

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

Tax District Field Offices and the Department's call center can provide full service and general information about the Department's taxes, taxpayer access point, programs, classes, and forms. Information specific to your filing situation, payment plans and delinquent accounts.

TAX DISTRICT FIELD OFFICES

ALBUQUERQUE

10500 Copper Pointe Avenue NE
Albuquerque, NM 87123

SANTA FE

Manuel Lujan Sr. Bldg.
1200 S. St. Francis Dr.
Santa Fe, NM 87504

FARMINGTON

3501 E. Main St., Suite N
Farmington, NM 87499

LAS CRUCES

2540 S. El Paseo Bldg. #2
Las Cruces, NM 88004

ROSWELL

400 Pennsylvania Ave., Suite 200
Roswell, NM 8820

For forms and instructions visit the Department's web site at <http://www.tax.newmexico.gov>

Call Center Number:

1-866-285-2996

If faxing something to a tax district field office, please fax to:

Call Center Fax Number:

1-505-841-6327

If mailing information to a tax district field office, please mail to:

Taxation and Revenue Department
P.O. Box 8485
Albuquerque, NM 87198-8485

For additional contact information please visit the Department's website at <http://www.tax.newmexico.gov/contact-us.aspx>

General Information. FYIs and Bulletins present general information with minimum technical language. All FYIs and Bulletins are free of charge and available through all local tax offices and on the Taxation and Revenue Department's website at <http://www.tax.newmexico.gov/forms-publications.aspx>

This information is as accurate as possible as of the date specified on the 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.