period. Divide by two.

A taxpayer may be required to compute an average value on a monthly basis if the Department determines that a monthly average is necessary to correctly reflect the average value of the taxpayer's property.

**Line 2. Payroll Factor.** This factor is a percentage determined as follows:

**Divide** the total amount paid as compensation to employees in New Mexico during the tax year (column 2)

**By** the total amount paid as compensation to employees everywhere during the tax year (column 1).

"Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Only amounts paid directly to employees are included in the payroll factor. "Employees" include

leased employees where the taxpayer is considered an employer for payroll tax purposes, but "employees" are not independent contractors to whom the taxpayer issues federal Form 1099.

Only compensation that is attributable to business operations subject to apportionment is included in the payroll factor.

Compensation of any employee whose primary activities relate to the production of non-business income is excluded from the payroll factor, but may be included as a related expense of the allocated activity.

**Line 3. Sales Factor.** This factor is a percentage determined as follows:

**Divide** the total gross receipts attributable to New Mexico during the tax year, excluding returns, allowances and allocated income (column 2)

**By** the total gross receipts everywhere during the tax year, excluding returns, allowances and allocated income (column 1). If the percentage is negative, enter zero.

"Gross receipts" means all income earned from transactions and activities in the regular course of business, including income from licensing of intangible personal property.

Sales of tangible personal property are New Mexico sales if:

- The property is delivered or shipped to a purchaser, other than the United States government, within the state regardless of the FOB point or other conditions of the sale, or
- The property is shipped from an office, store, warehouse, factory or other place of storage in this state and
  - the purchaser is the United States government, or
  - the taxpayer is not taxable in the state of the purchaser.

Sales other than sales of tangible personal property are New Mexico sales if:

- The income-producing activity was performed in New Mexico,
- The income-producing activity was

performed both inside and outside New Mexico, but a greater proportion was performed within New Mexico than in any other single state (the proportion shall be determined by the cost of performance in each state),

- The gross receipts were from the rental, lease, licensing or any other use of either real or tangible personal property during the time the property was in New Mexico, or
- The gross receipts were from the performance of personal services in New Mexico.

#### **Lines 4 and 5. Total Factors and Average New Mexico Percentage.**

New Mexico uses an evenly weighted three-factor formula. The three-factor formula is for all taxpayers except taxpayers who are:

- Qualifying manufacturers who elect to use the special manufacturers apportionment formula, or
- A taxpayer whose principal business activity in New Mexico is a headquarters operation and who elects to use the single weighted sales factor apportionment formula, or
- Allowed or required to eliminate one or more factors because the three-factor formula does not fairly represent the extent of their business activity in New Mexico.

**Taxpayers using the three-factor formula, complete lines 4 and 5 as described on Schedule PTE-A. Taxpayers electing or required to use one of the exclusions described above must follow the instructions described next.**

#### **Exclusion 1**

##### **Electing Manufacturers Apportionment Formula**

Taxpayers whose principal activity is manufacturing may elect to use a special apportionment formula. For tax years beginning on or after January 1,

2014, the election allows taxpayers to apportion the business income to New Mexico using an alternative method which, over a five-year period, phases-in a single weighted sales factor.

See the chart below for the apportionment formula.

The election for the special factor method applies to the tax year in which the manufacturer notifies the Department of their election, until the manufacturer notifies the Department, in writing, that the election is terminated. The manufacturer, however, shall not terminate the election until the method of apportioning business income has been used by the taxpayer for at least three consecutive tax years, covering at least 36 calendar months.

The statutory authority for this elective method is in Statue 7-4-10(B) NMSA 1978.

#### **Definition of Manufacturing**

"Manufacturing" means combining or processing components or materials to increase their value for sales in the ordinary course of business, but does not include:

- (a) construction;
- (b) farming;
- (c) power generation, except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act [Articles 1 through 6 and 8 through 13 of Chapter 62 NMSA 1978] or
- (d) processing natural resources, including hydrocarbons.

#### **How to Make the Election**

To elect to use the electing manufacturers apportionment formula, you must notify the Department in writing no later than the filing date of the first return to

which your election applies.

Submit your notification to make your election or to terminate your election to 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).

On PTE-A, line 5, use the formula in the chart that corresponds to the tax year of your return to calculate the apportionment percentage.

#### **Exclusion 2**

##### **Electing Headquarters Operation Apportionment Formula**

Taxpayers whose principal business activity in New Mexico is a headquarters operation may elect to use a single weighted sales factor apportionment formula. For tax years beginning on or after January 1, 2015, the election allows the taxpayer to apportion the business income to New Mexico using a single weighted sales factor.

If elected the taxpayer apportions taxable income by multiplying it by a fraction, the numerator of which is the total sales of the business in New Mexico during the tax year and denominator of which is the total sales of the taxpayer from any location within or outside of the state during the tax year.

The election for the special factor method applies to the tax year in which the business notifies the Department of their election, until the business notifies the Department, in writing, that the election is terminated. The taxpayer, however, shall not terminate the election until the method of apportioning business income has been used by the taxpayer for at least three consecutive tax years, covering at least 36 calendar months.

The statutory authority for this elective method is in Section 7-4-10(C) NMSA 1978.

### **Single Weighted Sales Factor For Electing Manufacturers**

**For tax years beginning:**

January 1, 2016 through December 31, 2016

**The apportionment formula is:**

$$\frac{7x \text{ sales factor} + 1.5x \text{ property factor} + 1.5x \text{ payroll factor}}{10}$$



## Definition of Headquarters

"Headquarters operation" means:

(a) the center of operations of a business: 1) where corporate staff employees are physically employed; 2) where centralized functions are performed, including administrative, planning, managerial, human resources, purchasing, information technology and accounting, but not including a call center; 3) the function and purpose of which is to manage and direct most aspects and regional headquarters if the national headquarters is subordinate only to the ownership of the business or its representatives and the regional headquarters is subordinate to the national headquarters; or

(b) the center of operations of a business: 1) the function and purpose of which is to manage and direct most aspects of one or more centralized functions; and 2) from which final authority over one or more centralized functions is issued.

## How to Make the Election

To elect to use the headquarters operation apportionment formula, you must notify the Department in writing no later than the filing date of the first return to which your election applies.

Submit your notification to make your election or to terminate your election to 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)

Use the instructions below to calculate the apportionment percentage on PTE-A, line 5.

Complete the property factor and payroll factor on lines 1 and 2 even if you elect to report by sales factor. Compute the sales factor on line 3. Transfer the amount in line 3 to line 5. Also complete lines A and B at the bottom of Schedule PTE-A.

## Exclusion 3

**Eliminating one or more factors.** If the allocation and apportionment provisions of the Uniform Division of Income for Tax Purposes Act do not fairly represent the extent of your business

activity in New Mexico, you may without prior approval, or the Department may require if reasonable, the exclusion of any one or more insignificant factors—property, payroll, or sales.

## SCHEDULE PTE-B LINE INSTRUCTIONS

### LINES 1 - 9. ALLOCATED NON-BUSINESS INCOME TAXABLE TO OWNERS

Schedule PTE-B must be used by entities to allocate income not connected to the entity's regular trade or business.

Direct and indirect expenses related to allocated income must be deducted from the related income. Expenses related to allocated income are determined by the entity's books and records. If the entity's books and records do not reflect proper amounts for expenses, the entity may rely on other reasonable methods.

If you have an entry in column 2, you must also have an entry in column 1. The allocation cannot be correctly computed if both columns are not completed correctly.

Enter the following information on the appropriate lines of PTE-B to allocate income:

#### Line 1. Net Non-business Dividends.

Column 2: Total amount in column 1 is allocated to New Mexico if the taxpayer's commercial domicile is in New Mexico.

"Commercial domicile" means the principal place from which the taxpayer's trade or business is directed or managed.

#### Line 2. Net Non-business Interest.

Column 2: Total amount in column 1 is allocated to New Mexico if the taxpayer's commercial domicile is in New Mexico.

**Lines 3 and 4. Net Non-business Rents and Royalties.** Column 2: The following net rent and royalty income

should be allocated to New Mexico if it is non-business income:

1. Income from real property located in New Mexico;
2. Income from all tangible personal property if the taxpayer's commercial domicile is in New Mexico and the entity is not organized under the laws of or taxable in the state where the property is used;
3. Income from tangible personal property that is used in New Mexico;
4. Income from intangibles (patents, copyrights, franchises, trademarks and licenses) used in New Mexico, and
5. Income from intangibles if the taxpayer's commercial domicile is in New Mexico but the income from the intangible is not taxable in the state where the intangible is used.

A patent is used in New Mexico if it is used in production, fabrication, manufacturing or other processing in New Mexico.

A copyright is used in New Mexico if printing or other production occurs in New Mexico.

#### LINE 5. Net Profit or (Loss) on the Sale or Exchange of Non-business Assets.

Column 2: The net gain or loss from the sale or exchange of the following should be allocated to New Mexico if it is non-business income:

1. Real property located in New Mexico;
2. Tangible personal property located in New Mexico at the time it was sold;
3. Tangible personal property not located in New Mexico at the time it was sold if:
  - a. the entity's commercial domicile is within New Mexico, and
  - b. the gain was not taxable in the state where the tangible personal property was located, and
4. Intangible personal property if the entity's commercial domicile is in New Mexico.

#### Line 6. Net Non-business Partnership Income (Loss).

Column 2: Non-business partnership income should be allocated to New Mexico to the extent the partnership conducts business in this state.

**Line 7. Other Net Non-business Income (Loss).** Attach a schedule to identify all other allocated income.

#### **CONSISTENCY IN REPORTING**

An entity is required to be consistent in:

- Classifying income as allocable or apportionable;
- The valuation of property and its inclusion in the property factor;
- The treatment of compensation for the payroll factor; and
- The exclusion or inclusion of receipts in the sales factor for returns filed in all states.

Any change or inconsistency from prior year returns must be disclosed in a statement attached to the return. Identify the amounts and reasons for the changes or inconsistencies.

#### **PETITION PROCEDURE OPEN TO TAXPAYER**

If the above procedures for allocation and apportionment do not fairly represent the extent of the taxpayer's business activity in New Mexico, the taxpayer may petition, or the Secretary of Taxation and Revenue may require, that another method be used to apportion or allocate all or any part of the taxpayer's business income.

#### **AFTER YOU FILE YOUR RETURN**

At any time after filing your return, it may be subject to further review, verification or correction. The State of New Mexico, pursuant to reciprocal information exchange agreements, exchanges information with the Internal Revenue Service, certain other state agencies

and taxing authorities in other states.

If your tax return is adjusted or an assessment of additional tax is issued, you will be provided a description of your rights as a taxpayer. Our Publication FYI-406, *Your Rights Under the Tax Laws*, describes in detail how to dispute an adjustment or assessment made by the Department through either the claim for refund procedure or the protest procedure. Publication FYI-406 is available by contacting your local district tax office or by downloading from the Department website at [www.tax.newmexico.gov](http://www.tax.newmexico.gov). Click on "Forms and Publications".

***Reminder:***  
***Write your correct federal employer identification number (FEIN) on ALL forms, schedules, payments and correspondence.***

### **Privacy Notification**

The New Mexico Taxation and Revenue Department requires taxpayers to furnish federal employer identification numbers as a means of taxpayer identification. All information supplied electronically by taxpayers is protected using encryption and fire walls. Taxpayer information on returns is protected in accordance with the confidentiality provisions of the Tax Administration Act (Section 7-1-8 NMSA 1978).

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# New Mexico Taxpayer Bill of Rights

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Most tax transactions happen without incident. In an imperfect world, however, occasional disagreements occur through misunderstanding, mathematical error, missed deadlines, misplaced papers, high volume of transactions and many other situations. Over the years the Legislature and the Department have established ways to handle difficulties according to the provisions of the state tax code. Following are some of your rights. Should you wish to consult the law itself, you will find it in Sections 7-1-4.1 through 7-1-4.3 NMSA 1978:

- The right to available public information and prompt and courteous tax assistance;
- The right to representation and advice by counsel or other qualified representatives at any time during your interactions with the department according to provisions of Section 7-1-24 NMSA 1978, or with the Administrative Hearings Office in accordance with the provisions of the Administrative Hearings Office Act;
- The right to have audits, inspections of records and meetings conducted at a reasonable time and place according to Section 7-1-11 NMSA 1978;
- The right to simple, non-technical information explaining procedures, remedies and rights during audit, protest and collection proceedings under the Tax Administration Act;
- The right to receive an explanation of audit results and the basis for audits, assessments or denials of refunds that identify tax, interest or penalty due;
- The right to seek review through formal or informal proceedings of findings or unfavorable decisions arising from determinations during audit or protest procedures according to Section 7-1-24 NMSA 1978 and the Administrative Hearings Office Act;
- The right to have your tax information kept confidential unless other-

wise specified by law in Sections 7-1-8.1 through 7-1-8.10 NMSA 1978;

- The right to an abatement of an assessment of taxes incorrectly, erroneously or illegally made (Section 7-1-28 NMSA 1978) and a right to seek a compromise of an asserted tax liability. When the Secretary of Taxation and Revenue in good faith doubts that you owe us what we claim you owe, you also have the right to seek a compromise if one exists in your particular case (Section 7-1-20 NMSA 1978);
- The right to clear information of the consequences if a tax assessment is not paid, secured, protested or otherwise provided for according to Section 7-1-16 NMSA 1978. If you become a delinquent taxpayer, upon notice of delinquency you have the right to timely notice of collection actions that require sale or seizure of your property under the Tax Administration Act, and
- The right to pay your tax obligations by installment payment agreements according to the provisions of Section 7-1-21 NMSA 1978.

## Confidentiality Provisions:

Statutes regulating the confidentiality of your taxes continue to be strict. The Legislature included language in Section 7-1-8 NMSA 1978 requiring the Department to answer questions about whether a taxpayer is registered to do business in this state or is registered for other tax programs, but it does not allow employees to reveal whether you have filed a return. A hearing officer's written ruling on questions of evidence or procedure according to the provisions of the Administrative Hearings Office Act may be made public, but not the name and identification number of the taxpayer requesting the ruling. Now included in public record are the monthly gasoline tax reports of numbers of gallons of gasoline and ethanol-blended fuels received and deducted, and the tax paid by each filer or payer of the tax. Identities of rack operators, importers, blenders, suppliers or distributors

and the number of gallons of gasoline and other fuels are public record. The Department may make known to the Gaming Control Board the tax returns of license applicants and their affiliates.

## Audit Provisions:

We must provide you with written, dated notice that an audit is about to begin on a specific date, and the notice must tell you which tax programs and reporting periods will be covered. We must issue a second notice, which states any outstanding records or books of account requested and not yet received, between 60 and 180 days after the audit begins. If you do not produce the records within 90 days, the department can issue an assessment of tax on the basis of the information as it stands. If you need additional time, you must submit a specific request in writing. Interest on outstanding liabilities accrues if the department does not issue an assessment within 180 days of the notice of outstanding records or books, or within 90 days after time has expired under your request for additional time; however, you are entitled to an abatement of interest for the period of time after you have complied with department requests and the department has not acted on the audit.

## Administrative Hearing Procedures:

A hearing officer may not engage or participate in any way in the enforcement or formulation of general tax policy other than to conduct hearings. You may request the Chief Hearing Officer of the Administrative Hearings Office determine if a hearing officer has engaged or participated in the enforcement or formulation of tax policy and if the hearing officer's activities have affected his or her impartiality. The Chief Hearing Officer may designate another hearing officer for the matter. Hearing officers may not communicate unilaterally about a matter you have protested while that matter is still pending. The chief hearing officer may appoint another hearing officer if that occurs. You may request a written ruling on any contested question of evidence in mat-



ters in which you have filed a pending written protest. You also may request that two or more protests on related issues be combined and heard jointly, and the hearing officer shall grant the request unless it creates an unreasonable burden on the department.

**Credit Claims:**

The Department has 180 days from the filing date to approve or deny a statutory tax credit. If it does not act, the credit is approved. The Secretary decides whether a refund of tax due you may be offset against your other tax liabilities, and you will receive notice that the refund will be made accordingly. You are entitled to interest until the tax liability is credited with the refund amount. Please see the paragraph above on "Audit Provisions" for interest due you if the department does not offset a refund or credit against your other tax liabilities within the prescribed time. The Department may make a direct refund of overpaid

taxes to the taxpayer without requiring the taxpayer to file a refund claim. The Department does not have to pay interest on credits or refunds if it applies the amount to a tax interception program, to an estimated payment, or to offset prior liabilities of the taxpayer.

**Awarding of Costs and Fees:**

If you prevail in an administrative or court proceeding brought by you or against you after July 1, 2003, under the Tax Administration Act, you may be entitled to a judgment or a settlement for reasonable administrative costs connected to the action.

**Penalty:**

The department may not assess penalty against you if you fail to pay tax when due because of a mistake of law made in good faith and on reasonable grounds. If the Secretary determines that it is unfair to hold a spouse or former spouse liable for payment of unpaid taxes, the Secretary

may decline to take action against the spouse or former spouse of the person who actually owes the tax. In extreme cases of delinquency under Section 7-1-53 NMSA 1978 the Department may enjoin a taxpayer from continuing in business after a hearing and until the delinquency is cleared.